

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 29 OF 2020
(Subject:- Provisional Pension/Withholding of Pension and Gratuity)

DISTRICT:- NANDED

Shaikh Akhtar Hussain s/o Mohd. Hanif,)
Age:- 59 Years, Occu- Retired,)
R/o Mominpura, Near Pochamma Mandir,)
Kinwat, Tq. Kinwat, Dist. Nanded.)
...APPLICANT

V E R S U S

- 1. The State of Maharashtra,**)
Through Chief Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)
- 2. The Superintendent of Police,**)
Nanded, Tq. & Dist. Nanded.)
Vazirabad Chouk, Nanded.)
- 3. The Divisional Inquiry Officer,**)
Sub Division, Nanded (City),)
Tq. & Dist. Nanded.)
Vazirabad Chouk, Nanded.)

...RESPONDENTS

APPEARANCE : Shri P.B. Rakhunde, learned counsel for
the applicant.

: Smt. V.P. Choudhari, learned Presenting
Officer for the respondent authorities.

CORAM : **Justice Shri Vinay Joshi, Member (J)**

DATE : **27.11.2024**

ORDER

Heard Shri P.B. Rakhunde, learned counsel for the applicant and Smt. V.P. Choudhari, learned Presenting Officer for the respondent authorities.

2. The short issue involved in this Original Application is about issuance of directions to the respondent No.2 i.e. the Superintendent of Police, Nanded for release of provisional pension, release of gratuity amount and leave encashment amount within stipulated period. On instructions, learned counsel appearing for the applicant would submit that he is not pressing the ancillary reliefs pertaining to gratuity amount and leave encashment amount with liberty to challenge at later stage. In the circumstances, the Original Application remains to the extent of release of provisional pension only.

3. The applicant was appointed as a Police Constable vide appointment order dated 01.10.1983. During course of time, he was promoted to the post of Assistant Sub Inspector. In the meantime, Crime No. 8/2014 has been registered against the applicant under the provisions of Prevention of

Corruption Act. In consequence, the applicant was kept under suspension and the departmental enquiry has been initiated. The applicant was tried in Special Case No. ACB/100015/2015 before the Additional Sessions Judge, Nanded, who has convicted him vide judgment and order dated 19.06.2019. Being aggrieved, the applicant has preferred Criminal Appeal No. 670/2019 before the Hon'ble High Court of Bombay, Bench at Aurangabad, which is still pending. In the said appeal, the execution of substantive sentence has been suspended and the applicant was released on bail. The departmental enquiry was concluded by holding that the charges have been proved. The applicant has been imposed punishment of reversion from the post of A.S.I. for the period of two years vide order dated 04.12.2017. The applicant was retired by way of superannuation vide order dated 30.09.2018. Thereafter, the provisional pension has been issued to the applicant for the period of six months i.e. till 30.05.2019. However, thereafter, it was withheld, which is cause for this Original Application.

4. The applicant's learned counsel would submit that the action of department of withholding the provisional

pension is wholly unjustified. To substantiate the said contention, the applicant lays hand on Rule 27 (4) r/w Rule 130 (1)(b) of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as below:-

“27. Right of Government to withhold or withdraw pension.-(1)... ..

- (2)
- (3)
- (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.*

130. Provisional pension where departmental or judicial proceedings may be pending.-(1) (a)... ..

(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 is 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.”

5. On that basis it is canvassed that the criminal proceedings is still pending and the appeal being continuation of proceedings, the rule would apply. In support of said contention the applicant has placed reliance on the decision dated 30.08.2013 rendered by this bench of the Tribunal in O.A.No. 920/2012, wherein this Tribunal in somewhat

similarly situated facts, with regard to the aforesaid legal provisions held that the applicant therein was entitled for provisional pension.

6. Learned Presenting Officer while resisting this application would submit that in terms of provisions of Rule 26 of the Maharashtra Civil Services (Pension) Rules, 1982 the applicant is not eligible for provisional pension on account of requirement of good conduct and conviction in criminal offence. The said issue has already been dealt with by the Tribunal in above referred O.A. The aspect of good conduct pertains to future good conduct, which is expected from the Government servant and secondly the order of conviction is sub-judice meaning thereby, it has not attained finality. Thus, it cannot be said that the applicant in a true sense is convict of crime.

7. Rule 27 (4) specifies that the Government servant is eligible for provisional pension on attaining the age of superannuation against whom any departmental or judicial proceedings are instituted. It is not in dispute that judicial proceeding has not been finally concluded against the applicant and therefore, there is no reason to withhold the

provisional pension of the applicant. Thus, I hold that the applicant is entitled to get the provisional pension under Rules 27 (4) read with Rule 130 (1)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 till his appeal is decided. Necessary follow up action be taken.

8. In view of above facts and circumstances, Original Application stands disposed of. The applicant is at liberty to raise his claim about gratuity amount and leave encashment amount after disposal of criminal appeal, if occasion so arises. No costs.

MEMBER (J)

Place:-Aurangabad
Date : 27.11.2024
SAS O.A. 29/2020 Provisional Pension