

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.862/2022**

**DISTRICT:- BEED**

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Shankar s/o Shyamrao Patange,  
Age : 48 years, Occ : Service as a Record Clerk,  
R/o. Plot No.280, New Estate Colony,  
N-2, CIDCO, Aurangabad  
Tq. & Dist. Aurangabad.

**...APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Secretary,  
Water Resources Department,  
Mantralaya, Mumbai-32.
- 2) The Superintendent Engineer,  
Command Area and Development Authority,  
Beed.
- 3) The Sub Divisional Engineer,  
Jaikwadi Irrigation Sub Division No.4,  
Georai, Tq. Georai, Dist. Beed.
- 4) The Section Officer,  
Jaikwadi Lift Irrigation Section No.2,  
Georai, Tq. Georai, Dist. Beed.
- 5) The Executive Engineer,  
Jaikwadi Irrigation Division No.3,  
Beed, Tq. & Dist. Beed.

**...RESPONDENTS**

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APPEARANCE :Shri Nitin B. Patil, Counsel for  
Applicant.

:Smt. M.S.Patni, Presenting Officer for  
respondent authorities.

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**CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN**

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**Decided on : 10-10-2023.**  
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**ORAL ORDER:**

1. Heard Shri Nitin B. Patil, learned Counsel for the applicant and Smt. M.S.Patni, learned Presenting Officer for respondent authorities.

2. Grievance of the applicant is that, he has not been paid any subsistence allowance from the date of his suspension. As has been submitted in the O.A., the order of suspension dated 31-05-2021 was served upon the applicant on 03-01-2022. Learned Counsel for the applicant submitted that the applicant has furnished the certificates as required under Sub Rule 4 of Rule 69 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 ("Rules of 1981" for short) that he was not gainfully employed elsewhere or was not involved in any trade or business. It is the contention of the applicant that though he did not breach any condition as mentioned in the order of suspension, he has been illegally refused suspension allowance for wrong reasons.

3. Request so made is opposed by the respondents in their affidavit in reply. It is the contention on behalf of the respondents that the applicant did not remain present

in the office for several days without seeking any permission therefor. It is further contended that, from the record which is maintained in the office of the respondents, it is revealed that the applicant had remained absent frequently without taking any leave. It is further contended that the applicant has suppressed the fact of one more criminal case filed against him. Learned P.O. submitted that for the aforesaid lapses, the subsistence allowance has not been paid to the applicant and no error has been thereby committed by the respondents.

4. I have duly considered the submissions made on behalf of the applicant and the respondents. The documents on record support the contention of the applicant that the suspension order dated 31.5.2021 was served on him on 3.1.2022. It is the grievance of the applicant that he could not have been suspended retrospectively. From the order of suspension however, it is revealed that since the applicant in C.R. No. 292/2020 was arrested on 19.3.2021 and remained behind the bars for more than 48 hours, under the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, more particularly Rule 4(1)(c) read with Rule 4(2) the

applicant must be deemed to have been suspended with effect from the date of his detention. The other grievance of the applicant is that he has not been paid the subsistence allowance. According to the respondents, the subsistence allowance has not been paid to the applicant as he did not mark his presence and because of his such absence, the subsistence allowance has not been paid to him. The respondents have issued notice dated 28.3.2022 seeking explanation in that regard from the applicant.

5. However, if the order of suspension is read as it is, it nowhere provides or requires the physical presence of the applicant in the office concerned or at the headquarters of the office. What is contended is that, delinquent shall not leave the headquarters without permission of the officer concerned. According to the learned P.O., the requirement as above envelopes in itself the requirement of the physical presence of the applicant in the office on the working days. As such, according to the learned P.O. the respondents have rightly refused the request of the applicant and have sought explanation from the applicant. Some record is also produced by the respondents showing the presence of the applicant in the office as well as his

absence. However, the applicant has come out with a contention that no such condition was imposed upon him requiring his physical presence every day at headquarters on every working day. Learned Counsel further submitted that certificate as was required to be submitted by the applicant under Sub Rule 4 of Rule 69 of Rules of 1981, the self- attested certificates are submitted by the applicant. As such, according to the applicant only compliance which was expected from him has been done by him. As such respondents could not have refused the subsistence allowance to the applicant. The record further reveals that the appeal has been preferred by the applicant on 25-07-2023 seeking subsistence allowance, however, till date the said appeal has not been decided by the appellate authority.

6. After having considered the contentions as are raised on behalf of the applicant as well as the respondents, it appears to me that the lapses are there on part of both the parties i.e. applicant as well as the respondents. In the order of suspension, it is nowhere mentioned that physical presence of the applicant would be required on every working day during the period of

suspension. However, while taking a plea that it was not a condition, the applicant has also come out with a case that on every such day he was present in the office. It appears to me that during the period of suspension, the suspension allowance is required to be paid to the suspended employee as provided under Rule 68 of the Rules of 1981. As I have already mentioned the only requirement for granting subsistence allowance is that the applicant has to submit the certificates as provided under Sub Rule 4 of Rule 69 of the Rules of 1981. Such certificates are submitted by the present applicant and in spite of that on certain other grounds he has been refused the subsistence allowance. Therefore, action taken by the respondents *prima facie* appears to be unsustainable.

7. In view of the fact that the applicant has preferred a substantive representation/appeal to the Superintending Engineer on 25.7.2022, the applicant shall pursue his said representation/appeal and the respondents are under an obligation to decide his said representation/appeal. In the circumstances, without going into the merits of the contentions raised in the O.A., I deem it appropriate to dispose of the present O.A. with the following directions: -

[i] Respondent No. 2 shall decide the representation/appeal dated 25.7.2022 submitted by the applicant on or before 25.11.2023 by giving due opportunity of hearing to the applicant and by taking into account the provisions, more particularly Rules 68 & 69 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payments During Suspension, Dismissal and Removal) Rules, 1981

(ii) It would be open for the applicant to take some additional pleadings based on the subsequent events happened in the intervening period, if he so desires, at the time of hearing of the appeal before respondent No. 2.

(iii) There shall be no order as to costs.

**VICE CHAIRMAN**

**Place : Aurangabad**  
**Date : 10.10.2023.**