

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

WRIT PETITION NO. 11813 OF 2015

Rajendra Tatyaba Jadhavar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. S. Jadhavar, Advocate for the Petitioner.

Shri V. M. Kagane, A.G.P. for Respondent Nos. 1.

Shri V. C. Patil, Advocate h/f Shri U. B. Bondar, Advocate for the Respondent No. 2.

The Respondent No. 3 is served.

Shri Popat P. More, Advocate for the Respondent No. 4.

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

DATE : 23RD MARCH, 2017.

PER COURT :

. The petitioner assails the judgment of the Maharashtra Administrative Tribunal thereby dismissing the original application filed by the petitioner. The petitioner retired on attaining age of superannuation on 31.07.2008 as a Medical Officer. A show cause notice was issued to the petitioner prior to his retirement as to why his service should not be terminated for the alleged misappropriation. The enquiry was not properly initiated. A criminal case was filed against the petitioner, which is pending. The pensionary benefits were sanctioned to the

petitioner by the Accountant General, however, same were withheld by the District Health Officer on the ground that an amount of Rs. 9,14,427/- was to be recovered. The petitioner had earlier filed Original Application No. 727 of 2009 seeking directions to respondents to release pensionary benefits. Said Original Application was dismissed by the Tribunal with a direction to finalize the pensionary benefits of petitioner after conclusion of judicial proceedings pending against the petitioner. The learned counsel submits that, the provisional pension was been paid. However, it has been withheld for last six to seven months. According to the learned counsel, the petitioner is entitled for gratuity and other benefits also. The learned counsel relies on the judgment of the Apex Court in a case of **State of Zarkhand Vs. Jitendra Kumar Srivastava and another** dated ***August 14, 2013*** in **Civil Appeal No. 6770 of 2013**.

2. The learned Assistant Government Pleader submits that, provisional pension was being sanctioned to the petitioner, however, as amount is recoverable from the petitioner and criminal case is pending, said order is rightly passed.

3. Perusal of Rule 130 of the Maharashtra Civil Services (Pension) Rules (for short "M.C.S. (Pension) Rules"), it is manifest that, when criminal case is pending against the petitioner, the petitioner is required to be paid provisional

pension and his gratuity is required to be withheld.

4. The petitioner would be entitled for the provisional pension as laid down under Rule 130 read with Rule 27 of the M. C. S. (Pension) Rules and depending upon the judgment that would be delivered in the criminal case, pension and other benefits would be paid. Rule that was considered by the Apex Court in a case of **State of Zarkhand Vs. Jitendra Kumar Srivastava and another** referred to supra was different than Rule 130 of the M. C. S. (Pension) Rules. In the rules before the Apex Court, there was no provision of withholding gratuity and leave encashment. In Rule 130 of the M. C. S. (Pension) Rules there is specific provision that, no gratuity shall be paid to a Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders therein. As such the petitioner would not be entitled for gratuity. The respondents shall continue to pay the petitioner provisional pension as per Rule 130 read with Rule 27 of the M. C. S. (Pension) Rules. The authority shall calculate the provisional pension considering the rule 130 of the M. C. S. (Pension) Rules and whatever admissible to the petitioner, while granting provisional pension shall be made admissible. The arrears of the provisional pension shall also be paid expeditiously and preferably within two months and regular provisional pension be paid till the culmination of the criminal proceedings and depending upon the judgment in the criminal

case further steps shall be taken. The writ petition accordingly is disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 17