

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.374/2024 (S.B.)

Rajendra s/o Bhauraoji Dongre,
Aged about: 59 years,
Occupation: Retired as Police Hawaldar,
R/o Girankar Layout, Near Dental College Amravati
Tq. & Dist. Amravati.

... **APPLICANT**

// V E R S U S //

- 1] State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai - 400 032.
- 2] The Commissioner of Police,
Amravati City, Amravati
Office at Chandur Railway Road,
Near Jog Stadium Amravati,
Tq. & Dist. Amravati - 444 606.

... **RESPONDENTS**

Shri K.V.Kothale, Id. Advocate for the Applicant.

Shri M.I.Khan, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M. A. Lovekar, Member (J).

J U D G M E N T

Judgment is reserved on 09/12/2024.

Judgment is pronounced on 11/12/2024.

Heard Shri K.V.Kothale, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The Applicant who retired on superannuation on 31/01/2024 from the post of Police Hawaldar is aggrieved by order dated 15/03/2024 (Annexure A-1) which reads as under:-

“उपरोक्त संदर्भांन्कीत विषयान्वये कळविण्यात येते की, सेवानिवृत्त उपदानाचा पैसा मिळणे बाबत विनंती अर्ज या कार्यालयास प्राप्त झाला.

श्री. राजेन्द्र भाऊरावजी डोंगरे माजी पोलीस हवालदार /695 सेवानिवृत्त दिनांक ३१/०१/२०२४ यांचे विरुद्ध अपक्र. 153/2019 कलम 7, (संशोधन दिनांक 08/03/2019) रोजी पो.स्टे. राजापेठ अमरावती शहर येथे लाचलुचपत प्रतिबंधक कायदा 1988 अन्वये गुन्हा दाखल असून सदर प्रकरणाची सद्यःस्थिती न्यायप्रविष्ट आहे.

म.ना.से. (निवृत्तीवेतन) नियम १९८२ मधील नियम १३० (बी) मधील तरतुदी नुसार विभागीय किंवा न्यायीक कार्यवाही प्रलंबीत असेल त्याबाबतीत तात्पुरते निवृत्तीवेतन मंजूर करता येते. त्यामुळे त्यांना निवृत्ती वेतनाचे ९० टक्के इतके व त्यावर महागाई भत्त्यासह तात्पुरते निवृत्ती मंजूर करण्यात आलेले आहेत.

त्यांचे विरुद्धची न्यायीक कार्यवाही पूर्ण होईपर्यंत आणि त्यासंबंधीत अंतिम आदेश दिले जाईपर्यंत उपदान (Gratuity) नियम १३० (सी) नुसार दिले जाणार नाही. त्यामुळे श्री. राजेन्द्र

भाऊरावजी डोंगरे माजी पोलीस हवालदार /695 यांना न्यायिक कार्यवाही पूर्ण होईपर्यन्त उपदान अनुज्ञेय ठरत नाही.”

3. It is not in dispute that Special Case under Section 7 of the Prevention of Corruption Act arising out of Crime No.153/2019 registered at Rajapeth Police Station, Amravati on 08/03/2019 is pending against the applicant in the Special Court. It is also not in dispute that on account of registration of aforesaid crime the applicant was placed under suspension in contemplation of initiation of departmental enquiry, departmental enquiry was initiated but kept in abeyance till the decision of criminal case.

4. Learned P.O. Shri M.I.Khan, supported the impugned order by relying on sub-sections (b) and (c) of Rule 130(1) of the Maharashtra Civil Services (Pension) Rules, 1982 which read as under:-

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

(1)(a) XXX

(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 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 authorised to be paid to the Government Servant]"

5. The applicant, on the other hand, sought to rely on the Judgment of the Hon'ble Supreme Court dated 14/08/2013 in Civil Appeal No.6770/2013 (***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Ano.***). In this ruling the question for consideration was whether in the absence of any provision in the Pension Rules the State Government could withhold a part of pension and / or gratuity during the pendency of departmental / criminal proceedings, and, by relying *inter alia* on Article 300 A of Constitution of India said question was answered in the negative. It was observed:-

"Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property".

Article 300 A of the Constitution of India reads as under:-

"300A Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law."

6. In the instant case Rule 130 does enable the employer to pay provisional pension only, and withhold gratuity during pendency of departmental / judicial proceedings. This being the factual and legal position, the O.A. deserves to be, and the same is hereby, dismissed with no order as to costs.

Member (J)

Dated :-11/12/2024.
PRM.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 11/12/2024
and pronounced on

Uploaded on : 12/12/2024