

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 2630 OF 2014**

PURUSHOTTAM KASHINATH KULKARNI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Thoke Dhananjay B.
AGP for Respondent/State : Mr. S.D. Kaldate
Advocate for Respondent no.4 : Mr. Rane Girish S.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: February 16, 2016

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PER COURT :-

Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the parties.

2. This Petition seeks directions to the Respondent No.5 to release the amount of gratuity, pension and group insurance as against the LIC Master Policy No. CGI-20053 and 20256.

3. The learned counsel appearing for the petitioner submits that, merely on the ground that, the criminal case is pending against the petitioner, the amount of pension and gratuity is withheld by the Respondents. The said action of

the respondents withholding pension and gratuity amount on the ground that, the criminal case is pending against the petitioner, is contrary to the law laid down by the Hon'ble Supreme Court in the case of **State of Jharkhand and ors V/s Jitendra Kumar Srivastava and anr.**¹ Therefore, he submits that, the Petition may be allowed.

4. On the other hand, the learned A.G.P. appearing for the respondent/State invited our attention to the averments in the affidavit in replies filed on behalf of the Respondent No.5. He submits that, the office of the Liquidator has withheld the amount of D.A. and also the other amounts since the crimes are registered against the petitioner and other employees.

5. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned A.G.P. appearing for the respondents. With their able assistance, we have perused the pleadings in the Petition, annexures thereto and the judgment in the case of **State of Jharkhand and others**

¹ (2013) 12 S.C.C. 210

(supra) and we are of the opinion that, the Petition deserves to be allowed for the reasons set out hereinbelow.

6. In case of **State of Jharkhand and others (supra)**, the Supreme Court formulated the following questions for consideration :-

"2. Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/criminal proceedings ?"

7. After taking into consideration, the various expositions on the subject, the Supreme Court in paras 16 and 17 of the judgment held thus :-

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A. 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."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the

constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different.”

8. During the course of hearing, the learned counsel appearing for the petitioner submits that, enquiry initiated under Section 88 of the Maharashtra Co-operative Societies Act, 1960, has been completed and the petitioner has been exonerated in the said enquiry, however, the offences are pending against the petitioner.

9. Keeping in view the exposition of the Supreme Court in the case of **State of Jharkhand and others** (supra), and in particular, the observations in paras 14 and 15 thereof, in our opinion, the action of the respondents to

withholding the amount of pension, gratuity and leave encashment cannot be countenanced. In the light of above, we direct the Respondents to calculate the amount of pension, gratuity and leave encashment and pay the same to the petitioner, as expeditiously as possible, and preferably within four months from today.

10. The Petition is allowed in above terms and same stands disposed of.

11. The Rule is made absolute in the above terms.

(**P.R. BORA, J.**)

(**S.S. SHINDE, J.**)

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