

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6650 OF 2020

ASHFAKALI KHAN ABDULALI KHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.V.G.Salgare, Advocate for the petitioner.

Mr.P.S.Patil, AGP for respondent No.1.

Mr.R.K.Ingole Patil, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : OCTOBER 25, 2021

PER COURT :

1. We have considered the strenuous submissions of the learned Advocates for the respective sides. The learned Advocate for respondent Nos.2 and 3 and the learned AGP have vehemently opposed this petition and pray for it's dismissal. It is pointed out that though the petitioner has been acquitted for committing offences punishable under sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 vide judgment dated 19/07/2019 in Special Case (ACB) No.07/2007, a criminal appeal challenging such acquittal is pending in this Court.

2. The petitioner has put forth prayer clause B, C and D as under :-

"B. By Writ, order or directions the respondent No.2 and 3 may kindly be directed to fix final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of justice.

C. By writ, order or directions the respondent No.2 and 3 may kindly be directed to pay the difference of final regular pension deducting the amount paid to the petitioner by way of provisional pension from 01.07.2017 till the actual grant of regular pension as per 7th Pay Commission and to pay interest @ 12% on regular pension from 20.07.2019 till the grant and payment of actual regular pension and for the payment of interest on the amount payable to the petitioner of gratuity from 01.07.2017 till the actual payment of gratuity in the interest of justice.

D. Pending hearing and final disposal of this Writ Petition the respondent No.2 and 3 may kindly be directed to fix the final pensionable pay and to grant regular pension, gratuity and commutation of pension to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of Justice."

3. It is settled Law that gratuity cannot be forfeited unless the

offence amounting to moral turpitude is proved to have been committed by the petitioner, u/s 4, 6(d)(2) of the Payment of Gratuity Act, 1972 and in the light of the judgment delivered by the Hon'ble Apex Court in the matter of Union Bank of India and others Vs.C.G.Ajay Babu and another [(2018) 9 SCC 529].

4. The learned Advocate for the Corporation submits that the provisional pension is being granted to the petitioner. He, however, cannot point out any provision under the MCS (Pension) Rules, 1982 that an appeal pending against acquittal would empower the employer to hold back regular pension.

5. In the light of the facts as recorded above and keeping in view that an appeal against the acquittal is pending adjudication, the petitioner need not be made to suffer the rigours of litigation, though, we intend to pass an equitable order.

6. In view of the above, this petition is partly allowed in terms of prayer clause "B" with the following rider :-

[a] The petitioner shall tender an affidavit/undertaking to

respondent No.3 Municipal Commissioner stating therein that if he suffers an adverse order in the pending proceedings for challenging the acquittal and his acquittal is converted into conviction, he shall return the entire gratuity amount within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the petitioner to the extent of the monetary reliefs that he would be getting in view of this order.

[b] After such affidavit is filed satisfying the above stated ingredients, the Corporation shall initiate steps for compliance of prayer clause “B” and ensure that such compliance is made within 12 (twelve) weeks from the date of the filing of such affidavit by the petitioner.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)