

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.1512 OF 2015.**

Somnath S/o Dnyanoba Paul,
Age 59 years, Occ.Pensioner,
R/o BH-1/1, Thakare Nagar,
N-2, Cidco, Aurangabad. ... Petitioner.

Versus

1. The Maharashtra State
Co-operative Cotton Growers
Marketing Federation Ltd.,
Khatan Bhavan, 6th floor,
198, Jamshedji Tata Road,
Infront of Rits Hotel Church
Gate, Mumbai-20.

2. The General Manager (Adm.),
The Maharashtra State
Cooperative Cotton Growers
Marketing Federation Ltd.,
Khatan Bhavan, 6th floor,
198, Jamshedji Tata Road,
Infront of Rits Hotel Church
Gate, Mumbai-20. ... Respondents.

...

Mr.A.N.Nagargoje, advocate for the petitioner.
Mr.S.T.Shelke, advocate for Respondent No.1.

...

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 06.10.2016.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. Rule. Rule returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

3. Mr.Nagargoje, learned counsel for the petitioner states that the petitioner on attaining the age of superannuation retired from the service of the Respondent No.1 on 30.3.2013. The retiral benefits were not paid. Subsequently, after great persuasion the petitioner was paid the amount of gratuity. However, the amount receivable on account of leave encashment and Medical leave was not paid to the petitioner. The petitioner again on 10.11.2014 made representation to the Respondent for payment of the amount, however, the Respondent vide letter dated 25.11.2014 communicated that as the Departmental Inquiry as

well as Criminal case is pending, the said amount can not be paid. The learned counsel submits that on 4.1.2007 on account of registration of a Criminal case against the petitioner, the petitioner was suspended, however, on 2.3.2010 the said suspension was withdrawn and the petitioner was reinstated on the post of Senior Grader and thereafter has retired from service. The learned counsel submits that there is no provision in the Rule authorising the Respondent to withhold the retiral benefits. In absence of any provision in the Rule, the Respondents can not withhold the retiral benefits on the ground of pendency of a Criminal case. The learned counsel relies on the judgment of the Apex Court in a case of **"State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another"** reported in **(2013) 12 Supreme Court Cases 210**.

4. Mr.Shelke, learned counsel for the Respondent submits that the Criminal prosecution against the petitioner is pending with regard to Anti Corruption Law, so also the Departmental proceedings. As the same is pending, the retiral

benefits with regard to leave encashment and Medical leave is validly and legitimately withheld. No error has been committed by the Respondent in that regard.

5. We have considered the submissions. In a case of **"State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another"** referred to supra, the question before the Apex Court was *"Whether in absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of a Departmental/Criminal proceedings"*. The Apex Court categorically held that in absence of any provision in the Rules, the pensionary benefits can not be withheld.

6. Rule 43 as is relied by the learned counsel for the Respondent is pari materia with the Rule which was also a subject matter of interpretation before the Apex Court in the case of **"State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another"** referred to supra. Rule 35 which is relied by the Respondent

operates only after the punishment is imposed and the same does not apply in the case of pendency of Criminal proceedings or a Departmental Inquiry.

7. In view of that, the impugned order rejecting the application of the petitioner for claiming the leave encashment and the Medical leave can not be sustained and deserves to be set aside and is hereby set aside.

8. The Respondents shall make the payment of the amount towards leave encashment and Medical leave as may be due and payable to the petitioner as per Rules expeditiously. The learned counsel for the petitioner claims interest on the said amount. Considering that there was a bonafide dispute, we are not inclined to grant the said prayer.

9. Rule accordingly made absolute in above terms. No costs.

Sd/-

(K.L.WADANE, J.)

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Sd/-

(S.V.GANGAPURWALA, J.)

