

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 457 OF 2019

(Subject – Suspension Period / Salary Benefits)

DISTRICT : AURANGABAD

Ashish Ghansham Vaishnav,)
Age : 38 years, Occu. : Service,)
R/o. Shrikrushna Nagar, Hudco,)
Aurangabad.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai.)

2. The Commissioner of Police,)
Police Commissioner Office,)
Aurangabad.)

3. The Deputy Commissioner of Police,))
(Head Quarters) Aurangabad.)

4. The Assistant Commissioner of Police,))
(Administration), Police Commissioner Office,))
Aurangabad.)

...RESPONDENTS

APPEARANCE : Shri Manoj Kadtu, Advocate for the Applicant.

: Shri S.K. Shirse, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **25.08.2022.**

ORDER

1. The present Original Application is filed seeking direction to the respondent No. 2 i.e. the Commissioner of Police, Aurangabad to consider the suspension period of the applicant as regular service period for granting all salary benefits w.e.f. from the date of suspension i.e. 20.09.2011.

2. The facts in brief giving rise to this application can be summarized as follows :-

(a) The applicant was initially appointed as a Police Constable after due selection process on 01.10.2000. While he was posted at Police Station, Begumpura, the applicant was arrested on 15.09.2011 by the officials of the Anti-Corruption Bureau. It is alleged that the applicant demanded and accepted bribe of Rs. 600/- from the complaint of Shri Dhondiram Arjun Borse-Patil. In view of that, the applicant came to be suspended vide order dated 20.09.2011. The applicant challenged the said order of suspension dated 20.09.2011 by filing O.A. No. 779/2015 before this Tribunal and sought reinstatement. The said O.A. was allowed by this Tribunal by the order dated 26.02.2016 (Annexure A-1). Pursuant to the said order, the

respondent No. 2 reinstated the applicant in service vide order dated 22.04.2016 (page No. 68 of the paper book), but order regarding regularization and pay and allowances was deferred till the decision of judicial proceedings and of Departmental Enquiry.

(b) It is contended that in respect of above-said crime, Special Case No. 13/2012 was filed against the applicant. Upon trial, the applicant has been acquitted in the said Special Case No. 13/2012 as per the judgment and order dated 06.07.2017 (Annexure A-2) passed by the Special Judge-5 (under P.C. Act), Aurangabad. In view of the said acquittal, the applicant submitted representations dated 25.09.2017(Annexure A-3), 10.01.2018(Annexure A-4) and 18.12.2018 (Annexure A-5) to the respondent No. 2 i.e. the Commissioner of Police, Aurangabad seeking regularization of suspension period and benefits of pay and allowances. The applicant also sent legal notice dated 02.03.2019 (Annexure A-6) through his Advocate seeking similar relief of regularization of suspension period and pay and allowances, thereby the applicant also pointed out the case of similarly situated Police official Shri Ashok Pandurang Gadhekar (page No. 45 of the paper book), who was granted

reliefs of regularization of suspension period after he was acquitted in Criminal Case filed under the Prevention of Corruption Act, 1988, but subject to decision in Criminal Appeal preferred by the State against the said order of acquittal. However, the respondents did not pay any heed to his above-said representations and legal notice. Hence, the present Original Application.

3. The respondent Nos. 1 to 4 have resisted the present Original Application by filing affidavit in reply through one Shri Nishikant Hanumant Bhujbal, working as Assistant Commissioner of Police (Administration), in the office of Commissioner of Police, Aurangabad City, Aurangabad i.e. the respondent No. 2, thereby he denied all the adverse contentions raised in the Original Application. It is specifically submitted that Shri Ashok Pandurang Gadhekar, who was prosecuted under the Prevention of Corruption Act, 1988 was acquitted in the said case without giving any benefit of doubt and therefore, the said case is not applicable to the present applicant, who is acquitted by giving benefits of doubt. It is further specifically submitted that the applicant was involved in a serious case registered under the Prevention of Corruption Act, 1988. The applicant is acquitted in the said case by giving benefit of doubt

and against the said order of acquittal, the State has preferred Criminal Appeal and the said Criminal Appeal is pending against the applicant before the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad and till then, the decision of regularization and payment of salary and allowances is deferred, which is justifiable. In this regard, the respondents have annexed a copy of the order dated 11.02.2019 passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Application for Leave to Appeal by State No. 159/2018. Hence, the present Original Application deserved to be rejected.

4. The applicant filed rejoinder affidavit denying all the adverse contentions raised in the affidavit in reply and thereby annexed the reinstatement order dated 22.04.2020 (page No. 68 of the paper book).

5. I have heard the arguments advanced at length by Shri M.M. Kadtu, learned Advocate for the applicant on one hand and Shri S.K. Shirse, learned Presenting Officer for the respondents on the other hand.

6. Considering the facts of the present case, the same would revolve around the Rule 72 of the Maharashtra Civil Services

(Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, which is as under :-

72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty-

1. When a Government servant who has been suspended is reinstated or would have so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order:-

- a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and*
- b) whether or not the said period shall be treated as a period spent on duty*

2. Notwithstanding anything contained in rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not suspended, subject to adjustment in respect of subsistence allowance already paid.

3. Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

4. In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

5. *In cases other than those falling under sub-rules(2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection within such period which in no case shall exceed, as may be specified in the notice.*

6. *Where suspension is revoked pending finalisation of the of the disciplinary or court proceedings, any order passed under sun-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case be.*

7. *In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose.*

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note.- The order of the competent authority under preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of temporary Government servant: and*
- (b) leave of any kind in excess of five years in the case of permanent Government servant.*

8. *The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.*

9. *The amount determined under the proviso to sub-rule (3) or under sun-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 68.”*

7. In the case in hand, the applicant has been acquitted in the Special Case No. 13/2012 vide judgment and order dated 06.07.2017 (Annexure A-2), thereby he is acquitted of the offences punishable under Section 7,13(1) read with 13(2) of the

Prevention of Corruption Act, 1988. Perusal of the said judgment and order would show that as stated by the respondents, he is acquitted by giving benefit of reasonable doubt.

8. The applicant has relied upon the similar case of Shri Ashok Pandurang Gadhekar by placing on record the order dated 16.04.2015 (page No. 45 of the paper book) of his regularization and payment of salary and allowances. It is true that in the said order, it is mentioned that said Shri A.P. Gadhekar is released in the said case honorably. In view of that, according to the respondents, the said case cannot be equated with the case of the present applicant, who is acquitted by giving benefit of reasonable doubt. But the fact remains that the applicant is acquitted of the offences punishable under Section 7, 13(1) read with 13(2) of the Prevention of Corruption Act, 1988 in Special Case No. 13/2012.

9. It is true that the Criminal Appeal filed by the State against the said order of acquittal of the applicant is pending before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. However, when the applicant is acquitted in a Criminal Case, it was incumbent upon the respondents to take a conscious decision under Rule 72 of the Maharashtra Civil

Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 in accordance with law in view of the various representations made by the applicant in that regard.

10. Perusal of the order of reinstatement dated 22.04.2016 (page No. 68 of the paper book) would show that the respondent No. 2 has simply deferred the decision on that aspect till decision in Criminal Case on that stage of the matter and / or Departmental Enquiry. It is nobody's case that the Departmental Enquiry is also initiated against the applicant in respect of very incident. However, after acquittal of the applicant in criminal proceedings and though various representations were made by the applicant, the respondents failed to take decision on the regularization of suspension period of the applicant.

11. Relevant Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 does not speak of criminal appeal. In view of the same, it was incumbent upon the respondents and more particularly the respondent No. 2 to take decision in accordance with law under Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and

Payments during Suspension, Dismissal and Removal) Rules, 1981. The respondents and more particularly the respondent No. 2 has failed to take decision. In view of the same, in my considered opinion, this is a fit case to give an appropriate directions to the respondents and more particularly to the respondent No. 2 to take decision in accordance with law under Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 about the regularization of suspension period of the applicant for the purposes of payment of pay and allowances. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 457/2019 is partly allowed in following terms :-

- (A) The respondent No. 2 i.e. the Commissioner of Police, Aurangabad is directed to consider the suspension period of the applicant as regular service period for granting admissible salary benefits in accordance with law within a period of two months from the date of this order and to communicate the decision thereof to the applicant in writing within next 15 days thereafter.
- (B) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 25.08.2022.

KPB S.B. O.A. No. 457 of 2019 VDD Suspension period and salary benefits

(V.D. DONGRE)

MEMBER (J)