IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6540 OF 2018

Govind Baliram Gurav,
Age : 63 years, Occu. Retired
Asstt. Sub-Inspector,
Resi. Of Nathnagar,
Near Kripa Sadan English School,
Latur, Tq. and Dist. Latur **PETITIONER**

VERSUS

1. The State of Maharashtra,
through Secretary,
Home Department, Mantralaya,
Mumbai

2. Director General of Police,
Maharashtra State, Colaba,
Mumbai – 400 005

3. Superintendent of Police,
Shivaji Chowk, Latur,
District Latur

4. The Accountant General (A&E)-II,
Maharashtra State, Post Box.No.114,
Civil Lines, Nagpur **RESPONDENTS**

Mr. Vinod D. Godbharle, Advocate for the petitioner
Mr. S.K. Tambe, A.G.P. for respondent Nos.1 to 3
None for respondent No.4, though duly served

CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.

RESERVED ON : 17th OCTOBER, 2018
PRONOUNCED ON :26th OCTOBER, 2018

ORDER (PER : R.G. AVACHAT, J.):

Heard the learned counsel for the petitioner and the learned A.G.P., representing respondent Nos. 1 to 3.

2. The undisputed facts are as under :-

. The petitioner retired on attaining the age of superannuation on 31st May, 2013. At the time of his retirement, criminal case was pending against him before the Court of Judicial Magistrate, First Class, Ausa. On his acquittal on 1st September, 2014, the State preferred an appeal against acquittal. It is reported that the said appeal has been dismissed in May, 2018.

. Since the criminal case was pending against the petitioner when he retired on attaining the age of superannuation, the Police Department, with which he was serving, did not release his pensionary benefits. The petitioner, therefore, preferred Original Application before the Maharashtra Administrative Tribunal (M.A.T.) Bench at Aurangabad. The M.A.T. partly allowed the Original Application, directing the respondents herein to pay the petitioner all consequential benefits. The order passed by the M.A.T. in Original Application is silent as regards the petitioner's claim for interest on delayed payment. The petitioner has, therefore, preferred the present Writ Petition.

3. According to the learned A.G.P., as the appeal against the judgment and order acquitting the petitioner was pending, the State was justified in withholding the retiral benefits and interest thereon. The learned A.G.P. relied on Rule 27(4) read with Rules 129A and 130 of the Maharashtra Civil Services (Pension) Rules, 1982 ("MCS Pension Rules", for short).

4. The learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in ***Writ Petition No.12966 of 2017 (Vinodkumar Narayan Dixit Vs. The State of Maharashtra),*** decided on ***3rd April, 2018.***

5. It would be apposite to refer to the relevant part of Rules 129A and 130 of the MCS Pension Rules. The Rules run thus :-

> **"129A. Interest on delayed payment of gratuity.-**
>
> (1) Where the payment of retirement

gratuity or death gratuity, as the case may be, has been delayed beyond the period of three months from the date of retirement or death, and it is clearly established that the delay in payment was attributable to administrative lapse, an interest at the rate applicable to General Provident Fund deposits shall be paid on the amount of gratuity, in respect of the period beyond three months.

Provided that, no interest shall be payable if the delay in payment of such gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter;

Provided further that no interest shall be payable in the case where a provisional gratuity is paid.

(2) *****

(3) *****

130. Provisional pension where departmental or judicial proceedings may be pending. -

(1)(a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub rule (4) of rule 27 of the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Service (Discipline & Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub clause (I), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant]

(2) *****"

6. The Division Bench of this Court in the case of ***Vinodkumar Narayan Dixit*** (supra), had an occasion to interpret the aforesaid Rules. In paragraph No.22 of its judgment, the Court has observed thus :

"Upon conjoint and harmonious reading of Rules 129A, 130 of the MCS (Pension) Rules, 1982 and the executive instructions in the GR dated 6th May, 1991, it is quite clear that even though the government servant cannot insist upon payment of gratuity until the conclusion of departmental or judicial proceedings against him, once the government servant is exonerated in the departmental proceedings or acquitted in the judicial proceedings, such government

servant, can claim gratuity along with interest thereon to be computed from three months from the date of retirement and upto the actual date of payment of the gratuity amount."

7. The petitioner, in the present case, has claimed interest on the delayed payment of the retiral benefits, which are as under :-

(i)	Pension	Rs.3,24,134/-	27.10.17
(ii)	Encashment of leave	Rs.3,04,560/-	31.10.17
(iii)	Gratuity	Rs.2,79,180/-	31.10.17
(iv)	Increments	Rs.2,65,837/-	03.11.17
(v)	Commutation of pension	Rs.3,39,854/-	20.11.17

8. Admittedly, there has been delay of three years and two months in making payment of retiral benefits after acquittal of the petitioner in criminal case. The petitioner would, therefore be justified in claiming interest thereon. His claim for interest gets re-enforced in view of the fact of his acquittal in a criminal case. It is reiterated that once the Government servant is exonerated in the departmental proceeding or acquitted in the judicial proceeding, such

Government servant can claim gratuity along with interest thereon to be computed from three months from the date of acquittal to the actual date of payment of the gratuity amount. The same will be the case as regards the other retiral benefits.

9. We, however, do not propose to grant the petitioner the interest on the amount of pension worth Rs.3,24,134/- for the reason that the petitioner had been paid provisional pension. The petitioner also appears to have not come with clean hands since he has claimed interest on the consolidated pension amount of Rs.3,24,134/-. It needs no mention that pension is payable month to month. The aforesaid amount of pension includes the pension spread over for the period from the date of retirement to the date of its actual payment i.e. 27th October, 2017.

. So far as the other claims of the petitioner are concerned, the respondents ought to have released the said benefits within a period of six months from the date of his acquittal. The rate of interest payable on the amount standing to credit to a Provident Fund account during the relevant period was 8.7% per annum. Thus, on account of there having been delay in releasing the said benefits, we propose to grant the petitioner the interest at the rate of 8% per annum on the retiral benefits prescribed in item Nos.2 to 5 of paragraph No.20 of the writ petition for the period from 1st December, 2014 to the date of actual payment thereof, as is stated thereagainst in the petition.

10. For the reasons stated hereinabove, we partly allow the Writ Petition and direct the respondents to pay the petitioner the interest at the rate of 8% per annum on the retiral benefits, as stated hereinabove, within a period of six months from today. No costs.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

npj/WP6540-2018