

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3020 OF 2003

Ramakant Lingappa Motaphale
Age 60 yrs., Occu. Retired Govt. Servant,
R/o C/o Prayag Provisions, Vasmat Road,
District Parbhani.

...Petitioner...
(Ori. Applicant)

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.

(Copy to be served on Government
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad).

- 2] The Secretary to the Government
of Maharashtra, Irrigation Department,
Mantralaya, Mumbai.
- 3] Divisional Commissioner,
Aurangabad.
- 4] Chief Executive Officer,
Zilla Parishad, Parbhani.

...Respondents...
(Orig. Respondents)

...
Advocate for Petitioner : Mrs. Asha Rasal
A.G.P. for Respondent Nos. 1 to 3 : Mr. U. S. Mote

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CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

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DATE OF RESERVING THE JUDGMENT : 05.03.2015
DATE OF PRONOUNCING THE JUDGMENT : 10.03.2015

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JUDGMENT :- (Per V.K.Jadhav, J.)

1. By this Writ Petition, the petitioner assails the legality and correctness of the judgment and order dated 25.6.2003, passed by the learned Member of the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application no.513/2000.

2. Brief facts giving rise to the present Writ Petition are as under :-

The petitioner was working as Sub Divisional officer under Minor Irrigation Sub-Division, Jintoor, District Parbhani. The petitioner retired from the Government service on 28.2.1999 on superannuation. The petitioner had not received pension and pensionary benefits immediately, but the same was received by him in the month of April, 2001. There is a delay of two years approximately, in granting pension and pensionary benefits to the petitioner. According to the petitioner, he is entitled to claim interest on the delayed payment of pension and pensionary benefits. The petitioner has, therefore, approached the Maharashtra Administrative Tribunal, Aurangabad, by filing Original Application No.513/2000. The learned Member of the Maharashtra Administrative Tribunal, by its impugned judgment and order dated 25.06.2003, has rejected the said Original Application. Hence, this Writ petition.

3. The learned counsel for the petitioner submits that, the petitioner was entitled for pension and pensionary benefits on the next day of his retirement as provided under Rule 121 to 130 of the The Maharashtra Civil Services (Pension) Rules, 1982. The delay was occurred on account of negligence on the part of the respondents. The delay is attributable to the respondents on account of administrative lapse. The petitioner is, therefore, entitled to claim interest on delayed payment of pension and pensionary benefits.

4. The learned AGP submits that, Departmental Inquiry was proposed against the petitioner in respect of misappropriation of amount in construction of social welfare building and quality of the construction. The said proposal for initiating departmental inquiry was submitted to the Government by letter dated 27.1.1998. Due to submission of the above proposal to the Government, certificate with regard to “No Departmental Inquiry” and “No Dues Certificate” could not be submitted by the Respondent C.E.O., Parbhani to the Accountant General, Nagpur for sanction of pension proposal of the petitioner. Subsequently, the Government has dropped the proposal of initiation of Departmental Inquiry against the petitioner. The learned AGP therefore, submits that delay is not attributable to any administrative lapse. The respondents are, therefore, not liable

to pay any interest on the so called delayed payment of pension and pensionary benefits. The learned AGP further submits that, provisional pension was sanctioned to the petitioner and therefore, the petitioner is not entitled for interest on delayed payment of pension.

5. As per the provisions of Rule 129-B of the Maharashtra Civil Services (Pension) Rules, 1982, interest shall be payable if the delay in payment of pension is attributable to the Department on account of administrative lapse. Rule 129-B of Maharashtra Civil Services (Pension) Rules, 1982 reads as under :-

“129-B. Interest on delayed payment of pension.-

(1) Where the payment of pension or family pension authorized after six months from the date when its payment became due, an interest at the rate applicable to General Provident Fund deposits shall be paid on the amount of pension, in respect of the period beyond six months :

Provided that, no interest shall be payable if the delay in payment of pension was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter :

Provided further that no interest shall be payable the period for which a provisional pension is paid. In

case of Government servant to whom provisional pension is sanctioned an interest as provided shall be paid after a period of six months from the cessation of provisional pension till the final pension is authorized

- (2) Every case of delayed pension or family pension, as the case may be, shall suo motu, be considered by the concerned Administrative Department; and where the Department is satisfied that the delay in payment of such pension was caused on account of administrative lapse, that Department shall sanction payment of interest after obtaining the admissibility report in this behalf from the Accountant General (Accounts and Entitlement), Maharashtra, Mumbai or Nagpur, as the case may be. The approval of the Finance Department for payment of such Interest shall not be necessary.*
- (3) In all cases, where interest has been authorized on pension or family pension, as the case may be, due to administrative lapse, the concerned Administrative Department shall fix the responsibility and take disciplinary action against the Government servant or servants concerned, including the concerned officer, who are found responsible for the delay in the payment of such pension and recover the amount of interest required to be paid from the Government Servant or servants concerned including the concerned officer who are found responsible for the delay in the payment of such pension.*
- (4) If as a result of Government's decision taken*

subsequent to the retirement of a Government servant, the amount of pension already paid on his retirement is enhanced on account of, -

(a) grant of pay higher than the pay on which pension, already paid was determined; or

(b) liberalization in the provisions of these rules from a date prior to the date of retirement of the Government servant concerned, no interest on the arrears of pension shall be paid.”

6. The petitioner retired on 28.2.1999. The proposal for holding Departmental Inquiry against him was sent to the Government on 27.1.1998. The pension and pensionary benefits were finally granted to the petitioner in the month of April, 2001. It is not clear as to when the Government has dropped the proposal of initiation of Departmental Inquiry against the petitioner. The respondents have also not placed the documents either before the Maharashtra Administrative Tribunal or before this Court in Writ Petition, to show that the Government has dropped the said proposal as late as in the year closed to the sanctioning of pension and pensionary benefits to the petitioner. The pension and pensionary benefits could not be sanctioned due to non issuance of “No Departmental Inquiry Certificate” and “No Dues Certificate” by the Department. This is a typical case of delay in payment of pension caused on account of administrative

lapse. As per the provisions of above stated rule, under two contingencies, the interest is not payable on the delayed payment of the pension. Firstly - if the delay in payment of pension is attributable to the failure on the part of the Government Servant to comply with the procedure and secondly - the period in which a provisional pension has been paid. Here in this case, the Department has come with the averments that, provisional pension was sanctioned to the petitioner. But no documents are placed on record to show that the petitioner was, in fact, paid the provisional pension till the final pension is authorized. We are not agree with the observations made by the learned Member of the Maharashtra Administrative Tribunal that the delay was not attributable to any administrative lapse.

7. In view of this, the impugned judgment and order dated 25.06.2003, passed by the learned Member of the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, is liable to be quashed and set aside. Hence, the following order.

O R D E R

1. Writ petition is hereby allowed.
2. The impugned judgment and order dated 25.6.2003, passed by the learned Member, Maharashtra Administrative Tribunal, Mumbai, Bench

at Aurangabad, in Original Application No.513/2000 is hereby quashed and set aside.

3. The respondents are hereby directed to pay the interest on the amount of pension in respect of the period beyond six months at the rate applicable to the General Provident Fund deposits at the relevant time.

4. Rule is made absolute accordingly.

5. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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