

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 168 OF 2018
(Subject – Back wages/Increments & Other Benefits)**

DISTRICT: OSMANABAD

Shri Raosaheb S/o Shivram Kshirsagar,)
Age : Major, Occu. : Service as Grahpal in)
Government Girls Hostel, At. Ashti,)
Dist. Beed, R/o Ramkrishna Colony,)
Umrekota, Osmanabad, Dist. Osmanabad.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through the Secretary,)
In the Department of Social Welfare,)
Maharashtra State, Mumbai.)
- 2) **The Director,**)
Social Welfare Department,)
Maharashtra State, Pune.)
- 3) **The Divisional Commissioner,**)
Social Welfare Department,)
Aurangabad.)
- 4) **The Divisional Social Welfare Officer,**)
Aurangabad Division, Aurangabad.)
- 5) **The Assistant Commissioner,**)
Social Welfare, Beed.)
- 6) **The Special District Social Welfare**)
Officer,)
Beed.)

.. RESPONDENTS

APPEARANCE : Shri Nilesh J. Patil, Advocate for Applicant.

: Smt. Priya R. Bharaswadkar, Presenting
Officer for Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 22.10.2018.

ORAL - ORDER

1. Heard Shri N.J. Patil, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for respondents.

2. The applicant has challenged the impugned order dated 07.10.2017, by which the respondents have denied his claim regarding back wages and salary during the period of suspension and dismissal by filing the present Original Application.

3. The applicant is serving as a Paharekari (Watchman) in the Social Welfare Department at Girls Hostel, Majalgaon. In the year 2001, he along with other employees has been suspended. Thereafter, a Criminal case has been registered against them for the offences punishable u/s 420 R/w 34 of the Indian Penal Code. A Departmental Enquiry has also been initiated against him. The enquiry was conducted and thereafter, he was held guilty for the charges leveled against him. The Disciplinary Authority imposed the punishment on the basis of enquiry report of Special District Social Welfare Officer, Beed and

dismissed the applicant by the order dated 26.12.2008. The applicant had challenged the said order in a departmental appeal, but the said appeal came to be rejected on 14.01.2011. Meanwhile, a Criminal case bearing RCC No. 322/2001 filed against the applicant, which has been disposed of by the Chief Judicial Magistrate, Osmanabad on 01.03.2011 and the applicant, who one of the accused, was acquitted. Thereafter, the applicant has filed O.A. No. 140/2015 before this Tribunal challenging the order of dismissal passed by the disciplinary authority on 26.12.2008 and the order passed in departmental appeal on 14.01.2011 confirming the order of disciplinary authority and prayed to reinstate him in the service and to direct the respondents to pay back wages since the date of his termination as per Rules. The O.A. No. 140/2015 came to be allowed on 28.04.2016 by the Division Bench of this Tribunal and the order dated 14.01.2011 issued by the Divisional Social Welfare Officer, Aurangabad Division, Aurangabad passed in departmental appeal and termination order dated 26.12.2012 issued by the Special District Social Welfare Officer, Beed had been quashed and set aside. This Tribunal has further directed the respondents to reinstate the applicant on the post held by him previously and to take proper decision as per Rules as regards back wages, if any. As per the decision given by this

Tribunal, the applicant came to be reinstated in service by the order dated 31.08.2016. The respondent No. 5 i.e. the Assistant Commissioner, Social Welfare, Beed passed the order dated 07.10.2017 regarding back wages of the applicant and rejected his claim for back wages on the principle "No Work No Pay". Being aggrieved by the said order dated 07.10.2017, the applicant has filed the present O.A. and prayed to quash and set aside the impugned order dated 07.10.2017 and prayed to direct the respondents to pay back wages, increments and other benefits to him. It is contention of the applicant that meanwhile; he retired on superannuation w.e.f. 31.07.2018.

4. The respondent Nos. 5 and 6 have filed their affidavit in reply and resisted the contentions of the applicant. They have not denied the fact regarding involvement of the applicant in Departmental Enquiry, as well as, in criminal case. They have also not disputed the fact that the applicant has been acquitted in the criminal case filed against him. They have also not disputed the fact that in the Departmental Enquiry the applicant was held guilty and he was terminated from the service. They have admitted that the order passed by the disciplinary authority has been upheld in the departmental appeal preferred by the applicant. They have no dispute about filing of the O.A. No.

140/2015 by the applicant, in which the applicant has challenged the order passed in Departmental Appeal and termination order and the decision in the O.A. They have not disputed the fact that in view of the order passed by this Tribunal, the applicant has been reinstated in the service by the order dated 31.08.2016. They have not disputed the fact that this Tribunal has directed the respondent No. 5 to consider the claim of the applicant regarding back wages and other consequential benefits on his reinstatement, as per Rules. It is their contention that as per the directions given by this Tribunal, the respondent No. 5 has considered the claim of the applicant regarding back wages from the date of dismissal till his reinstatement in service. It is their contention that the respondent No. 5 has rejected the claim of the applicant on the principle "No Work No Pay", as the applicant had not worked during that period. It is their contention that in view of the decision given by the Hon'ble Supreme Court of India in case of **Sukdeo Pandey Vs. Union of India and Anr.** in **Civil Appeal No. 3888 of 2007** reported in **2007 (S.C.2) Page no. 806** the claim of the applicant has been rejected and there is no illegality in it. Therefore they prayed to reject the present Original Application.

5. On perusal of the record, it reveals that the applicant is serving as a Watchman at Girls Hostel, Majalgaon, Dist. Beed. A Criminal case has been registered against him and others for the offences punishable u/s 420 R/w 34 of the Indian Penal Code in the Criminal Court. A departmental enquiry has also been initiated against him. After conclusion of departmental enquiry, the enquiry officer held the applicant guilty of the charges leveled against him. On the basis of report submitted by the enquiry officer, the disciplinary authority imposed the punishment of termination of services of the applicant by the order dated 26.12.2008. The applicant has challenged the said order in the departmental appeal, but the said appeal came to be rejected on 14.01.2011. Meanwhile, the criminal case bearing RCC No.322 of 2001 has been decided by the Chief Judicial Magistrate, Osmanabad on 01.03.2011 and the applicant was acquitted of the charges leveled against him. Thereafter, the applicant has filed O.A. No. 140/2015 before this Tribunal and challenged the order passed by the Divisional Social Welfare Officer, Aurangabad Division, Aurangabad dated 14.01.2011 in the departmental appeal and the order of termination dated 16.12.2012 passed by the Special District Social Welfare Officer, Beed on 26.12.2012 and prayed to quash and set aside the said orders and prayed to reinstate him on the post held by him

previously. He has also prayed to direct the respondents to pay back wages as per Rules. The O.A. No. 140/2015 came to be allowed by the Division Bench of this Tribunal on 28.04.2016 and the order dated 14.01.2011 passed by the Divisional Social Welfare Officer, Aurangabad Division, Aurangabad in appeal and the termination order passed by the Special Director Social Welfare Officer, Beed dated 26.12.2012 have been quashed and set aside and the Tribunal directed the respondents to reinstate the applicant on the post held by him previously and to take proper decision as per Rules as regards back wages, if any. In view of the said decision, the respondent No. 5 reinstated the applicant in the service on the earlier post held by him by order dated 31.08.2016. The respondent No. 5 passed the order dated 07.10.2017 and rejected the claim of the applicant regarding back wages on the principle "No Work No Pay".

6. Learned Advocate for the applicant has submitted that since the order of termination of services of the applicant has been quashed and set aside in view of the order passed by this Tribunal in O.A. No. 140/2015 and since the applicant has been reinstated, he is entitled to get back wages from the date of his dismissal till the date of his reinstatement in service, as well as, regarding suspension period in view of the provisions of Rule

70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, but the respondent No. 5 has not considered his claim in view of said provisions and passed the impugned order dated 07.10.2017, which is illegal. Therefore, he prayed to quash and set aside the impugned order dated 07.10.2017 by allowing the present O.A.

7. Learned Presenting Officer has submitted that from the date of termination till the date of his reinstatement in service, the applicant was not on duty and he has not worked during that period. Therefore, he is not entitled to get salary and other financial benefits during the said period on the principle "No Work No Pay" and therefore, respondent No. 5 has rightly rejected the claim of the applicant regarding back wages. Therefore, she has supported the impugned order.

8. On perusal of the record, it reveals that this Tribunal by the order dated 28.04.2016 passed in O.A. No. 140/2015 directed the respondent No. 5 to take proper decision as per the Rules regarding back wages claimed by the applicant. Since his termination order has been quashed and set aside by this Tribunal and as he was reinstated in service in view of the said direction, the respondent No. 5 ought to have considered the

claim of the applicant regarding back wages and other financial benefits during the period of suspension and from the date of his dismissal till the date of his reinstatement in service as per the Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981. But the respondent No. 5 has not considered the provisions of Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 and wrongly decided the claim of the applicant. Therefore, in my view, the impugned order dated 07.10.2017 is not in accordance with Rules and therefore, it is not sustainable in the eye of law. Consequently, it deserves to be quashed and set aside. Therefore, in my view, it is just and proper to allow the present O.A. and to quash and set aside the impugned order dated 07.10.2017 passed by the respondent No. 5.

9. In view of the discussions in foregoing paragraphs, the O.A. is allowed. The impugned order dated 07.10.2017 passed by the respondent No. 5 rejecting the claim of the applicant regarding back wages and consequential monetary benefits claimed by him is hereby quashed and set aside. The respondent No. 5 is directed to decide the claim of the applicant

regarding back wages and other monetary benefits during the suspension period and from the date of termination till his reinstatement in the service as claimed by the applicant as per the provisions of Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, within a period of two months from the date of this order and communicate the decision therein to the applicant in writing.

10. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 22.10.2018.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 168 of 2018 BPP 2018 back wages, increments and other benefits dies