

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) WP NO.11791/2015

930 WRIT PETITION NO. 11791 OF 2015

NARSING NARSAYYAJI MUDIRAJ
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Nr,Dhage Vaibhav B.
AGP for Respondent State: Mr.S.D.Kaldate

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CORAM : S.S. SHINDE & P.R. BORA, JJ.
Dated: March 02, 2016

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PER COURT :-

1. Heard learned Counsel appearing for the petitioner, and learned A.G.P. appearing for respondent State.
2. It is not in dispute that, the petitioner is receiving provisional pension, however, gratuity amount and full pension is not released in favour of the petitioner.
3. Learned Counsel appearing for the petitioner submits that, Government of Maharashtra, Home Department, vide its letter dated 22nd April, 2013 (Page No.21), has communicated its decision, not to initiate departmental enquiry against the petitioner, to the Commissioner, State Excise, Maharashtra State, Mumbai. It is submitted that, prior to taking such decision, the Commissioner, State Excise, had refused to grant 'No Divisional Enquiry Certificate. It is submitted that in view of the decision of the State Government, not to initiate any Departmental enquiry, the Commissioner, State Excise, ought to have issued the `No Departmental -

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Enquiry Certificate.

4. Learned Counsel appearing for the petitioner invited our attention to the representations addressed to the Principal Secretary, State Excise, Mantralaya, Mumbai, on 3.7.2014, 24.11.2014 and also 7.1.2014, and submits that, inspite of filing such representations, there is neither sanction to release of the gratuity amount in favour of the petitioner nor any decision is communicated to the petitioner. Therefore, learned Counsel appearing for the petitioner submits that the petition deserves consideration.

5. Relying upon the judgment of the Apex Court in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr** (Civil Appeal No.6770/2013) decided on August 14th, 2013, learned Counsel for the petitioner contends that, merely because criminal case is pending, is no ground to withhold the amount of gratuity and final pension.

6. On the other hand, learned A.G.P. submits that already provisional pension is being paid to the petitioner and yet decision about release of the gratuity amount is not taken by the Office of the Accountant General, at Nagpur.

7. In the light of the submissions advanced across the Bar, and keeping in view the representations filed by the petitioner, and since no any decision is communicated to the petitioner by the Office of the Accountant General, or the -

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concerned Department, we direct the Office of the Accountant General / respondent no.2 and respondent No.4 to consider the representations submitted by the petitioner, and take decision on merits on the said representations, and communicate the same as expeditiously as possible, however, within eight weeks from today. In case the decision is favourable to the petitioner, the amount of gratuity be disbursed to him within eight weeks from taking such decision.

We make it clear that we have not expressed any opinion on merits and it is for respondent no.2 and 4 to take the decision on the representations filed by the petitioner, keeping in view the relevant Rules and Procedure and also the decision of the Supreme Court in the case of **State of Jharkhand & Ors.** (cited supra).

The petition is partly allowed and the same stands disposed of.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

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