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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14289 OF 2017

1] The State of Maharashtra]
Through its Secretary Irrigation]
Department, Mantralaya, Mumbai 400032]
]]
2] The Accountant General]
(Accounts & Entitlement)-1,]
Maharashtra having office at 2nd Floor,]
Pratiksha Bhavan, New Marine Lines, 101,]
Maharshi Karve Road, Mumbai-400020]
]]
3] The Superintendent Engineer]
& Deputy Administrator, having office at]
Maharashtra Engineering Research Institute]]
Dindori Road, Nashik.] Petitioners

V/s

Mr. Baban Yeshwant Ghuge,]
Age 64 years. Occ- Retired, R/o. Jai Malhar]
Opp. Vanraj, Kathegalli, Nashik.] Respondent.

Mr. N.K. Rajpurohit, Assistant Government Pleader for the
petitioners.

Mr. Sudhanva S. Bedekar, Advocate for the respondent.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ.

Date on which the arguments were concluded : 10/05/2024

Date on which the judgment is pronounced : 19/07/2024

JUDGMENT: (Per A.S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith and heard learned
Counsel for the parties.

2] The issue that arises for consideration in this writ petition is with regard to the entitlement of a State Government employee to receive gratuity on the conclusion of judicial proceedings in view of Rule 130(1)(c) of the Maharashtra Civil Services (Pension) Rules, 1982. In other words, whether gratuity is payable on the acquittal of an employee in judicial proceedings or whether payment of gratuity can be made only after the acquittal has attained finality?

3] The facts relevant for considering the aforesaid issue are that the respondent came to be appointed as Junior Engineer on 01/06/1978. On 21/11/1998, proceedings under the provisions of the Prevention of Corruption Act, 1988 (for short, the Act of 1988) came to be filed against him and his family members. As a consequence of initiation of these proceedings, the respondent was placed under suspension. He was thereafter prosecuted in the said proceedings vide Special Case No.8 of 2002. The learned Special Judge at the conclusion of trial acquitted the respondent and other accused by the judgment dated 25/04/2008. The State Government being aggrieved by the acquittal of the respondent preferred Criminal Appeal No.638 of 2009 in this Court which is pending. Since the appeal preferred by the State Government challenging the order of acquittal was pending, the pensionary

benefits alongwith gratuity of the respondent were withheld. In this backdrop, the respondent approached the Maharashtra Administrative Tribunal (for short, the Tribunal) by filing Original Application No.843 of 2016. The Tribunal by its judgment dated 04/07/2017 took the view that the respondent having been acquitted in the criminal trial, it could not be said that any judicial proceedings in the form of the criminal appeal were pending. It held that the expression “judicial proceedings” was restricted to the criminal trial and on acquittal, the said proceedings came to an end. On this premise, the Tribunal held that the respondent was entitled to receive regular pension as well gratuity that was withheld. Being aggrieved by the aforesaid, the State of Maharashtra has preferred this writ petition.

4] Shri N. K. Rajpurohit, the learned Assistant Government Pleader for the petitioners referred to the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, “Rules of 1982”) to urge that the learned Member of the Tribunal was not justified in directing payment of pension as well as gratuity to the respondent despite pendency of the criminal appeal challenging his acquittal. According to him, the expression “judicial proceedings” as referred to in Rule 130(1)(c) of the Rules of 1982 would include a criminal appeal challenging the

order of acquittal of an employee. It was urged that on a plain reading of aforesaid Rule, it was clear that until the judicial proceedings were concluded by passing of final orders therein, gratuity was not liable to be paid. Since Criminal Appeal No.638 of 2009 preferred by the State was pending, the amount of pension and gratuity was rightly withheld. The entitlement was only to receive provisional pension during pendency of such judicial proceedings.

To substantiate his contentions in this regard, the learned Assistant Government Pleader placed reliance on the following decisions:-

(i) *Garikapatti Veeraya vs. N. Subbiah Choudhury*, AIR 1957 SC 540.

(ii) *Lakhminder Singh Brar vs. Union of India (UOI) and ors.* [2010 (127) FLR 1077].

(iii) Decision of Rajasthan High Court in *Ramdhan S/o Bhuraji; Brijlal S/o. Ramnath vs Kanmal S/o Nathuram*, 1981 Lawsuit (Raj) 199.

(iv) *B. Madan Mohan Singh vs. B. Ram Sunder Singh*, AIR 1930 ALL 326.

(v) Judgment of Division Bench of Bombay High Court dated 07/02/2017 delivered in Writ Petition No.5137 of 2016 (*Ramesh Manikrao Sasane vs. The State of Maharashtra and anr.*)

(vi) *Bhikham Singh and others vs. Darshan Singh and others*, AIR (29) 1942 Oudh 489.

(vii) Judgment of Madras High Court in *Soora Kulasekara Chetty and another vs. Tholasingam Chetty*, 47 L.W. 314.

(viii) Judgment of Full Bench of Allahabad High Court in *Shyam Sunder Lal vs. Shagun Chand*, AIR 1967 (ALL) 214.

(ix) *Jarnail Singh vs. The Secretary, Ministry of Home Affairs and others* (1993) 1 SCC 47.

It was thus submitted that the Tribunal erred in allowing the Original Application and directing payment of regular pension as well as release of gratuity notwithstanding the fact that the judicial proceedings had not come to an end. It was prayed that the judgment of the Tribunal be set aside.

5] On the other hand, Mr. Sudhanva S. Bedekar, the learned counsel for the respondent, opposed the aforesaid submissions and supported the order passed by the Tribunal. According to him, on his acquittal at the conclusion of trial, the employee concerned was entitled to receive pension and gratuity. Merely because the judgment of acquittal was the subject matter of challenge in appeal, the same would not amount to continuation of the trial so as to deny such pensionary benefits as well as

receiving the amount of gratuity. According to the learned Counsel, the judgment of the Division Bench in *Ramesh Manikrao Sasane* (supra) had been rendered *per incuriam* inasmuch as the Court failed to notice the provisions of Rule 27 of the Rules of 1982 and the meaning of the term “judicial proceedings” as stated therein. Similarly, the said term as defined by Section 2(i) under the Code of Criminal Procedure, 1973 (for short, “the Code”) had not been taken into consideration. In addition, the learned Counsel sought to buttress his contention by relying upon the following decisions:-

(i) Judgment of Division Bench of this Court dated 22/03/2021 delivered in Original Side Writ Petition No.3601 of 2018 (*Shrikant Ramchandra Inamdar vs. Municipal Corporation of Greater Mumbai*)

(ii) *Sau Sheela Rameshchandra Bargaje vs. Administrative Officer and others*, 2021, SCC Online Bom 3664.

(iii) *State of U.P. and another vs. Synthetics and Chemicals Ltd. and another*, (1991) 4 SCC 139.

(iv) Judgment of Division Bench of this Court (Bench at Aurangabad) dated 27/09/2022 delivered in Writ Petition No.14327 of 2021 (*Abhimanyu Laxman Kumbhar vs. The Maharashtra State Electricity Distribution Company Ltd and others*)

(v) *Kundasing Badusing Pawar vs. State of Maharashtra and others*, 2022 SCC OnLine Bom 2585.

(vi) *Vasant Gopal Bhagwat and others vs. Pune Municipal Corporation*, 1997(3) Mh.L.J. 812.

(vii) *Rajeev Sharma vs. State of UP & others*, (2015) All L.J. 98.

(viii) *Chief Commissioner & another vs. R.S. Ramkrishna Rao and another*, 2010 SCC OnLine AP 37.

(ix) *R.C. Dubey vs. MP State Electricity Board*, 2013 SCC OnLine MP 1004.

(x) *Bharat Sanchar Nigam Limited vs. S. Rajagopal* (2015) 7 MLJ 851.

It was thus urged that considering the fact that grant of pensionary benefits which would include gratuity could not be treated as a bounty but as the right of an employee, said benefits were liable to be released immediately after acquittal of such employee who was involved in any criminal proceedings. Since no departmental inquiry was held against the respondent and he had been acquitted in the criminal trial, the State Government ought to release all pensionary benefits of the respondent including the amount of gratuity. For these reasons no interference with the judgment of the Tribunal was called for.

6] We have heard the learned counsel for the parties and we have perused the documentary material on record. We have thereafter given thoughtful consideration to the issue that arises for consideration. The undisputed facts lie in a narrow compass. While in service, the respondent was tried for the offence punishable under Section 13(1)(e) read with Section 13(2) of the

Act of 1988. At the conclusion of trial, he was acquitted on 25/04/2008. The appeal challenging his acquittal at the behest of the State of Maharashtra being Criminal Appeal No.638 of 2009 is pending in this Court. The respondent superannuated on 31/10/2011 without being subjected to any disciplinary proceedings. It is in this background that the question as to whether the State of Maharashtra is entitled to withhold the pensionary benefits which includes the amount of gratuity under the Rules of 1982 till the conclusion of judicial proceedings arises for consideration.

7] For considering the aforesaid issue, it would be necessary to first refer to the relevant Rules having bearing on the same. Rule 27 of the Rules of 1982 permits the Appointing authority to withhold or withdraw pension or any part thereof if in any departmental inquiry or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service. Under sub-rule (6) of Rule 27, it has been stated that for the purposes of said Rule judicial proceedings shall be deemed to be instituted 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. In case of civil proceedings, it is the date of presentation of the plaint in Court.

Rule 130 of the Rules of 1982 empowers the payment of provisional pension in case any departmental or judicial proceedings against the Government servant are pending. Rule 130(1)(c) being relevant for the present purposes is reproduced below:-

“130(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.”

It can thus be seen from the aforesaid provisions that the Government has the right to withhold or withdraw pension subject to the contingencies mentioned in Rule 27. Rule 130 recognizes the right to receive provisional pension during pendency of departmental or judicial proceedings. Insofar as the amount of gratuity is concerned, the same cannot be paid to the Government servant until the conclusion of departmental or judicial proceedings and issue of final orders thereon.

Incidentally, it may be noted that in the context of the provisions of Rule 69(1)(c) of the Central Civil Services (Pension) Rules, 1972 which too prohibits payment of gratuity until the conclusion of judicial proceedings and issue of final orders thereon, the Supreme Court in *Jarnail Singh* (supra) has recognized the power of Government to withhold payment of gratuity and its payment being subject to final outcome of any

pending judicial proceeding.

8] On a plain reading of Rule 130, it becomes clear that though a Government servant is entitled to receive provisional pension notwithstanding pendency of departmental or judicial proceedings, he is not entitled to be paid gratuity until such departmental or judicial proceedings come to an end and final orders thereon are passed. The words “until the conclusion of the departmental or judicial proceedings and issue of final orders thereon” clearly indicate that the entitlement to gratuity is dependent on the conclusion of departmental or judicial proceedings. The requirement of final orders being passed in such proceedings has material bearing and its impact on the entitlement to receive gratuity cannot be ignored.

9] In the aforesaid context, the effect of pendency of the appeal preferred by the State of Maharashtra against the judgment of the trial court acquitting the respondent would have to be taken into consideration. According to the petitioners, since the judicial proceedings against the respondent are yet to be finally concluded, the respondent would not be entitled to receive gratuity till that time in view of Rule 130(1)(c) of the Rules of 1982. On the other hand, according to the respondent, since the

trial court acquitted the respondent in the criminal trial and said proceedings having come to an end, there was no impediment in releasing the amount of gratuity in his favour. This is on the premise that pendency of an appeal against acquittal could not be treated to be continuation of the criminal trial.

10] Both the learned counsel have referred to various decisions to bring home their contentions. Reference, however, is being made only to those decisions which are found relevant for answering the issue that arises. At the outset, we may refer to the decision of the Coordinate Bench in *Ramesh Manikrao Sasane* (supra). The petitioner therein, while in service, faced trial under the provisions of the Act of 1988. He was acquitted by the Special Court and thereafter he sought release of his pension and other benefits. Though he was granted provisional pension, other terminal benefits were not released. The Tribunal did not grant any relief to him in the backdrop of the fact that an appeal preferred by the State of Maharashtra against the order of acquittal was pending. In that context after referring to Rule 130(1)(c) of the Rules of 1982, it was observed that the said petitioner was not entitled to receive gratuity till the conclusion of the criminal appeal against the order of acquittal.

The learned counsel for the respondent sought to contend that since the provisions of Rule 27 of the Rules of 1982 as well as the expression “proceedings” as defined under the Code were not considered by the Coordinate Bench, the said decision was rendered *per incuriam*. To substantiate this contention, reliance was placed on the decision of the Supreme Court in *Synthetic Chemicals Limited* (supra).

11] In our view, the Coordinate Bench has rightly found that on account of pendency of appeal against acquittal the said petitioner was not entitled to receive gratuity till the criminal appeal was decided. As stated above, the plain reading of Rule 130(1)(c) clearly indicates that until and unless the departmental or judicial proceedings are concluded and final orders thereon are passed, the gratuity is not liable to be paid to the concerned Government servant. The reference made to the provisions of Rule 27(6) is misplaced for the reason that firstly Rule 27(6) starts with the expression “for the purpose of this Rule”. The same would indicate that only for the purpose of Rule 27, judicial proceedings would be deemed to be instituted on the date on which cognizance of report of a police officer is taken by the Magistrate. In the present context, we are not concerned with the institution of judicial proceedings but conclusion and passing

of final orders in judicial proceedings. In our view, the provisions of Rule 27 of the Rules of 1982 would not come into play in a situation where the entitlement to receive gratuity under Rule 130(1)(c) of the Rules of 1982 is in question. We are therefore in agreement with the observations made in *Ramesh Manikrao Sasane* (supra).

12] The ratio of the decisions in *Shrikant Ramchandra Inamdar* (supra) and *Sheela Rameshchandra Bargaje* (supra) is not attracted to the facts of the present case. In the first case, criminal proceedings with regard to a property dispute between the servant of the Municipal Corporation of Greater Mumbai and his family members was pending. For that reason, he was not paid the amount of gratuity by relying upon Rule 45A(c) of the Pension Rules of the Municipal Corporation. It is in that context that the Division Bench observed that the criminal proceedings did not relate to the service of the said employee and hence the said Rule could not be applied for denying him payment of gratuity. The ratio of this decision was followed in the subsequent decision referred to hereinabove. Therein, the employee was facing criminal proceedings under Sections 498A, 313 and 323 of the Indian Penal Code on the basis of the complaint filed by his mother-in-law. By referring to the earlier

decision in *Shrikant Ramchandra Inamdar* (supra), it was held that since the criminal proceedings did not relate to the employment of the concerned employee, the amount of gratuity could not be withheld.

The aforesaid two decisions therefore relate to involvement in criminal proceedings based on incidents that were personal to the concerned employee and were not related to his employment. In the present case, the prosecution relates to an offence under the Act of 1988 on the allegation that the respondent had acquired disproportionate assets to his known source of income. The proceedings do relate to the employment of the respondent and hence the rigors of Rule 130(1)(c) would be attracted.

13] The issue whether a criminal appeal against an order of acquittal amounts to continuation of the trial would not be very relevant in the context of Rule 130(1)(c) of the Rules of 1982. The said Rule would have to be read in its entirety keeping in mind the object sought to be achieved. Rule 130 seeks to differentiate the manner in which pension and gratuity is payable whenever departmental or judicial proceedings are pending. While a Government servant is entitled to receive provisional pension for a period of six months from the date of retirement when departmental or judicial proceedings are pending subject to such

period being extended by the Audit Officer and such provisional pension being continued till the conclusion of departmental or judicial proceedings with passing of final orders by the competent authority, gratuity is permitted to be withheld for the entire period from the date of retirement till passing of final orders on conclusion of departmental or judicial proceedings. The object is clear inasmuch as a Government servant is entitled to receive provisional pension notwithstanding the pendency of departmental or judicial proceeding so as to provide him means of sustenance. The entitlement to receive gratuity is however postponed till the departmental or judicial proceedings are finally concluded. The power to withhold gratuity under Rule 130(1)(c) of the Rules of 1982 is not under challenge. The words “and issue of final orders thereon” cannot be divorced from the words “until the conclusion of the departmental or judicial proceedings” when they all find place in the same sub-rule. In this context therefore we do not find it necessary to consider whether pendency of an appeal challenging the acquittal of a Government servant would amount to continuation of the criminal trial against him.

14] The Delhi High Court in *Subhas Chand vs. S.M. Aggrwal*, **1984 Cr.L.J. 481** considered the use of the expression “judicial proceedings” as occurring in Section 2(c)(ii) of the Contempt of

Courts Act, 1971 that defines “criminal contempt”. It observed that by using the said expression the Legislature had done away with the distinction between a trial and an appeal. A fair construction of said expression would mean that even an appeal is a continuation of the trial.

Though the above decision arises under the Contempt of Courts Act, 1971, the expression “judicial proceedings” has been interpreted to include the trial as well as an appeal. This decision has been relied upon by the Allahabad High Court in *State of U.P. through Principal Secretary vs. Mahahanand Pandey and another* **(2021) 170 FLR 977** while considering Regulations 351-AA and 919-A(3) relating to pension of State employees. In that context it was observed as under :

“The word “judicial proceedings” used under Regulation 351-AA would include every proceeding pending in the Court whether original or at the appellate stage. The judicial proceeding means proceeding over which Judge presides. A criminal appeal cannot be taken out from the definition of “judicial proceeding” and thereby, if one is acquitted but appeal thereupon is pending, he/she would be governed by Regulation 351-AA and thereby, entitled to the provisional pension.”

It was held that pendency of a criminal appeal against
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acquittal would not entitle an employee to seek the amount of gratuity.

In *Lakhminder Singh Brar* (supra) the Delhi High Court considered the provisions of Rule 69(1)(c) of the Central Civil Services (Pension) Rules which is similarly worded as Rule 130(1)(c) of the Rules of 1982. In the context of the expression “judicial proceedings” vis-a-vis pendency of an appeal against acquittal, it was held that pendency of such appeal would amount to continuation of judicial proceedings pending against a Government servant.

15] We may refer to the decision of the Supreme Court in *Gurpal Singh Vs. High Court of Judicature for Rajasthan*, **2012 INSC 544**. The petitioner therein who was serving as Judicial Magistrate First Class came to be arrested on 20/12/1985 on an offence under Section 302 of the Indian Penal Code being registered against him. He was thus placed under suspension. He came to be acquitted by the trial Court on 01/05/2002. His acquittal was challenged before the High Court. One of the contentions raised by the petitioner was that his suspension ought to have been revoked by the High Court immediately on his acquittal. The Supreme Court held that notwithstanding the petitioner’s acquittal, it was not imperative for the High Court to have revoked

the petitioner's suspension. The acquittal of the petitioner had been challenged and the conclusions of the trial were not final. They were liable to be reversed in appeal.

It is true that the aforesaid observations are in the context of the issue of suspension. Nevertheless, the aspect of the order of acquittal being under challenge in appeal and the same not attaining finality has been highlighted.

16] Though the decisions in *Rajeev Sharma, R.S. Ramkrishna Rao and another, R.C. Dubey and Bharat Sanchar Nigam Limited (supra)* do take the view that pendency of an appeal against acquittal would not enable the employer to withhold retiral benefits, we respectfully are not inclined to follow the said view. The words "issue of final orders thereon" used in Rule 130(1)(c) of the Rules of 1982 cannot be ignored or rendered otiose by holding that notwithstanding the pendency of an appeal against acquittal, such employee would be entitled to gratuity. In our view, the expression "judicial proceedings and issue of final orders thereon" in the context in which it is used would mean the culmination of judicial proceedings. In the present case, final orders at the conclusion of judicial proceedings are yet to be passed as the criminal appeal challenging the respondent's acquittal is pending.

17] For all the aforesaid reasons, we find that the Tribunal committed an error in directing release of the amount of gratuity in favour of the respondent by misconstruing the provisions of Rule 130(1)(c) of the Rules of 1982. Since the criminal appeal challenging the acquittal of the respondent is still pending, gratuity cannot be released till final orders are passed in the said proceedings. To that extent, the order passed by the Tribunal in Original Application No.843 of 2016 deserves to be modified Accordingly, the following order is passed :

(a) The judgment in Original Application No.843 of 2016 dated 04/07/2017 is partly modified. It is held that the respondent is entitled to receive provisional pension in accordance with Rule 130(1) of the Rules of 1982.

(b) The respondent would be entitled to receive gratuity in terms of Rule 130(1)(c) of the Rules of 1982 at the conclusion of the pending judicial proceedings and on final orders being passed thereon.

Rule is made absolute in the aforesaid terms leaving the parties to bear their own costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]