

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.298/2024 (S.B.)

Dinesh s/o Keshavrao Mhala,
Aged about : 59 years,
Occupation: Retired as Police Hawaldar,
R/o Dhanwantari Nagar, Near Aayurved College,
Dastur Nagar Road, Amravati – 444606,
Tq. & Dist. Amravati.

... **APPLICANT**

// V E R S U S //

- 1] The 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 V.A. Kothale, Advocate for the Applicant.

Shri A.P. Potnis, learned P.O. for the Respondents.

**Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman.**

Dated :- 16/12/2024.

J U D G M E N T

Heard Shri V.A. Kothale, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The case of the applicant in short is as under :-

The applicant is retired on 31/01/2024. The respondents have not paid amount of gratuity. The applicant is getting provisional pension and not regular pension. Therefore, applicant approached to this Tribunal for the following relief:-

“9[i] Order respondents to release 10% pension withheld, illegally vide Order Annexure-A-1 dated 01.03.2024 by Respondent No.2 Commissioner of Police, Amravati and be further pleased to order respondents to release Gratuity payable to the applicant due to retirement from the post of Police Head constable on 31.01.2024 @ interest on delayed claim immediately.”

3. The O.A. is strongly opposed by the respondents. It is submitted that, as per Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982, the applicant is not entitled to get regular pension and other pensionary benefits, because, the applicant is facing the criminal trial. The said trial is still pending, hence, O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for applicant Shri V.A. Kothale has pointed out the Judgment of Hon'ble Bombay High Court Bench at Aurangabad in the case of ***Purushottam Kashinath Kulkarni and others VS. the State of Maharashtra and others***, decided on 16/02/2016.

5. The learned P.O. has pointed out the Judgment of Hon'ble Bombay High Court Bench at Aurangabad in the case of ***Govind Trimbakrao Kanadkhedkar Vs. Chief Executive Officer, Zilla Parishad, Nanded & Ors.***, decided on 08/01/2019. There are other Judgments of the Hon'ble Bombay High Court Bench at Nagpur also on this point.

6. There is no dispute that applicant is facing Criminal Trial. The said Trial is still pending. The Judgment of the Hon'ble Bombay High Court Bench at Aurangabad in the case of ***Govind Trimbakrao Kanadkhedkar Vs. Chief Executive Officer, Zilla Parishad, Nanded & Ors.***, is reproduced below:-

"1. Mr. Bobade, learned counsel petitioner seeks relief of for the all pensionary benefits. According to the learned counsel, the petitioner stands retired on attaining the age of superannuation on 31.10.2017. The petitioner was placed under

suspension in September-2016. On account of the fact that criminal case is filed against the petitioner the departmental enquiry was not initiated against the petitioner. In view of that the learned counsel seeks regular pension with all retiral benefits.

2. We have heard the learned counsel for the respondents.

3. It is not disputed that the criminal prosecution is pending against the petitioner. Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 apply. In view of the said provision, the petitioner is entitled for provisional pension pending the judicial proceedings. As provisional pension is already sanctioned to the petitioner, the relief of pensionary benefits as claimed by the petitioner cannot be granted.

4. The petitioner may make an application to the Court where the criminal prosecution is pending to decide his criminal prosecution expeditiously.

5. The writ petition is disposed of. No costs."

7. In view of the recent Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad, dated 08/01/2019, the cited Judgment in the case of **Purushottam Kashinath Kulkarni and others VS. The State of Maharashtra and others** (cited *supra*) is not applicable. Moreover, the Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 is very clear. The Rule 27 of the M.C.S. (Pension) Rules show that whenever the departmental enquiry or criminal case is pending, employee is not entitled to get regular pension and pensionary benefit.

In the present case, the applicant is getting provisional pension. The regular pension and pensionary benefits are withheld by the respondents. As per the title of Rule 27 of the M.C.S. (Pension) Rules, it is the Authority of the Government to withhold the regular pension and pensionary benefits. The same issue is decided in the above cited Judgment in the case of the Hon'ble Bombay High Court Bench at Aurangabad in the case of **Govind Trimbakrao Kanadkhedkar Vs. Chief Executive Officer, Zilla Parishad, Nanded & Ors.** Hence, the applicant is not entitled for the relief claimed in this O.A. Therefore, the following order is passed:-

ORDER

- (i) The O.A. is dismissed.
- (ii) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-16/12/2024.
dnk.

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

Name of Steno : D.N. Kadam.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 16/12/2024.

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