

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4491/2017

(PRAKASH PANDURANGJI DANGE **VERSUS** STATE OF MAHARASHTRA & ANOTHER)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri N.Majithia, counsel for the petitioner.
 Shri A.M. Joshi, counsel for the R-1.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : MARCH 13, 2018.

By this writ petition, the petitioner seeks a direction to the respondents to grant the benefit of the leave encashment and gratuity to the petitioner.

Admittedly, a first information report was registered against the petitioner for the offences punishable under the provisions of the Prevention of Corruption Act and a criminal trial in that regard is pending against the petitioner. The rules of service applicable to the petitioner do not specifically make a provision for dealing with a case where a criminal trial is pending against an employee after his retirement. In the absence of any special provision in this regard in the service rules applicable to the petitioner, the rules provide that the provisions of the Maharashtra Civil Services Rules would apply. If that be so, during the pendency of the criminal trial against the petitioner, the petitioner cannot claim the benefit of leave encashment as of a right as under Rule 68(6)(a) of the Maharashtra Civil Services (Leave) Rules, 1981, an authority competent to grant the benefit of leave encashment is entitled to withhold either the whole or a part of cash equivalent to the earned leave in the case of the government servant, who retires on attaining the age of superannuation and a criminal proceedings

is pending against him. Similarly in view of the provisions of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982, gratuity would not be payable to a government servant until the conclusion of the judicial proceedings and issuance of final orders. Admittedly, the criminal trial for the offence punishable under the provisions of the Prevention of Corruption Act is pending against the petitioner and hence, in view of the two aforesaid provisions which may be applicable in the case of the petitioner in view of the reference to the Maharashtra Civil Services Rules in the absence of any specific provision in service rules, the petitioner would not be entitled to claim the aforesaid benefits as of a right till the criminal proceedings pending against him are culminated. The judgment reported in **AIR 2013 SC 3383** (*State of Maharashtra & Others Versus Jitendra Kumar Srivastava & Another*) and relied on by the counsel for the petitioner cannot be applied to the case in hand as in the said judgment, it is held by the Hon'ble Supreme Court that in the absence of any provision in the pension rules, the State cannot withhold a part of pension and/or gratuity during the pendency of the departmental or criminal proceedings. Under the Maharashtra Civil Services Rules, there are specific provisions empowering the competent authorities to withhold the gratuity and leave encashment.

In the result, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE