

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.332 OF 2021

DISTRICT : NASHIK

Shri Ramesh Tanaji Chavan.)
Age : 59 Yrs, Occu.: Retired as)
Head Master, Government Ashram School,)
Dahindule, Tal.: Baglan, District : Nashik)
And residing at 14/8, Om Niwas Row)
Housing Society, Opp. Sanklecha's)
Construction, Jatra-Nandur Road,)
Adgaon, Nashik.)...**Applicant**

Versus

1. The Project Officer.)
Integrated Tribal Development,)
Project Office, Kalwan, Tal.: Kalwan,)
District : Nashik.)
2. The Head Master.)
Government Ashram School,)
Dahindule, Tal.: Baglan,)
District : Nashik.)
3. The Commissioner.)
Tribal Development, M.S, Nashik.)
4. The State of Maharashtra.)
Through Principal Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 01.10.2021

JUDGMENT

1. The Applicant has sought direction to the Respondents to release his retiral benefits invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant joined Government service as Teacher and after rendering service of about 35 years, he availed voluntary retirement w.e.f.31.07.2019. At the time of retirement, no D.E. or criminal prosecution was instituted or pending against him. However, his gratuity, regular pension, leave encashment and home-town bill was withheld. He made representations on 14.11.2019, 30.12.2019, 11.12.2020, 06.03.2020, 09.06.2020 and 19.01.2021 requesting the Respondents to release his withheld retiral benefits but in vain. He was granted provisional pension upto 31.01.2020 but it was also stopped for no valid reasons. It is on this background, having no other option after waiting more than two years, the Applicant has filed the present O.A. seeking direction to the Respondents to release his withheld retiral benefits.

3. The Respondents resisted the claim by filing Affidavit-in-reply *inter-alia* contending that after retirement of the Applicant, the Committee constituted in this behalf had inspected and examined the record of the School and found various irregularities in the purchase of School material attributing misappropriation of Government money. Accordingly, Show Cause Notice was given to the Applicant on 27.08.2020 as to why departmental action and criminal prosecution should not be initiated against him for the alleged irregularities and misappropriation of funds. The Applicant submitted reply denying the

charges. This seems to be the ground for withholding remaining retiral benefits of the Applicant.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that admittedly, on the date of retirement i.e. on 31.07.2019, neither D.E. nor criminal prosecution was instituted or pending against the Applicant, and therefore, the Respondents cannot withheld retiral benefits in law on the assumption of initiation of D.E. or criminal prosecution in future.

5. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer in reference to contentions raised in reply submits that after retirement of the Applicant in inspection, several irregularities, illegalities were noticed and it was decided to initiate criminal proceedings as well as departmental proceedings. However, she fairly concedes that till date, no such departmental enquiry or criminal prosecution has been instituted or launched against the Applicant.

6. Thus, what transpires from the record that Applicant was allowed to retire voluntarily on 31.07.2019 unconditionally. Admittedly, on the date of his retirement, no departmental enquiry or criminal prosecution was instituted or pending against him. It is only after retirement in inspection of School, certain irregularities, illegalities and misappropriation in the matter of purchase of School material was noticed by the Committee and report was made by the Committee to Respondent No.1 – Project Officer, Integrated Tribal Development on receipt of which Respondent No.1 recommended for initiation of departmental action and criminal prosecution against the Applicant, as seen from letter dated 09.01.2020 (Page No.167 of P.B.)

7. However, thereafter, no further steps were taken by the Respondents either to initiate the D.E. or criminal prosecution against the Applicant though the period of more than two years is over from his retirement.

8. The departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner. Whereas judicial proceedings shall be deemed to be instituted on the date on which complaint or report of a Police Officer of which the Magistrate takes cognizance is made as specifically provided under Rule 27(6) of 'Pension Rules of 1982'. Whereas, in the present case, admittedly, even till date, neither departmental proceedings are instituted nor any criminal proceedings are initiated in the Court of law. It is only in case of pendency for institution of criminal proceedings or departmental proceedings at the time of retirement, the gratuity and regular pension can be withheld till conclusion of such proceedings.

9. At this juncture, it would be apposite to reproduce Rule 27 and Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982, which are as follows :-

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

(1) [Appointing Authority 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 reemployment, -

(i) shall not be instituted save with the sanction of (Appointing Authority),

(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 reemployment, 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.”

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

(1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date of 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 authorised to be paid to the Government Servant].

(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 specified period.”

10. Undoubtedly, in terms of Rule 27 as quoted above, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of 'Rules of 1982'. In that event, if pensioner is found guilty for grave misconduct or negligence during the period of his service, then the Government is empowered to withhold or withdraw or pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement of the Applicant, so as to have bearing of Rule 27(2)(a) of 'Pension Rules of 1982'.

11. In this context, it would be useful to refer the decision of Hon'ble High Court in **The Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Versus Bhujgonda B. Patil : 2003 (3) Mah.L.J. 602**. In that case, the D.E. was initiated during the service but was continued after retirement of the Respondent. In this authority, the Hon'ble High Court highlighted the scope, ambit as well as limitation of Rule 27 of 'Rules of 1982'. Para No.13 of the Judgment is important, which is as follows :-

"13. All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub - rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re - employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules."

12. Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of 'Pension Rules of 1982' and where on conclusion, the Government servant (pensioner) found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld.

13. As regard gratuity, the Rule 130(c) says “no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.” Here, the legislature has not used the word “pensioner” and has specifically used the word “Government Servant”, which is significant in the present context. This leads to suggest that Rule 130(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of ‘Rules of 1982’, in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired, right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found guilty in D.E, if initiated fulfilling embargo mention in Rule 27(2)(b) of ‘Pension Rules 1982’. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon’ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.

14. Indeed this aspect is acknowledged by the Government of Maharashtra in G.R. dated 06.10.1998 reiterating the provisions of Rule 27 of ‘Pension Rules of 1982 wherein it is stated as follows :-

“सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शाससन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार कार्यवाही होत नाही असे शासनाच्या निर्देशनास आले आहे. त्यामुळे अशा प्रकरणामध्ये सेवानिवृत्त कर्मचा-याचे महाराष्ट्र प्रशासकीय न्यायाधिकरण तसेच लोकआयुक्तांकडे निवृत्ती वेतन इत्यादि फायदे न मिळालेबाबत तक्रारी येतात. सदर प्रकरणामध्ये वित्त विभाग शासन निर्णय क्रमांकसेनिवे-१०९४/१५५/सेवा-४, दिनांक २४ एप्रिल १९९५ अन्वये शासनाला व्याजाचा खर्च विनाकारण करावा लागतो. तेव्हा सर्व शिस्तभंग विषयक प्राधिका-यांना पुन्हा निर्देशित करण्यात येते की, वित्त विभाग शासन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार सेवानिवृत्त होणा-या शासकीय कर्मचा-याचे बाबतीत त्याच्या सेवानिवृत्तीपुर्वी महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियम १९८२ मधील नियम २७ (६) नुसार विभागीय चौकशीची कार्यवाही सुरु करण्यात आली नसेल म्हणजेच आरोपपत्र देण्यात आले नसेल किंवा आधीच्या तारखेपासून निलंबनाधीन ठेवण्यात आले नसेल तर सेवानिवृत्तीचा दिनांकाला त्याचेविरुद्ध विभागीय चौकशी प्रलंबित आहे असे म्हणता येत नाही व त्यामुळे अशा कर्मचा-यांना सेवानिवृत्ती विषयक सर्व फायदे वेळेवर अदा करणे अपेक्षित आहे.”

15. The learned P.O. could not point out any provision or Rule empowering the Government to withhold retiral benefits on the ground of initiation of D.E. or criminal prosecution in future. On the contrary, the legal position is fairly settled that it is only in case of institution of departmental proceedings or criminal proceedings on the date of retirement, the gratuity and regular pension can be withheld. Indeed, this aspect is acknowledged by the Government in G.R. dated 06.10.1998 reproduced above.

16. As stated above, the Applicant was allowed to retire voluntarily, unconditionally on 31.07.2019. It is only after his retirement, in inspection, certain irregularities, illegalities are noticed in the matter of purchase of School material, etc., the Respondent No.1 had recommended for initiation of D.E. as well as for institution of criminal case, but admittedly even till date, no D.E. is instituted nor any criminal case is filed in the Court of law, even no FIR is registered. This being the position, the retiral benefits cannot be withheld on conjuncture or possibility of initiation of any such proceedings in future. The Respondents may initiate such proceedings as permissible in law but they cannot withhold retiral benefits for such an indefinite period. In any case, in law, there being no such proceedings pending against the Applicant on the date of retirement, withholding of gratuity and other retiral benefits is totally erroneous and unsustainable in law. If any such proceedings are instituted as permissible in law, it is in the event of conviction, the Government can withhold or withdraw the pension, but

the retiral benefits of the Applicant cannot be kept in abeyance on any such speculation of initiation of D.E. or criminal proceedings in future.

17. The totality of aforesaid discussion leads me to sum-up that withholding of remaining retiral benefits is totally impermissible and Respondents are required to release the same. Needless to mention, the Respondents are at liberty to initiate the D.E. or criminal prosecution, as may be permissible in law. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release remaining retiral benefits to the Applicant within a month from today.
- (C) The Respondents are free to initiate the D.E. or criminal prosecution, as may be permissible in law.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 01.10.2021
Dictation taken by :
S.K. Wamanse.

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