

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1498 OF 2023

**DISTRICT: THANE
SUB : RETIRAL BENEFITS**

Shri Shankar Chanappa Pujari, Age 59 years,)
Retired as Police Inspector.)
R/o. B-1/2-1, Shubaramb Complex,)
Wadi Road, Manpada, Thane (W), Thane.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Secretary, Home Department,)
Having Office at Mantralaya,)
Mumbai-400 032.)
- 2) The Director General of Police, Shahid)
Bhagat Singh Road, Colaba,)
Mumbai 400 005.)
- 3) The Commissioner of Police, near)
Crawford Market, CST, Mumbai 400 001.)...**Respondents**

Shri M. B. Kadam, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Ashutosh N. Karmarkar, Member (J)

Date : 28.08.2024

ORDER

1. Heard Shri M. B. Kadam, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The Applicant has claimed relief for direction to the Respondents to pay Provisional Pension, Gratuity, GIS and other consequential service benefits invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

3. Initially, the Applicant was appointed as 'Police Sub Inspector' on 08.09.1992 and retired as 'Assistant Commissioner of Police' on 30.06.2023. During his service in 2015, the FIR was registered against him for the offences under Section 7, 13 (1)(d) with 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C. Act, 1988'). Subsequently, the Applicant was acquitted in the said ACB Case No.47/2017 on 12.04.2019. According to Applicant, during the pendency of the said case, the Respondents formed a committee to verify the assets. Thereafter, a committee filed a report in 2017-2018. The FIR was registered against the Applicant under Section 13(1)(c) read with 13(2) of 'P.C. Act, 1988', but the charge sheet in Criminal Case is not filed. According to Applicant, he retired on 30.06.2023, but the amount of gratuity is not paid. The retirement benefits including pension are also pending. The Applicant claimed relief on the ground that no charge sheet is filed against him and in the departmental enquiry punishment of 'Warning' was only imposed.

4. The Respondent No.3 has filed Affidavit in Reply. They have not disputed the fact that the Applicant is retired on 30.06.2023 and he was acquitted in ACB Case No.47/2017. It is also not disputed that C.R. No.31/2021 was registered against Applicant regarding disproportionate assets but no final report is submitted. According to them, as per Rule 130(c) of 'Pension Rules, 1982', the gratuity cannot be paid until judicial proceeding is concluded and final order is passed. The Applicant is acquitted in Criminal Case. But in departmental enquiry, punishment of 'Warning' was given to him.

5. Learned Advocate for Applicant has submitted that alleged 'warning' dated 24.03.2023 is not in connection with earlier crime registered against the Applicant. Learned Advocate has also invited attention to document (Exhibit A) which is 'Case Diary' and submitted that on the day of retirement, the Applicant was not informed about punishment of D.E. or Criminal Proceeding. In support of his case, the

learned Advocate for Applicant has referred to judgments of this Tribunal and Hon'ble High Court of Judicature at Bombay which are as follows: -

- (A) **O. A. No.238/2023 (Shirishkumar V. Rajwade V/s State of Maharashtra), dated 05.06.2023.**
- (B) **O.A. No.346/2021 (Dilip P. Patil V/s State of Maharashtra), dated 17.07.2022.**
- (C) **W. P. No.2630/2014 (Purushottam K. Kulkarni & Ors. V/s State of Maharashtra & Ors.)**

6. On the other hand, it is submitted by learned PO that C. R. No.31/2021 under 'P.C. Act, 1988' was registered against the Applicant for the offences under Section 13(1)(e) read with 13(2) on 04.07.2021 i.e. before retirement of the Applicant. According to Respondents, the registration of this crime can be said to be a criminal proceeding and, therefore, in view of Rule 130 (c) of 'Pension Rules, 1982'; the relief regarding payment of pension cannot be granted. Learned PO has referred to judgments of the Hon'ble High Court of Judicature at Bombay in **W.P. No.14289/2017 (State of Maharashtra & Ors V/s Baban Yeshwant Ghuge)**, dated 19.07.2024. According to learned PO, it is immaterial whether the charge-sheet was filed on the day of retirement. It is also submitted by her that the judgment referred by her was not referred when the orders of this Tribunal were passed in cases of **Shirishkumar V. Rajwade** and **Dilip P. Patil (cited supra)**.

7. During the course of argument, the learned Advocate for Applicant has submitted that Applicant did not receive regular pension amount towards leave encashment and gratuity. Firstly, I will deal with the issue regarding payment of gratuity. On the basis of submissions, the issue for consideration is whether the Respondents can withhold the payment of gratuity. It is undisputed fact that Applicant stands retired from service on 30.06.2023. It is not case of Respondent that any departmental enquiry was initiated on date of retirement of the Applicant. The Respondent has contended in Affidavit in Reply that crime under Section

13(1)(e) r/w 13(2) of Prevention of Corruption Act, 1988 was registered against the Applicant pertaining to disproportionate assets vide CR No.31/2021.

8. So far as the issue regarding payment of gratuity is concerned, it is necessary to reproduce Section 130(1)(c) of 'Pension Rules, 1982' which reads as under:-

“130. Provisional pension where departmental or judicial proceedings may be pending.

(1)(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 authorised to be paid to the Government Servant].

9. It can be said on the basis of this provision that the Government has right to withhold or withdraw pension subject to contingencies. It is also necessary to refer Rule 27 of 'Pension Rules, 1982 which reads as under :-

“27. Right of Government to withhold or withdraw pension.-

(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

- 2(a) The departmental proceedings referred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.
- (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -
- (i) shall not be instituted save with the sanction of the Government,
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and
 - (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.
- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of and event which took place, more than four years before such institution.”
- (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) Where Government decided not to withhold or withdrawn pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at the rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

- (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 cognizance is made, and
 - (ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

10. In view of Rule 130(1)(c) of 'Pension Rules, 1982', the amount of gratuity cannot be paid to the Government servant until the conclusion of departmental or judicial proceeding and the issue of final orders thereon.

11. Rule 27(6)(b) (i) says that the judicial proceedings shall be deemed to be instituted on the date on which complaint or report of the officer of which Magistrate takes cognizance is made. Mere registration of offence cannot be a ground to withhold gratuity particularly when the charge sheet is not filed. In future if criminal case is instituted in the court of law and if the Applicant found guilty, in that case Government can withdraw or withhold pension as provided under Rule 26 of 'Pension Rules'. In support of issue regarding gratuity, learned Advocate rightly relied on the judgments of this Tribunal in case of (i) ***Shirishkumar Rajwade V/s State of Maharashtra in O. A. No.238 of 2023, dated 05.06.2023 and (ii) Dilip Parbat Patil V/s State of Maharashtra & Ors in O.A.No.346 of 2021, dated 17.07.2022 .***

12. On the other hand, the learned PO has placed reliance on the judgment of the Hon'ble High Court of Judicature at Bombay in ***W.P. No.14289 of 2017 (State of Maharashtra & Ors. V/s Baban Ghuge) .*** In that case, the concerned Government servant was acquitted in criminal case. But the State had preferred Criminal Appeal which was pending. The Hon'ble High Court in ***State of Maharashtra & Or. V/s***

Baban Ghuge's case (cited supra) has observed that since criminal appeal is pending, the gratuity cannot be released. The facts in that case appears to be somewhat different. Thus, the discussion above leads me to say that since Applicant stands retired without their being any initiation of judicial proceedings, his right to receive gratuity and pension cannot be withheld.

13. Rule 27 of 'Pension Rules' provides for withholding pension where any departmental enquiry is instituted before retirement and even after retirement subject to constraints mentioned in Rule 27(b) of 'Pension Rules' in case pensioner is found guilty on conclusion of DE. In view of the facts that neither DE nor judicial proceeding was initiated on the date of retirement of Applicant, his right to receive pension and gratuity cannot be kept in abeyance.

14. The learned Advocate for Applicant also submitted about non receipt of amount of leave encashment. For that purpose, Rule 68 (6) (a) of Maharashtra Civil Services (Leave) Rules, 1981 needs to be looked into. The said Rule is reproduced as under:-

"Rule 68(6)(a) : The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any."

The above referred Rule empowers the competent authority to withhold leave encashment until conclusion of departmental enquiry initiated against the Government servant. It is already discussed that no departmental enquiry was pending nor judicial proceeding can be said to be pending against the Applicant on the date of retirement. Therefore, the Applicant can be said to be entitled for leave encashment.

15. For the reasons stated in forgoing paragraphs, the Original Application deserves to be allowed.

ORDER

- (A) Original Application is allowed.
- (B) The Respondents are directed to release pensionary benefits namely gratuity, leave encashment and also release regular pension within the period of three months from the date of this order.
- (C) No order as to costs.

Sd/-

(A. N. KARMARKAR)
Member (J)

Place: Mumbai

Date: 28.08.2024

Dictation taken by: V. S. Mane

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