

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4777 OF 2018

Shri Ramkrishna s/o Nanaji Gaurkar,
Aged about 64 years, Occu: Retired,
R/o Post Vegaon, Tahsil Maregaon,
District Yavatmal. **PETITIONER**

...V E R S U S...

1. The Education Officer (Secondary)
Zilla Parishad, Chandrapur.
2. Shri Mahavir Shikshan Prasarak Samiti,
Vani, having its office at Natraj Chowk,
Jatra Road, Vani, District Yavatmal.
3. The Accountant General (A & E-II)
Maharashtra, Civil Lines, Nagpur.
4. The District Treasury Officer,
Yavatmal, Near Collector Office,
Yavatam-445401. **RESPONDENTS**

Mr. S. S. Sanyal, Advocate for Petitioner.
Mr. N. S. Rao, AGP for Respondents 1, 3 & 4/State.
Mr. B. G. Kulkarni, Advocate for Respondent 2.

CORAM: **ROHIT B. DEO AND Y. G. KHOBRAGADE, JJ.**
DATE: **2nd FEBRUARY, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard. Rule. Rule made returnable forthwith by
consent of the learned counsels for the parties.

2. The petitioner is seeking a declaration that he is entitled to interest on delayed payment of pension and gratuity.

3. The factual matrix is thus:

The petitioner was appointed as an Untrained Teacher in March 1997. In due course he was made permanent and appointed as Headmaster of the School.

4. In December 2009 respondent 2 initiated departmental inquiry which culminated in finding of guilt and vide order dated 25.11.2011 the petitioner was terminated.

5. The petitioner assailed the termination in Appeal STC 19/2011 which the Tribunal allowed vide judgment dated 21.11.2014. The Tribunal directed the respondent 2 to reinstate the petitioner in service with full back-wages.

6. In the interregnum, the petitioner had attained the age of superannuation on 30.06.2012. The judgment of the Tribunal was questioned by the management in Writ Petition 141/2015. The High Court granted interim relief, which was restricted to payment of back-wages, obviously since the petitioner

stood superannuated in 2012. On 17.02.2017 the petitioner and the management filed compromise petition in the High Court.

7. We may extract the relevant portion of the compromise petition.

02. Hence as per the directions of the Hon'ble School Tribunal respondent No.1 stands reinstated in service on the post of Head Master of the school and respondent No.1 would be treated to be in service for all other service benefits from 02.08.2011 to 30.06.2012. Accordingly the service book of respondent No.1 will be updated by incorporating the pay fixation by granting yearly increments and the salary of respondent No.1 with all admissible allowances will be worked out as on 30.06.2012.

03. That respondent No.1 had attained the age of superannuation on 30.06.2012 and hence as per rules respondent No.1 would be granted retirement as on 30.06.012 and will be deemed to have retired from service on 30.06.2012 (A.N.).

04. The Hon'ble School Tribunal has also issued directions for granting retirement and

pensionary benefits to respondent No.1. Accordingly the pension case of respondent No.1 will be submitted to the Competent Authority for releasing the retirement benefits and pensionary benefits to respondent No.1 as per rules. The Education Officer (Secondary), Zilla Parishad, Chandrapur and the office of the Accountant General will be the competent authorities to process the pension case and release the benefits. The respondent No.1 shall cooperate the petitioners for preparation of pension case.

05. It is agreed and undertaken by respondent No.1 that respondent No.1 has waived the claim for back-wages upto 30.06.2012. Hence neither the petitioners nor the Education Officer will be liable to pay any amount to respondent No.1 upto 30.06.2012 towards backwages. Accordingly respondent No.1 shall not be entitled for the claim of back-wages upto 30.06.2012.

8. The High Court disposed of Writ Petition 141/2015 in terms of the compromise petition dated 17.02.2017.

9. It is not in dispute that the pension was sanctioned

on 24.11.2017 with effect from the date of superannuation i.e. 01.07.2012. According to the petitioner, while he has received the pension, he is entitled to interest in view of the provisions of Rule 129 (b) of the Maharashtra Civil Services (Pension) Rules, 1982.

10. We may note the relevant provisions. Rule 129-A (1) of the Maharashtra Civil Services (Pension) Rules, 1982 read thus:

“129-A. Interest on delayed payment of gratuity:

(1) If the payment of gratuity has been authorised after three months from the date when its payment become 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% per annum |
| (ii) beyond one year | 10% per annum |

Provided that no interest shall be payable if the delay in payment of gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter:

Provided further that no interest shall be payable in the case in which a provisional gratuity is sanctioned.”

Equally relevant is Rule 130(1)(c) which read thus:

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

- (1) (a)

- (b)
 (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 (Discipline & 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 authorised to be paid to the Government servant.”

Plain reading of Rule 130 indicates that gratuity shall not be paid until the conclusion of the departmental or judicial proceedings and issue of final orders therein. The exception is if the employee is facing proceedings in contemplation of imposition of minor penalty.

11. The learned counsel for the petitioner Mr. Sanyal fairly invites our attention to the decision in *Prabhakar s/o Marotirao Dalal v. State of Maharashtra and another 2009 (1) Mh.L.J. 209*, which holds that since the disciplinary proceedings were pending when the petitioner retired, interest on the amount of gratuity is not payable.

12. In the factual matrix, we do not see any *mala fide* or gross negligence as would impel us to direct the respondents to

pay the petitioner interest on the amount of gratuity or pension, particularly since the learned counsel Mr. Sanyal fairly states that there was no prior demand as such that notwithstanding the pendency of the judicial proceedings, the petitioner be paid pension or gratuity.

13. In the facts of the case, we see no reason to exercise writ jurisdiction. The petition is dismissed.

(Y. G. KHOBRADE, J.)

(ROHIT B. DEO, J.)

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