

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 243/2020(S.B.)**

Shri Vijay Kumar Sitaram Kurkute,
Aged about: 61 years, Occu.: Service,
R/o. Somwari Peth, Sindkhed Raja,
Dist.: Buldhana.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary,
Department of Revenue & Forest,
Mantralaya, Mumbai-32.
2. The Collector, Buldhana.
3. The Sub Divisional Officer,
Sindkhed Raja, District: Buldhana.
4. The Tahsildar,
Deulgaon Raja, District : Buldhana.

Respondents.

Shri A.P.Sadavarte, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated:- 26th June, 2024.

JUDGMENT

Heard Shri A.P.Sadavarte, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

The applicant was appointed on the post of Talathi on 29.06.1984. The applicant was granted benefit of first time bound promotion on 30.06.1996 after completion of 12 years of service. Second time bound promotion was extended to the applicant on 30.06.2008. The applicant was arrested for the offence punishable under the Prevention of Corruption Act. The departmental enquiry was initiated and it was stopped till the decision of Sessions Court in respect of offences punishable under the Prevention of Corruption Act. The applicant is retired on 30.06.2016. It is submitted that the Criminal case is pending against the applicant. The respondents are not paying the pension and pensionary benefits to the applicant. Therefore, the applicant approached to this Tribunal for the following reliefs-

- i) Direct the Department to release the full pension, Gratuity amount along with interest @ 18% per annum.*
- ii) Direct the Department to grant permission to commute the pension.*

3. The O.A. is strongly opposed by the respondents. It is submitted that as per Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 the applicant is not entitled for pension and pensionary benefits.

4. During the course of submission, the learned counsel for the applicant has submitted that the applicant is getting provisional pension as per Rule 130 of the M.C.S. (Pension) Rules, 1982. The learned counsel for the applicant has pointed out the Judgment of the Supreme Court in Civil Appeal No.6611/2015 in the case of **Jyotirmay Ray Vs. The Field General Manager, Panjab National Bank & Ors.** The learned counsel for the applicant has submitted that the amount of Gratuity cannot be withheld as per Judgment of the Hon'ble Supreme Court.

5. The learned P.O. has pointed out Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.3978/2018 in the case of **Govind Trimbakrao Kanadkhekar Vs. Chief Executive Officer Zilla Parishad, Nanded and Others.** The learned counsel for the applicant has also pointed out the Judgment of **Parasram Gomaji Nasre Vs. the State of Maharashtra and Others.**

6. The learned P.O. has pointed out the Judgment of this Tribunal in O.A.No.761/2019 decided on 20.04.2023.

7. Rule 27 of the M.C.S.(Pension) Rules, 1982 is very clear.
Rule 27 is reproduced below-

27. Right of Government to withhold or withdraw pension-

(1) Government 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 reemployment 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 reemployment, 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 re-employment-

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

(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 re-employment, shall be instituted in respect of a cause of action which arose or in respect of an 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 decides not to withhold or withdraw 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 a 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.

8. The Hon'ble Bombay High Court, Bench at Aurangabad has specifically held that as per Rule 27, it is the right of the employer to withheld pension and pensionary benefits if the criminal case or departmental enquiry is pending. The employee is at liberty to approach to the Criminal Court to decide the said case as early as possible.

9. The learned P.O. has pointed out Judgment of the Hon'ble High Court, Bench at Nagpur in the case of **Parasram Gomaji Nasre Vs. the State of Maharashtra and Others** it is held that Rule 27 of the M.C.S. (Pension) Rules, 1982 is very clear. It is the right of the employer to withheld pension and pensionary benefits. As per Rule 130 of the M.C.S. (Pension) Rules only provisional pension can be paid to the employee, during the pendency of Criminal case or departmental enquiry. Cited Judgment by the side of applicant of

Hon'ble Supreme Court in the case of Jyotiram is on different footing. The said Judgment was based on the Circular issued by the Bank.

10. The employees of the Maharashtra State are governed by the Rules of pension and pensionary benefits. The applicant is retired employee. There is no dispute that the applicant was arrested for the offences under the Prevention of Corruption Act. The said case is still pending. The applicant is getting provisional pension. As per Judgment of the Hon'ble Bombay Court in the case of **Govind Trimbakrao Kanadkhekar Vs. Chief Executive Officer Zilla Parishad, Nanded and Others** and in the case of **Parasram Gomaji Nasre Vs. the State of Maharashtra and Others**, the applicant is not entitled to get pension and pensionary benefits till the decision of criminal case. Paras 3 and 4 of the Judgment in the case of **Govind Trimbakrao Kanadkhekar Vs. Chief Executive Officer Zilla Parishad, Nanded and Others** are reproduced below-

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.

11. In view of the above cited Judgment in the case of **Govind Trimbakrao Kanadkhekar Vs. Chief Executive Officer Zilla Parishad, Nanded and Others** and **Parasram Gomaji Nasre Vs. the State of Maharashtra and Others**, the applicant is not entitled for the pension and pensionary benefits till the decision of criminal case pending before the Sessions Court for the offence punishable under the Prevention of Corruption Act. Hence, the following order is passed-

ORDER

The O.A. is dismissed with no order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 26/06/2024.
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 26/06/2024.
