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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3601 OF 2018**

Shrikant Ramchandra Inamdar ...Petitioner
VS.
Municipal Corporation of
Greater Mumbai & Anr. ...Respondents

Mr.Akshay Puranik a/w Vrushali Pokharna i/b Pragnya Legal for the
Petitioner
Mr.Rajesh Patil with Rupali Adhate for MCGM
Ms Jyoti Bhagat Accounts Officer, E Ward, Pension Dept.

**CORAM : K.K.TATED AND
RIYAZ I. CHAGLA, JJ.**

DATE : FEBRUARY 25, 2021.

P. C. :

. Heard learned counsel for the parties.

2 Learned counsel for the Petitioner submits that during the pendency of the present Petition, Respondent paid their interim benefit including gratuity. He submitted that there was delay on the part of the Respondent to pay gratuity amount and therefore, Petitioner is entitled to interest on that amount. To that effect, he has given a chart of interest. Same is taken on record and marked `X' for identification.

3 Learned counsel for the Petitioner submitted that as per the Pension Rules,1953 of Municipal Corporation of Greater Mumbai, Petitioner is entitled to interest. In support of his contention he has relied

upon new Rule 14A , new Rule 45A and new Rule 55A which read thus:

New Rule 14A

“(1) Good conduct shall be implied for every, grant of pension. Competent authority, may, by order in writing, withhold or withdraw a pension or part thereof whether permanently or for specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

Provided that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum pension fixed.

(2) Where a pensioner is convicted of a serious crime by Court of Law, action under Sub Rule (1) shall be taken in the light of the judgment of the Court relating to such conviction.

(3) In a case not falling under sub Rule (2), if the competent authority considers, that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under Sub Rule (1), follow the procedure laid down for conducting Departmental Enquiry for imposing of reduction.

New Rule 45A

(1)(a) In respect of Municipal employees referred to in Rule 14B, the competent authority shall sanction 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 Municipal employees, 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 sanctioned by the competent authority from the date of retirement, subject to review after every six months upto and including the date on which, after conclusion of departmental or judicial proceedings final orders are passed by the competent authority.

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

(2) Payment of provisional pension made under Sub Rule (1) shall be adjusted against final retirement benefits sanctioned to such municipal employees upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period (effect is given from 1-8-1987).

New Rule 55A

Interest on delayed payment of gratuity.

(1) If the payment of gratuity has been authorised after three months from the date when its payment became due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the following rate on the amount of gratuity in respect of the period beyond three months shall be paid:-

- (i) beyond 3 months and upto one year – 7%
- (ii) beyond one year - 10%

Provided that the delay in the payment was not caused on account of failure on the part of the Municipal servant to comply with the procedure laid down in this behalf.

(2) Every case of delayed payment of gratuity shall suo-motu, be considered by the concerned department and where the department is satisfied that the delay in payment of gratuity was caused on account of administrative lapse, that department shall make a recommendation to the Chief Accountant's department for the payment of interest.

(3) If the recommendation of the department made under sub-rule (2) is accepted by the Chief Accountant's department, the concerned department shall accord sanction for the payment of interest.

(4) In all cases where the payment of interest has been authorised with the concurrence of the Chief Accountant's department concerned shall fix the responsibility and take disciplinary action against the Municipal servant or servants concerned who are found responsible for the delay in the payment of gratuity.

(5) If as a result of Corporation's decision taken subsequent to the retirement of a Municipal servant, the amount of gratuity already paid on his retirement is enhanced on account of-

(a) grant of pay higher than the pay on which gratuity already paid was determined.

(b) liberalisation in the provisions of these rules from a date prior to the date of retirement of the Municipal servant concerned, no interest on the arrears of gratuity shall be paid.

(6) Interest at the rates prescribed in Sub Rule (1) above, shall be payable upto the end of the month preceding the month in which payment of gratuity is made.

(7) Payment of gratuity is not made in case of employees against who departmental or judicial enquiry is pending. However, on completion of departmental/judicial enquiry, if the Municipal servant is acquitted of the charges levelled against him and if the competent authority sanctions the payment of gratuity the payment will be deemed to have become due and payable on the date immediately following the date of retirement. No interest will however, be payable in case Municipal servant in whose case departmental/judicial enquiry has been withdrawn due to death of Municipal employee.

(8) Above provisions shall be equally applicable in case of Municipal employee who dies while in service. (Effect is given from 1-6-1988).

4 In view of these facts, learned counsel for the Petitioner submits that Respondents may be directed to pay interest on delayed payment.

5 Learned counsel for the Respondent submits that there is no delay on their part to make gratuity payment. It is because of the pendency of criminal matter against the Petitioner that they withheld the Petitioner's gratuity.

6 Considering the submissions made by the learned counsel for the Petitioner and reliance placed on some of the Pension Rules, 1953 of Municipal Corporation of Greater Mumbai, Respondent to file their additional affidavit in reply stating whether the Petitioner is entitled to interest on delayed payment of gratuity amount and if so, how much amount.

7 Reply shall be filed on or before 12th March 2021 with copy to the other side.

8 Rejoinder, if any, to be filed on or before 17th March 2021 with copy to the other side.

9 Matter to appear on board on 22nd March 2021.

[RIYAZ I. CHAGLA, J.]

[K.K.TATED, J.]