

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI****M.A.NO.503 OF 2015 IN R.A.NO.34 OF 2015  
IN  
ORIGINAL APPLICATION NO.910 OF 2004**

DISTRICT: MUMBAI

- (1) The State of Maharashtra through )  
The Principal Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai. )
- (2) The Divisional Commissioner, )  
Konkan Division, Navi Mumbai. )
- (3) The Deputy Collector, )  
(Encroachment and Removal) )  
And Competent Authority, )  
Kurla, Mulund (West), )  
Mumbai-400 080. )
- .. Applicant (Org. Respondents.)

**Versus**

- Shri Vilas Prabhakar Bhanushali )  
R/o Sai Ashirwad, Flat No. 001, )  
Near Belawali Gaon, Badlapur (W) )  
Dist Thane )
- ) ..Respondent (Org. Applicant)

Shri K.B. Bhise, the learned Presenting Officer for the Applicants (Org. Respondents).

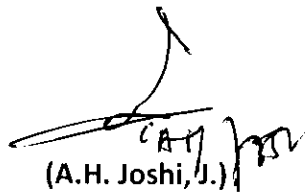
Shri R.M. Kolge, the learned Advocate for the Respondents (Org. Applicants).

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATE : 21.04.2016.

**J U D G M E N T**

1. Heard Shri K.B. Bhise, the learned Presenting Officer for the Applicants (Original Respondents and Shri R.M. Kolge, the learned Advocate for the Respondent (Original Applicant).
2. Perused M.A. and affidavit-in-reply.
3. It is seen that filing of application for review is delayed by 11 years.
4. Delay is sought to be explained by averring that the information about filing of criminal case against applicant was not ready at hand and record of service of applicant was scattered because he has served at various places and that he was on leave for long period.
5. Loathsomeness in Government records in a matter of public knowledge and judicial notice.
6. From the point of view that justice should prevail and delay ought not defeat justice, delay of 11 years caused in filing of R.A. is condoned.
7. Parties are directed to bear their own costs.

  
(A.H. Joshi, J.)  
Chairman

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**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**REVIEW APPLICATION NO.34 OF 2015  
IN  
ORIGINAL APPLICATION NO.910 OF 2004**

**DISTRICT: MUMBAI**

- |     |                                  |   |  |
|-----|----------------------------------|---|--|
| (1) | The State of Maharashtra through | ) |  |
|     | The Principal Secretary,         | ) |  |
|     | Revenue and Forest Department,   | ) |  |
|     | Mantralaya, Mumbai.              | ) |  |
| (2) | The Divisional Commissioner,     | ) |  |
|     | Konkan Division, Navi Mumbai.    | ) |  |
| (3) | The Deputy Collector,            | ) |  |
|     | (Encroachment and Removal)       | ) |  |
|     | And Competent Authority,         | ) |  |
|     | Kurla, Mulund (West),            | ) |  |
|     | Mumbai-400 080.                  | ) | <b>.. Applicants (Org. Respondents.)</b> |

**Versus**

Shri Vilas Prabhakar Bhanushali	)	
R/o Sai Ashirwad, Flat No. 001,	)	
Near Belawali Gaon, Badlapur (W)	)	
Dist Thane	)	<b>..Respondent (Org. Applicant)</b>

Shri K.B. Bhise, the learned Presenting Officer for the Applicants (Org. Respondents).

Shri R.M. Kolge, the learned Advocate for the Respondent (Org. Applicant).

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATE : 21.04.2016.



### J U D G M E N T

1. Heard both sides. Perused the record.
2. Original Application No.910 of 2004 was decided on 03.12.2004.
3. This Tribunal's order is very brief and is passed on learned P.O.'s concession.
4. In this Review the ground which is raised reads as follows :-

*"7. The Applicants (Org. Respondents) state that as per Rule 130(1)(c) of M.C.S. (Pension) Rules, 1982, the applicant is not entitled for Final Pension and Gratuity in view of the pendency of criminal case against him."*  
(Quoted paragraph 7, from page no.4 of the R.A. paper book)
5. It has transpired during hearing that fate of this R.A. is depending on the language of Rule 130 and Rule 27 (4) and (6) of M.C.S. (Pension) Rules, 1982.
6. Relevant rules are quoted below:-

***"130. Provisional pension where departmental or judicial proceedings may be pending :***

- (1) (a) *in respect of Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of Rule 27, the Head of Office shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.*
- (b) *The provisional pension shall be authorized by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period of extended by the Audit Officer and such provisional pension shall be continued up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.*
- (c) *No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.*  
*(Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorities to be paid to the Government servants.*

- (2) *Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specific period.*

27. ....

- (4) *In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 130 shall be sanctioned.*

(5) .....

- (6) *For the purpose of this rule, -*

- (a) *departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and*
- (b) *Judicial proceedings shall be deemed to be instituted -*
- (i) *in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognisance is made, and*
  - (ii) *in the case of civil proceedings, on the date of presenting the plaint in the Court."*

(Quoted from M.C.S. (Pension) Rules, 1978 - Rule 130, 27(4) and 27(6))

7. It is apparent that scheme of Rule 130 & 27 of M.C.S. (Pension) Rules, 1978 have to be read together. These rules provide withholding pension if judicial proceedings or D.E. is / are pending.

8. Condition precedent for withholding pension is pendency of Departmental Enquiry (D.E.) or judicial proceedings.

9. In precedent case D.E. is not pending. Therefore, pendency of D.E. is not the cause presented and relied upon by the State.

10. Cause pleaded in support of plea that applicant is not entitled for pension is the pendency of Criminal Case i.e. judicial proceedings.

11. Definition of "pendency of judicial proceedings" is given in Rule 27 (6) of M.C.S (Pension) Rules and it shall guide the rule for interpretation and the action.

12. Pendency of judicial proceedings is not defined to mean lodgement of F.I.R. rather taking cognizance by court is necessary, rather mandatory.

13. Admittedly in present case sanction for prosecution was granted by State on 07.09.2006 and charge-sheet was filed before Adhoc Special Judge, Kalyan on 28.03.2007, while Applicant had retired in 2003.

14. Thus on what is shown by Applicant cognizance of criminal case was not taken by court prior to Applicant's retirement.

15. In the foregoing premises, it is evident that the Applicant was entitled for release of regular pension.

16. As observed in foregoing paragraph no.13 text whereof is evident from the contents of the application for review, the claim and prayer for Review is not based on legally sustainable and factually correct grounds. Admittedly by State, no judicial proceeding was pending on the date of Applicant's retirement.

17. Thus, the prayer for withdrawal of statement by learned P.O. is based on the plea that Criminal case is pending. Pendency of Criminal case rather "pendency of judicial proceedings", in present case is fallacy and is based totally on erroneous notion.

18. Application for Review is thus proved to be based on totally erroneous grounds and facts and consequently misreading of provision of law, and hence the application for review has no merit, and is dismissed with costs.

Sd/-

(A.H. Joshi, J.)  
Chairman

PsZ.