

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

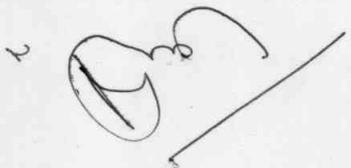
ORIGINAL APPLICATION NO.15 OF 2016

DISTRICT : NASHIK

Shri Arun Jagannath Thakare.)
Aged : 65 Yrs, Retired as Joint Director)
of Education with his last posting on)
deputation with the below named)
Respondent No.3 at Mumbai and R/at)
Padmaj, Sharada, C.H.S, Old Naka,)
Gangapur Road, Nashik - 13.)...**Applicant**

Versus

1. The Education Commissioner (M.S),)
Pune, Having office at Senapati)
Bapat Marg, Balbharati Campus,)
Pune-4.)
2. The Municipal Commissioner,)
Mumbai Municipal Corporation,)
Mumbai.)
3. The State of Maharashtra.)
Through the Principal Secretary,)
School Education Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**



Shri B.A. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents 1 & 3.

Shri U. Mande, Advocate for Respondent No.2.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 05.01.2017

JUDGMENT

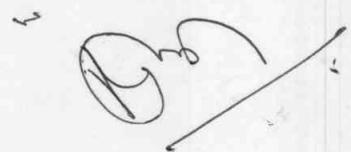
1. This Original Application (OA) now remains restricted only to the issue of grant of interest on the delayed payment of regular pension and gratuity.

2. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant, Ms. N.G. Gohad, the learned Presenting Officer for the Respondents 1 & 3 and Shri U. Mande, the learned Advocate for Respondent No.2.

3. The Applicant is a retired Joint Director of Education. The 1st Respondent is Education Commissioner, M.S, Pune. The 2nd Respondent is the Municipal Commissioner of Greater Mumbai and the 3rd Respondent is the State of Maharashtra through Principal Secretary, School Education Department.



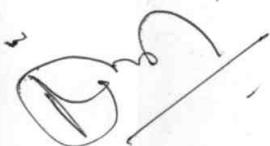
4. As a matter of fact, most of the facts at issue for which the facts have been needlessly set out reiterated and denied ritualistically are concluded finally by the Judgment in the matter of OA No.142/2014 (Shri Arun J. Thakare Vs. State of Maharashtra and 2 others, dated 9th June, 2014 decided by the then learned Member (Administrative) of this Tribunal. The present Applicant was the Applicant in that OA as well while the Respondents were the same though the 2nd Respondent here was the 3rd Respondent therein. The directions were sought therein to release the pre and post retirement dues along with interest to the Applicant and the directions were sought to the BMC to forward to the State, no dues and no DE Certificates or in the alternative the State to obtain the said Certificate from BMC. The Applicant was, in the evening of his career, on deputation with the BMC. Reading the said Judgment in OA 142/2014, it was found that the Applicant retired on 30.11.2008. He had not received gratuity, commutation of pension and difference between regular and provisional pension though he had received GPF, GIS and Leave Encashment. There were allegations of misconduct against the Applicant pertaining to his tenure at Latur. No charge was proved against him. The State has been writing to the BMC for the no dues and no DE Certificates. It was held in OA 142/2014 that *inter-alia* by virtue of lapse of four years



post retirement, no orders for initiation of the DE could be passed then. Reference was made to the contents of the various letters. It was observed quite categorically at internal page 11 as follows :

“It is quite clear that initiation of a DE is not possible or contemplated now and this fact has been informed to the respondent no.3 unambiguously. It was therefore incumbent on the part of the respondent no.3 to have issued the no dues and no enquiry certificates.”

5. Thereafter, reference was made to the orders earlier made in that OA and, ultimately, the final order was made in Para 14 (Page 66 of the PB). It is, therefore, quite clear that the only issue that now remains surviving is with regard to the admissibility and/or grant of interest and nothing more. I must repeat that the parties would have been better advised not to have unnecessarily raked-up the issues that were concluded by the Judgment in OA 142/2014. They have unnecessarily consumed public time which could have been avoided. Needless to say that fruitless confusion was also prone to be created and at least for those who are the specialists in law, I should have thought it had occurred to them the need to keep a proper



focus on this particular aspect of the matter. I must repeat times out of number that the Judgment of this Tribunal in OA 142/2014 had become final, conclusive and binding much before the present OA was brought by the Applicant.

6. Reading the Judgment in OA 142/2014, it becomes quite clear that the Applicant could not have been blamed for the delay in processing of an actual payment of the post retiral benefits to him. The Respondents cannot fall back upon any such plea. It should have become clear to the personnel of both State as well as BMC that in the context of the factual scenario such as it was, the Applicant was not liable to be proceeded against departmentally, in which connection, this Tribunal made categorical reference to the provisions of Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, and therefore, there was no reason why they should have slept over the clearing and payment of the legitimate dues of the Applicant.

7. There has been some debate at the Bar intra-Respondents with regard to the liability of payment to the Applicant. Now, a depute does not cease to be an employee of his principal, although during the period of deputation, his salary, etc. is paid by the borrowing

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authority, but in the ultimate analysis in the context of the present facts at least, the liability to pay the post retiral benefits as well as pensionary benefits was of the State. In my opinion, the various recitals from time to time in the correspondence which tend to suggest as if the State was helpless before BMC because they were not issuing the no dues, no DE Certificates was either over-reaction or an expression of guilty consciousness for the delay. Be it as it may, but if the State still felt that they had any grievance to ventilate against BMC, they could not have used the Applicant as "a hostage" as it were. I would, therefore, conclude by holding that the actual liability to pay retiral and pensionary benefits is of the State and if the State feel that any cause of action is there against BMC, they are free to take recourse to it for which I express no opinion.

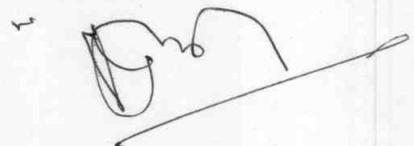
8. It appears from Exh.'M' (Page 68 of the Paper Book (PB)) that ultimately, the Accountant General made the orders on 28.11.2014 and the Applicant started getting his regular pension from December, 2014 and also in the same month of the same year, he got his gratuity. However, the above discussion would make it quite clear that there was an unexplained and unexplainable delay in the matter of the said payment. In that connection, the provisions of Rule 129-A and 129-B of the Pension Rules



would swing into operation and as already mentioned above the disabling factors therein mentioned are absent in favour of the Applicant herein. Therefore, the Applicant shall be entitled to receive interest in so far as the gratuity is concerned from 1.3.2009 till 30.11.2014 and the rate of interest shall be as applicable to the GPC deposits.

9. Reliance was placed on **Union of India Vs. Justice S.S. Sandhawalia (Retd.) & Ors., JT 1994(1) SC 62** and Judgment in fasciculus of Writ Petitions, the leading one being **Writ Petition No.8985/2011 (Smt. Savitribai Vs. State of Maharashtra and 3 others and others, dated 9th May, 2014)** decided by a Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench and also on a Judgment of this Tribunal in **OA 266/2008 (Shri Kantilal D. Shah Vs. The State of Maharashtra and 2 others, dated 6.11.2009)**. I have carefully perused the Judgments just referred to and applied the principles emanating therefrom hereto.

10. The upshot is that the Respondents 1 & 3 will be liable to pay interest to the Applicant as herein discussed, subject to their right to take action, if any, as mentioned in Rules 129-A and 129-B of the Pension Rules against their own Officers and also subject to any action that they



wanted to take against the BMC. The issue is that as between the Respondents and the Applicant, the Applicant can look upon only the Respondents 1 & 3 and that is it.

11. The Respondents 1 & 3 are hereby directed to pay to the Applicant interest at the rate applicable to the Provident Fund deposits as hereinabove indicated from 1.3.2009 to 30.11.2014 and their right to take action as indicated in the preceding Paragraph is in-tact as against their own employees as well as BMC. The compliance within six weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
05.01.2017

05-01-17

Mumbai

Date : 05.01.2017

Dictation taken by :

S.K. Wamanse.

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