

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

20 WRIT PETITION NO.4532 OF 2016

KUNDANSING BADUSING PAWAR
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

...
Advocate for the petitioner : Mr.V.D.Hon, Senior Advocate
i/b. Mr.A.V.Hon
AGP for Respondent-State : Mr.A.S.Shinde
...

**CORAM : S.V.GANGAPURWALA &
S.G.DIGE, JJ.**

DATE : 03.01.2022

P.C. :

1] Mr.V.D.Hon, learned Senior Advocate for the petitioner submits that the petitioner was appointed by the respondents in the year 1984 and on attaining the age of superannuation retired from service on 31.05.2009. The petitioner was paid provisional pension, however, the same is stopped subsequently on the ground that the petitioner is convicted for the offence under the provisions of Prevention of Corruption Act on 13.02.2012. Learned Senior Advocate submits that the appeal is filed by the petitioner, same is pending and in the appeal, sentence has been suspended. Learned Senior Advocate submits that rule 27 [4] r/w. rule 130 of the Maharashtra Civil Services [Pension] Rules, 1982

are not considered by the respondents. Withholding the pension is also without notice to the petitioner. No opportunity was given to the petitioner. According to the learned Senior Advocate, such an act is illegal. The appeal is pending and in view of that the petitioner would be entitled for continuation of provisional pension. Learned Senior Advocate relies upon the judgment of the Hon'ble Apex Court in the case of **State of Jharkhand & others Vs. Jitendra Kumar Srivastava & another** reported in [2013] 12 SCC 210.

2] Mr.A.S.Shinde, learned AGP submits that the petitioner is held guilty of offence under the provisions of the Prevention of Corruption Act and is convicted with imprisonment of one year. In appeal, conviction is not suspended. Rule 27 of the Maharashtra Civil Services [Pension] Rules, in such case, is squarely applies. Learned AGP also relies upon judgment of the Division Bench of this Court in the case of **Suresh Dadarao Suryawanshi Vs. State of Maharashtra & others** reported in 2008 [3] Mh.L.J. 389.

3] The fact that the petitioner is convicted for the offence under the provisions of the Prevention of Corruption Act, is not disputed. The appeal is filed by the petitioner, however, the petitioner could not succeed in getting his conviction suspended. Rule 27 of the Maharashtra Civil Services [Pension] Rules, in such matter, is clear. Rule 27

[4] of the Maharashtra Civil Services [Pension] Rules relied by the learned Senior Advocate need not apply in the present matter as that would be applicable if the departmental or judicial proceedings are pending. The petitioner already suffered conviction. Conviction is not stayed.

4] The Division Bench of this Court in the case of **Suresh Dadarao Suryawanshi [supra]** has observed that the conviction in instant case is for serious offence and Rule 130 would not apply.

5] In case appeal filed by the petitioner is allowed, then the petitioner can claim the benefits as admissible under law.

6] With the above observations, Writ Petition is disposed of. No costs.

[S.G.DIGE, J.]

[S.V.GANGAPURWALA, J.]