IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1918 OF 2025

Smt. Maheshwari Shanmugam Pillay,
W/o Late S.M. Pillay, Age about 65 years,
Occu: Homemaker, R/o 65,
Big Ghorpuri Bazar, Pune Camp-411 001. ….Petitioner

versus

1. Union of India,
Rep by its Secretary, Ministry of Defence,
South Block, New Delhi-110 010.

2. Pune Cantonment Board,
Rep by its Chief Executive Officer,
Golibar Maidan, Pune Camp,
Pune-411 001. ...Respondents

Mr. Bhaskar Reddy a/w Mr. Vinod Sangvikar, Advocate for the Petitioner.

Ms. Sangeeta Yadav a/w Mr. Umesh Gupta, Advocate for the Respondent No.1.

Mr. Tushad Kakalia a/w Mr. Sandeep Goyal i/by M/s. Mulla & Mulla and Craigie Blunt & Caroe, Advocate for Respondent No.2.

CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

RESERVED ON : 13th MARCH, 2025
PRONOUNCED ON : 17th APRIL,2025

JUDGEMENT (PER ASHWIN D. BHOBE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally by consent of the parties.

2. Petitioner, a widow is before this Court seeking release of the retiral dues/arrears of family pension payable to her late husband Shri. Shanmugam M. Pillay.

3. **Factual Matrix:-**

(a) Shri. Shanmugam M. Pillai (**S.M. Pillay**), late husband of Petitioner, was an employee of the Respondent No.2, having joined service on 05.05.1970. He was promoted to the post of Chief Revenue, Superintendent of Respondent No.2 in the year 2004. He was to retire on 31.01.2007 upon attaining the age of superannuation.

(b) On 22.01.2007, ten (10) days prior to his superannuation, Mr. S.M. Pillay was placed under suspension.

(c) On 05.02.2007, after four days from S.M. Pillay having retired from service, Respondent No.2 issued a charge memo under Rule 11 of Cantonment Fund Servant Rules, 1937 (**said Rules**).

(d) Pursuant to the charge memo, inquiry proceedings commenced and culminated on 30.09.2008 by imposition of major penalty of removal from service, with retrospective effect from 22.01.2007, i.e. the date of suspension.

(e) Appeal filed by S.M. Pillay against the order dated 30.09.2008 was dismissed by the Appellate Authority, vide rejection order dated 09.01.2013.

(f) Dissatisfied with the rejection order dated 09.01.2013, S.M. Pillay on 31.01.2013, filed revision application under Rule 20(1) of the said Rule.

(g) S.M. Pillay passed away on 12.02.2022.

(h) Reviewing Authority by order dated 09.05.2023 set aside the rejection order dated 09.01.2013 as well as the order dated 30.09.2008, "on account of procedural irregularities". The proceedings were also ordered to have abated.

(i) Respondent No.2 commenced family pension @ Rs. 19,095 per month w.e.f. May, 2023. Pension arrears from

01.02.2007 till 12.02.2022 and family pension from 13.02.2022 was paid to the Petitioner on 13.10.2023.

(j) Grievance of the Petitioner-widow is that the payment of retirement benefits and pension of S.M. Pillay being paid belatedly/delayed by the Respondent No.2, the Petitioner is entitled to interest on the amount of gratuity, pension and the other retiral benefits. Petitioner has sought for the following prayers:

> *A. That the Honourable High Court may please issue appropriate Writ or order or direction under Article 226 of the Constitution of India to the Respondent No. 2 to pay the petitioner within four weeks the balance of following retiral dues/ arrears of her husband late S.M. Pillay and her own family pension dues with interest;*
>
> > *(i) Pay Rs.48,06,656 as 18 per cent per annum interest on pension/family pension which has fallen due from 28th February 2007 and each month thereafter until 12-10-2023;*
> >
> > *(ii) Pay Rs.3,20,359 as 18 per cent per annum interest on Rs.1,90,690 paid on 3-5-2016 as Encashment of Earned Leave where as it was due on 31-1-2007;*
> >
> > *(iii) Pay balance of pay and allowances for the period 22-1-2007 to 31-1-2007 over and above the subsistence*

allowance already paid along with 18 per cent per annum interest with effect from 1-2-2007 till the date of payment.

(iv) Pay balance of gratuity along with 18 per cent interest till the date of actual payment.

B. Award costs for the delay and mental agony caused to the Petitioner and her deceased husband for the past 16 years."

4. Respondent though have put in appearance, no reply has been filed.

Submissions:-

5. Mr. Bhaskar Reddy, learned Advocate for the Petitioner has advanced the following arguments:

(i) By order dated 09.05.2023, the rejection order dated 09.01.2013 and the penalty order dated 30.09.2008 were set aside. It is the contention that the order dated 09.05.2023 has set aside the the penalty order on merits, i.e. on the ground of procedural irregularities. In addition, the proceedings were ordered to be abated. Thus, S.M. Pillay was entitled to all his retiral benefits, gratuity, pension, etc. on the date of his superannuation. In view of the same, the Petitioner would be entitled to interest on the delayed payment of the retirement benefits. Reliance is placed on the statement at Exhibit H to claim the interest on the pension arrears.

(ii) Penalty order dated 30.09.2008 being set aside, S.M. Pillay was entitled to the pay/allowance for the period of suspension, i.e., for the period from 22.01.2007 to 31.01.2007 along with interest on account of the delay in payment.

(iii) S.M. Pillay retired from service upon attaining age of superannuation on 31.01.2007. He submits that though S.M. Pillay was placed under suspension on 22.01.2007, charge memo was served on him on 05.02.2007 i.e. post retirement. He submits that the disciplinary proceedings in the present case initiated and continued against him after 31.01.2007, would be without jurisdiction, not competent and illegal. He submits that the said Rules do not contemplate continuation of disciplinary proceedings after retirement of the employee.

6. Mr. Tushad Kakalia, learned Advocate for the Respondent No.2 submits that the penalty order dated 30.09.2008 was set aside,

on account of the proceeding being held to be abated. Respondent No.2 having released/paid the retirement benefits to the Petitioner after the order dated 09.05.2023, the Petitioner would not be entitled to any interest or any amount as claimed by the Petitioner. He, therefore, prays that the petition be dismissed.

7. From the rival contentions, the question that falls for determination is whether the Petitioner would be entitled to interest on the ground of delay in payment of the retiral benefits, pension, etc. payable to S.M. Pillay?

Analysis:-

8. Records of the case bear out that S.M. Pillay was imposed major penalty of removal from service with retrospective effect from 22.01.2007, vide order dated 30.09.2008. Said penalty was confirmed by the first Appellate Authority by rejection order dated 09.01.2013. By the order dated 09.05.2023, the Authority under Rule 20(1) of the said Rules, set aside both the said orders dated 30.09.2008 as well as the order dated 09.01.2013. Reasons recorded by the said Authority for setting aside the orders are extracted hereinbelow.

> *"2. After considering all the facts and available records, competent authority has set aside the Order dated 09.01.2013 of GoC-in-C, SC and Order dated 30.09.2008 of Pune Cantonment Board on account of procedural irregularities bare*
>
> *3. All the proceedings in the subject matter may be abated."*

9. Thus, from a bare perusal of the order dated 09.05.2023, it is evident that the order imposing penalty dated 30.09.2008 and the rejection order dated 09.01.2013 were set aside on the ground of procedural irregularities. The said orders being set aside, S.M. Pillay would have to be treated as having retired on 31.01.2007 with a clean slate, consequently, being entitled to his retiral benefits, pension, etc. on the date of his retirement. The said payments were withheld on account of the pending disciplinary proceedings. In view of the exoneration of S.M. Pillay in the disciplinary proceedings, the Petitioner would be entitled to interest on the delayed payment. Retirement benefits being due to him w.e.f. the date of his retirement, the delay in payment would have to be considered from 31.01.2007.

10. With reference to the contention of the learned Advocate for the Respondents that the proceedings filed by S.M. Pillay against

the penalty order being abated, consequently Petitioner not being entitled to interest, will have to be rejected in view of the specific observation in the order dated 09.05.2023 which has set aside the penalty order on the ground of procedural irregularity. Mere observation that the proceedings stood abated would not come to the aid of the Respondent No.2 to deny Petitioner interest on delayed payments of the retiral benefits payable to S.M. Pillay. This is more so on account the fact that his retiral dues were withheld on account of the pending disciplinary proceedings.

11. S.M. Pillay retired from service on 31.01.2007 upon attaining the age of superannuation. Though S.M. Pillay was placed on the suspension on 22.01.2007, he was served with the charge memo on 05.02.2007. It is trite law that the departmental proceedings is not initiated merely by issuance of show cause notice, it is initiated only when charge-sheet is issued (see Union of India & Others versus K.V. Jankiraman[1]). Mr. Bhaskar Reddy, learned Advocate for the Petitioner submitted that the said Rules do not contemplate disciplinary proceedings after retirement of the employees. Mr. Tushad Kakalia, learned Advocate for Respondent No.2 was unable to point out any provision in the said Rules which

1 (1991) 4 SCC 109

would enable the Respondent No.2 to initiate or continue proceedings upon the retirement of its employees. This is an additional ground to hold that S.M. Pillay was denied his retirement dues, upon his retirement.

12. Upon exoneration of S.M. Pillay, the period of suspension Petitioner i.e. 22.01.2007 to 31.01.2007 would have to be considered on duty and consequently, he would be entitled to his full pay during the said period, less the subsistence allowance paid during the said period. The said amount shall be paid within two weeks from today along with interest @ 6% on the said amount payable from 31.01.2007 till actual payment.

13. Petitioner has made a grievance of a portion/part/balance of the gratuity amount not being paid. The Respondent No.2 is directed to calculate the gratuity amount payable to S.M. Pillay and if any amount is due and payable as gratuity, the same shall be paid within a period of two weeks from today along with interest @10% per annum on the said amount, in terms of the notification dated 01.10.1987 issued by the Ministry of Labour, Government of India and in terms of the decision of the Hon'ble Supreme Court in the

case of Gagan Bihari Prusty versus Paradip Port Trust & Others[1], wherein the Hon'ble Supreme Court has held that interest would be payable as per the notification issued by the Central Government, without having any excuse.

14. **The Writ Petition is allowed.** Petitioner would be entitled to interest @ 6% per annum under the following head for the following period:

(a) Family pension amount for the period from 28.02.2007 till 12.10.2023.

(b) Encashment of Earned Leave for the period from 31.01.2007 till 03.05.2016.

(c) Interest at the rate of 10% p.a. on the delayed payment of gratuity.

15. Rule is made absolute in the above terms.

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**

1 Special Leave to Appeal (C) No(s). 4468 of 2022 decided on 03.03.2025