

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

WRIT PETITION NO. 3987 OF 2017

Udhav Vitthalrao Padgilwar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Amit A. Yadkikar, Advocate for the Petitioner.

Shri M. B. Bharaswadkar, A.G.P. for Respondents/State..

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

DATE : 23RD MARCH, 2017.

PER COURT :

. The petitioner has retired from service. Criminal case is filed against the petitioner under the provisions of the Prevention of Corruption Act. The petitioner was sanctioned provisional pension. The petitioner subsequently came to be convicted by the Sessions Court. The provisional pension granted is withdrawn.

2. Mr. Yadkikar, the learned counsel for the petitioner strenuously contends that, the petitioner has preferred an appeal against the conviction recorded by the Sessions Court and in appeal the substantive sentence is suspended. The learned counsel submits that, as per the Rule 130 of the Maharashtra Civil Services (Pension) Rules (for short "M. C. S. (Pension)

Rules"), pending the judicial proceedings, provisional pension can be granted. The learned counsel submits that, the appeal being continuation of original proceedings, it will be deemed that the proceedings are pending and as such it was erroneous on the part of the respondents to withdraw the pension. The learned counsel to buttress his submissions relies on the judgment of the Apex Court in a case of Smt. Akhtari Bi Vs. State of M. P. reported in (2001) 4 SCC 355. So also on the judgment of the Division Bench of this Court in a case of Kiran Tulshiram Ingale Vs. Anupama P. Gaikwad and others reported in 2006 Cr.L.J. 4591.

3. The learned counsel submits that, department had even sought information from the legal advisor that is the Government Pleader and it is advised that there is no impediment to continue the provisional pension sanctioned to the petitioner.

4. The learned Assistant Government Pleader submits that, the petitioner being convicted, the provisional pension has been withdrawn.

5. We have considered the submissions canvassed by the learned counsel for respective parties. It is a fact that, in the prosecution filed against the petitioner under the provisions of the Prevention of Corruption Act, the petitioner has been

convicted. Appeal has been filed. The conviction is not suspended. Only the substantive sentence is suspended. The effect would be that, the petitioner today stands convicted. Rule 130 of the M. C. S. (Pension) Rules relied by the petitioner cannot be pressed in service for the petitioner. The said provision deals with sanction of provisional pension pending the departmental or judicial proceedings. The same would be during the period, if the trial was pending against the petitioner. However, the petitioner is convicted of the serious offence. The said provision would not inure to the benefit of the petitioner after having suffered conviction. In case appellate Court set aside conviction, then the petitioner would certainly be entitled for the benefit of final pension.

6. It is trite that, judgment of the Apex Court and this Court cannot be read as *euclid theorem*. Same has to be read in the context it is delivered. In a case of Smt. Akhtari Bi Vs. State of M. P. referred to supra, the Court was considering the right of the accused, who has filed an appeal to get the bail as the case did not come up for hearing for many years. In the case of Kiran Tulshiram Ingale Vs. Anupama P. Gaikwad and others the matter was on completely different premise. The same was arising out of matrimonial dispute.

7. Considering the aforesaid conspectus of the matter, it

would not be possible to accede to the argument of the learned counsel for the petitioner. The writ petition as such is disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 17