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(REPORTABLE)**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

83 WRIT PETITION NO.3830 OF 2023

THE STATE OF MAHARASHTRA THROUGH ADDITIONAL
CHIEF SECRETARY, HOME DEPARTMENT POL-10,
MANTRALAYA & OTHERS
VERSUS
NANDKISHOR SITARAM CHITLANGE

....

Mr V. M. Kagne, A.G.P. for Petitioners;
Mr Mukund Rangrao Kulkarni, Advocate for Respondent

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

**DATE : 3rd April, 2023 &
5th April, 2023**

PER COURT:

1. The Petitioners/ State of Maharashtra and others have assailed the judgment of the learned Maharashtra Administrative Tribunal (for short 'Tribunal'), dated 15/11/2022, passed in Original Application No.340/2022.
2. We have considered the strenuous submissions of the learned Advocates for the respective sides and with their assistance, we have gone through the petition paper book.
3. The dates and sequence of events are as under :-

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- (a) The Respondent / Original Applicant was appointed as a Police Prosecutor Class-I, on 18/07/1984.
- (b) He was promoted in 2013 to the post of Assistant Director and Public Prosecutor at Aurangabad.
- (c) He was due to retire on attaining the age of superannuation, on 30/09/2016.
- (d) On 13/08/2016, a 'Criminal Complaint' came to be registered at Jinsi Police Station, Aurangabad, bearing FIR No.299/2016, allegedly for having committed an offence punishable under Section 7, 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988. He was arrested on 13/08/2016 and released on bail on 14/08/2016.
- (e) He was suspended by an order dated 30/09/2016 w.e.f. 13/08/2016, since he was put behind the bars.
- (f) The criminal case is still pending and we are informed that recording of evidence has commenced.
- (g) The Original Applicant preferred Original Application No.340/2022 before the learned Tribunal, praying that the order dated 08/02/2022 be quashed and set aside.
- (h) By an order dated 08/02/2022, the Assistant Director and the Public Prosecutor, Aurangabad, informed the

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Petitioner that, he would not be entitled to the leave encashment and the gratuity, until the trial is over.

- (i) The Petitioner, therefore, raised this issue before the Tribunal, that, since he is not convicted and there is no verdict against him, merely because the FIR was registered around 47 days prior to his retirement, cannot entitle the employer for withholding the gratuity.

4. By the impugned judgment dated 15/11/2022, the Tribunal has allowed the application filed by the Applicant and has concluded that, he is entitled to receive the leave encashment as well as the gratuity amount. The said amount be released within 3 weeks and the applicant would furnish a requisite undertaking that, he would refund the amount so received by him within two months, in case he is held guilty in the criminal proceedings against him.

5. For the sake of clarity, the operative part of the order of the learned Tribunal, is reproduced hereunder:-

“O R D E R

- (i) *The impugned communication/order dated 8.2.2022 passed by respondent no. 3 is quashed and set aside.*

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(ii) The applicant is held entitled to receive the amount of gratuity, as well as, leave encashment. The said amount be released in favour of the applicant within the period of 3 weeks from the date of this order. The respondents are directed to release the said amount in favour of the applicant upon furnishing the requisite undertaking by the applicant that if required he would refund the amount so received to him within the period of 2 months in case he is held guilty in the criminal proceeding pending against him.

(iii) Having regard to the observations made in the body of the order the respondents shall consider the request of the applicant for release of other retiral benefits also in accordance with law and complete the process of pension expeditiously.

(iv) The Original Application stands disposed of in above terms. No order as to costs.”

6. It is undisputed that, on the date of retirement of the Petitioner, a charge-sheet was not served upon him by the employer. Obviously, the Departmental Enquiry had not commenced. The issue was, as to whether he could be entitled for the monetary benefits pursuant to his superannuation in view of the pending criminal case.

7. The learned Tribunal has referred to Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “the

1982 Rules”). For the sake of clarity, Rule 27 is reproduced hereunder :-

“27. Right of Government to withhold pension or withdraw pension.- (1) Appointing authority may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

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

(2) (a) The Departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.-

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- (i) shall not be instituted save with the sanction of the appointing authority,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 130 shall be sanctioned.

(5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purposes of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the

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Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance is made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court."

8. It is undisputed that the Petitioners before us, had conceded before the learned Tribunal that, they would release the leave encashment of the applicant on an undertaking being tendered to the Court. The said issue is, therefore, not addressed to us. What has been raised before our Court, is a challenge to the decision of the Tribunal in directing payment of gratuity amount to the Applicant.

9. Insofar as the payment of gratuity is concerned, Rule 130 (i)(c) of the 1982 Rules reads as under :-

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

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(1)(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 Services

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(Discipline and Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.]”

[Emphasis supplied]

10. It is, thus, apparent that, the above Rule indicates that, ‘no gratuity shall be paid to a Government servant until the conclusion of the departmental or judicial proceedings and issue (sic. issuance) of final order’.

11. Rule 27(6)(b)(i) of the 1982 Rules, therefore, is relevant to this case. The said provision indicates that, judicial proceedings shall be deemed to be instituted, in the case of criminal proceedings, on the date on which the complaint, of which the Magistrate takes cognizance, is made. Insofar as the Departmental Proceeding is concerned, such proceeding is deemed to be instituted on the date on which, statement of charges is issued.

12. In the present case, the issue is of judicial proceedings deemed to have been instituted. If such proceedings are deemed to be instituted, the gratuity amount can not be paid to the employee, since it is to be withheld until the judicial proceedings

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are concluded with the issuance of the final order. In case of criminal proceedings, a judicial proceeding is deemed to be instituted on the date, on which the complaint is registered or a report of the police officer, of which the Magistrate takes cognizance i.e. the charge-sheet. The word “OR” is used to disconnect the lodging of the complaint with the report of the police officer. Since these are two independent acts in the process of criminal investigation, the word “OR” has been used. It is undisputed that, on the date on which the applicant retired, a FIR was already registered, around 47 days prior to his superannuation. As such, lodging of the FIR, which amounts to lodging of a complaint against the Petitioner in the Police Station, was prior to the superannuation of the Petitioner.

13. We have perused paragraph 7 of the impugned judgment, wherein the Tribunal has come to the conclusion that, the mere filing of the first information report is not enough. Reliance is placed on an order passed by the Tribunal at Mumbai, in which the Tribunal concluded that, mere filing of the first information report before retirement cannot be a ground for withholding gratuity. In the impugned order, there is only a reference to the said order passed at Mumbai, by the Tribunal at

Aurangabad, inasmuch as, there is no discussion, as to how can the Tribunal could ignore the words “*in the case of criminal proceedings, on the date on which the complaint..... of which the Magistrate takes cognizance, is made*”. In the case of civil proceedings, judicial proceedings are deemed to be instituted the moment the plaint is lodged in the Court.

14. It has been consistently held that the Courts cannot legislate and are supposed to only interpret. We cannot ignore Rule 27(6)(b)(i), which reads as under :-

“judicial proceedings shall be deemed to be instituted-
(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer *of which the Magistrate takes cognizance is made.*”

15. We find from paragraph No.18 of the judgment dated 9th July, 2019 delivered by the learned Tribunal at Mumbai in Original Application No.401 of 2018, filed by Shri Rajesham Laxmipathi Boga, that the issue before the Tribunal was the lodging of an FIR after the retirement of the employee and after the filing of the original application before the Tribunal. It is specifically observed in paragraph No.18 in Rajesham Boga (supra) as under:-

“18. In so far as registration of FIR is concerned, it is true that on 11.08.2018 i.e. after filing of O.A, F.I.R. seems to have been registered against the Applicant and 10 other officials alleging misappropriation of medicines in the period from 2011 to 2017. When specific query was made about the filing of charge-sheet in criminal case, the learned P.O. fairly stated, on instructions, that no charge-sheet is filed in criminal case. Whereas, as per Rule 27 (6)(b) of ‘Pension Rules 1982’, the judicial proceedings shall be deemed to be instituted in case of criminal proceedings from the date on which the complaint or report of Police Officer of which the Magistrate takes cognizance is made. This being the legal position, mere registration of FIR after filing of O.A. cannot be the ground to withhold gratuity as Rule 130(1)(c) of ‘Pension Rules 1982’ is not attracted.”

16. We are of the view that the learned Tribunal at Aurangabad should not have followed the above conclusion without taking into account the facts in *Rajesham Boga (supra)*, wherein the said facts are completely different from the case before us. The facts before us are that, an FIR was registered 47 days prior to the retirement of the original Applicant. In ***Union of India Etc. Etc. Vs. K. V. Jankiraman Etc. Etc., (1991) 4 SCC 109***, the issue was of holding back the promotion of an employee

without there being any charge-sheet registered against him. Rule 17(1) of the Government of India (Department of Personnel and Training), Office Memorandum dated 30th January, 1982, was being considered alongwith Rule 17 (1) of the Service Rules applicable to the employee. There was no issue of withholding of the gratuity as is permissible under Rule 27(6)(b)(i) read with Rule 130(1)(c) of the Maharashtra Civil Services (Pension) Rules, 1982. The issue before us is altogether different and pertains to the lodging of a complaint which would mean and include an FIR, as being a ground sufficient for withholding of the gratuity.

17. The original Applicant relies upon a judgment delivered by this Court at the Principal Seat dated 18th January, 2022 in Writ Petition No.11955 of 2018 filed by ***Dr. Dipak Vishwnathrao Muley Vs. The State of Maharashtra and others.*** In the said case, the issue was as regards an enquiry, which was never completed prior to the retirement of the employee and this Court concluded that if there is no Departmental Enquiry concluded and no punishment awarded prior to the retirement of an employee, Rule 27 (2) would be applicable since the departmental proceedings were not instituted while the Government servant was in service.

18. While dealing with the deeming fiction of the pending proceedings, this Court in ***Dr. Dipak Vishwnathrao Muley*** (supra), restricted its conclusion to Rule 27(6)(a) and concluded that once the departmental enquiry was initiated after the Petitioner's retirement, then it is not material or relevant if two show-cause-notices were issued prior to the retirement of the Petitioner. In the case in hands, the issue is, as to whether there was a criminal complaint registered against the employee prior to his retirement and if this be the position, the judicial proceedings would be deemed to be instituted with the registration of an FIR, in view of Rule 27(6)(b)(i).

19. The registration of an FIR, on a complaint by the victim, sets in motion the criminal investigation under Section 154 of the Code of Criminal Procedure. Without an FIR, no investigation is set into motion. The intent of the legislature in drafting Rule 27 of the 1982 Rules appears to be that a proceeding must be set in motion. Therefore, it is provided under Section 27(6)(a) that a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges (charge sheet) is issued. A charge-sheet is akin to an FIR in

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criminal proceeding. Unless a charge-sheet is issued, a departmental enquiry is not deemed to be initiated. By applying the same analogy, in order to avoid violence to the language used in Rule 27(6)(b)(i), a criminal proceeding is said to be initiated with the lodging of a criminal complaint, which is a basis for registering an FIR. Hence, in criminal jurisprudence, by reading the specific language used in Rule 27(6)(b)(i), judicial proceeding would be deemed to be instituted from the date on which the FIR is registered, since the FIR initiates criminal investigation, and tendering of the charge-sheet is the culmination of the criminal investigation.

20. Section 154 of the Code of Criminal Procedure reads as under :-

“154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

21. An FIR under Section 154 of the Code of Criminal Procedure is the information given to the Police Officer of the cognizable offence and reduced into writing as required by Section 154, is what is known as First Information. The word “first” information report is not mentioned in the Code of Criminal Procedure, but is understood to mean information recorded under Section 154. The object of an FIR is to set the criminal law in motion and from the point of view of the Investigating Authority receiving such information about the alleged criminal activity for which the Authority can take suitable steps to press and establish the guilty. [**Ramakant vs. State, 2006 Cr.L.J. 4752 (Patna)**].

22. An FIR is a report relating to the commission of a cognizable offence given to the Police and recorded by it under Section 154 (*Apren vs. State, AIR 1973 SC 1*). In fact, it is information given to a Police Officer by an informant/complainant on which, the investigation is commenced. It sets the criminal law in motion and marks commencement of the investigation (*State vs. Rusy, AIR 1960 SC 391*).

23. In *Rhea Chakraborty vs. State of Bihar and others, (2020) 20 SCC 184*, it has been held that the power to conduct investigation by the police is under Section 154, as registration of an FIR is mandated when the information of cognizable offence is received by the Police (*Lalita Kumari vs. State of UP, (2014) 2 SCC 1*) and it was held that registration of an FIR is mandated when the information of a cognizable offence is received by the Police.

24. In the *State of M.P. vs. Ratan Singh and others, (2020) 12 SCC 630*, it was held that only earliest or first information in regard to commission of cognizable offence satisfies the requirement of Section 154. The Courts generally will

not disbelieve the version of the eyewitnesses even if there is some delay in lodging the FIR, if the versions of the eyewitnesses are reliable and trustworthy.

25. In ***Lalita Kumari vs. Government of UP, (2014) 2 SCC 1 (Five Judges Bench)***, it was held that registration of an FIR under Section 154 is mandatory in cognizable cases if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such situation. This is the general rule and must be strictly complied with. In ***State of Telangana vs. Habib Abdullah Jeelani and others, (2017) 2 SCC 779***, it was held that registration of an FIR is mandatory under Section 154 if information given to the Police discloses commission of a cognizable offence.

26. The learned Advocate for the original Applicant as well as the learned AGP have not placed before the Court any judicial pronouncement, either of this Court or of the Honourable Supreme Court, interpreting Rule 27(6)(b)(i) of the 1982 Rules, pertaining to pendency of judicial proceedings deemed to be instituted on the basis of an FIR/Complaint.

27. It is obvious that the attention of the learned Tribunal at Aurangabad or even at Mumbai, was not drawn by the learned Advocates appearing before it to the fact that the case of ***Rajesham Laxmipathi Boga*** (supra), was completely different and distinguishable on facts. Had the learned Advocates brought this aspect to the notice of the learned Tribunal, the distinction on facts would have been considered.

28. In view of the above, **this Petition is partly allowed.** The direction of the learned Tribunal to the extent of releasing of the gratuity amount, despite a criminal case pending against the Applicant, stands set aside, and since recording of evidence in Special Criminal Case No.11 of 2017, pending before the learned 4th Additional Sessions Court at Aurangabad, is in progress, we direct that the hearing in the said case shall be expedited and the Trial Court would conclude the said proceedings, as expeditiously as possible and in any case, on or before 31st August, 2023. The learned Advocate for the original Applicant submits on instructions, that the Applicant would render wholehearted cooperation in the said matter.

29. Needless to state, if the original Applicant is acquitted of the charge levelled upon him, by the Trial Court, the employer would release the gratuity amount, within 30 days and ensure that the same is paid to the original applicant.

30. The learned Advocate for the original Applicant prays that, since the Government does not intend to challenge the leave encashment issue, the said amount may be released by the appropriate authority, within 30 days. The learned A.G.P. submits that, after the Applicant tenders the undertaking, the leave encashment amount and other retiral benefits, save and except, the gratuity amount, would be released, within 30 days. This statement is recorded.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

sjk