

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 576 of 2021 (S.B.)

Sayyad Abid Hussain,
Age 78 yrs., Occ. Retired Fisheries Development Officer,
r/o Pujetan Colony, Darushifa, Hyderabad (Telangana)- 500024.
Aadhar Card No.6313 4512 1970
Mobile No.7674832466, 7993735081.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary Animal Husbandry,
Dairy Fisheries Development Department, Mantralaya,
Mumbai 400032.
- 2) The Commissioner of Fisheries,
Office of Commissioner of Fisheries,
Taraporwala Aquarium, Netaji Subhash Road,
Charni Road, Mumbai-02.
- 3) The Regional Deputy Commissioner of Fisheries,
Near Sadar Police Station, Civil Lines, Nagpur-01.
Mail:- mahafishcom@hotmail.com
- 4) The Accounts Officer [PR-6]
Office of Accountant General (Lekha & Hakdaril)
Maharashtra-2, Nagpur-440001.

Respondents.

S. Malode, Sarang Malode, N. Trivedi, Advs. for the applicant.

Shri A.P. Potnis, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 22/06/2023.

JUDGMENT

Heard Shri S. Malode, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was working as a Fishery Development Officer at Bramhapuri. He was made incharge of the post of Chief Executive Officer,, Fish Farming Development Agency (FFDA), Gadchiroli from 1996 to 1999. During the said period, four criminal prosecutions were initiated against the applicant and some other employees working in FFDA, Gadchiroli and some private persons by the Police Authorities at Dhanora and Gadchiroli in Gadchiroli District. Criminal case nos. 01/2000,02/2000, 16/2000 and 10/2000 were registered against the applicant. The Chief Judicial Magistrate, Gadchiroli convicted the accused including the applicant. The revision was filed before the Sessions Court. The Sessions Court has recorded its findings holding that Sayyad Abid Hussain (applicant) was working as Chief Executive Officer and he had not committed any offence and allowed the revision.

3. It is submitted by the applicant that after registration of FIR, the applicant was suspended as per the order dated 16/03/1999 w.e.f. 08/03/1999. The said suspension order was continued till the retirement of applicant. The applicant came to be retired on

31/08/2001. The respondent no.2 not treated the suspension period as a duty period as per the order dated 08/08/2019. Hence, the applicant approached to this Tribunal for the following reliefs -

“(A) By appropriate Order or direction and quash and set aside the impugned order at ANNEXURE-A-3 and direct the Non-Applicant No. 1 to 4 to treat the suspension period of Applicant from 08.03.1999 to 31.08.2001 as on duty for all purposes and not as the "suspension period" and allow this Application:

(B) Direct the Non-Applicants No.1 to 3 to pay all the arrears of salary till date of superannuation, retiral benefits, gratuity etc. and the arrears of monthly pension to Applicant, by passing order similar to the order at ANNEXURE-A-7, within a stipulated period, deemed just and proper to this Hon'ble Court and allow this Application:

(C) Direct the Non-Applicants No.1 to 3 to pay interest @ 12% per annum on all the arrears of salary till date of superannuation, retiral benefits, gratuity etc. and the arrears of monthly pension from 26.11.2014 till its realisation to Applicant, within a stipulated period, deemed just and proper to this Hon'ble Court:

(D) Award cost of this petition to the applicant and saddle the same on the non-applicants throughout. ”

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant has committed offence punishable under Sections 471,467,468,471,409,34 and 120B of IPC. He was convicted by the Chief Judicial Magistrate, Gadchiroli. Therefore, the suspension period cannot be treated as a duty period.

5. During the course of argument, the learned counsel for the applicant has submitted that no any departmental inquiry was conducted against the applicant. The applicant had challenged the Judgment of Chief Judicial Magistrate, Gadchiroli before the Sessions Court. The Sessions Court has allowed the revision and the order passed by the Chief Judicial Magistrate, Gadchiroli was quashed and set aside. Therefore, the applicant is entitled to treat his suspension period as a duty period.

6. The learned P.O. has submitted that the departmental inquiry was not conducted, but notice was issued to conduct the departmental inquiry. The applicant has committed offence. He was convicted and therefore he is not entitled to get the suspension period to be treated as a duty period.

7. As per the note sheet put up before the respondent no.2 dated 8/8/2019, it appears that the suspension period of applicant was not treated as a duty period, no any specific reason was given by respondent no.2 for not treating the duty period of applicant. It appears that the explanation was called by respondent no.2 as to why departmental inquiry was not conducted. There is no dispute that no any departmental inquiry was conducted by the respondents. The applicant was kept under suspension after registration of Crime against him. The Chief Judicial Magistrate has convicted the applicant

along with others for the offence punishable under Sections 420 r/w Section 34 and U/s 120-B. The said order was challenged before the Sessions Court, Gadchiroli in Criminal Appeal No.11/2009. The said appeal was decided on 17/02/2014. The specific finding is recorded by the Sessions Judge and acquitted the applicant. One of the revisions No.36/2014 was filed by the applicant before the Sessions Court, Gadchiroli. The said revision was decided on 26/11/2014. In para-12 the following findings were recorded by the Sessions Court –

“(12) Hence, I am of the opinion that as petitioner Sayyad Abid Hussain was working as Chief Executive Officer. The work done by him was as per his official duty and no overtact was found in respect of the act done by him. Hence, he was acquitted in Criminal Case no. 10/2000. On the basis of the same, he can be discharged in these cases also. However, the other petitioners Omprakash Shirpuriya and Ramdas Tipale cannot be discharged in these cases unless evidence of prosecution witnesses is recorded in respect of the act done by both these accused persons. Accused Naresh Meshram is discharged in these cases as no overtact was found on his part. However such is not the case in respect of Omprakash Shirpuriya and Ramdas Tipale. Hence, I am of the opinion that the order passed by the learned C.J.M. is to be set aside only in respect of petitioner Sayyad Abid Hussain and is to be confirmed in respect of Omprakash Shirpuriya and Ramdas Tipale. Hence, I answer point no. 1 accordingly and proceed to pass the following order.

ORDER

1) The Criminal Revision no. 36/ 2014 and 37/2014 are allowed only in respect of petitioner Sayyad Abid Hussain.

2) The Criminal Revision no. 35/2014 is hereby dismissed. Criminal Revision no. 36/2014 and 37/2014 is hereby dismissed in respect of petitioners Omprakash Shirpuriya and Ramdas Tipale.

3) The Common Order passed on 17/07/2014 by the learned CJM in Criminal Case no. 16/2000 below Exh. 140, in Criminal Case no. 1/2000 below Exh. 216 and in Criminal Case no. 2/2000 below Exh.195 is hereby set aside in respect of petitioner Sayyad Abid Hussain and the same is confirmed in respect of petitioners Omprakash Shirpuriya and Ramdas Tipale.

4) Record and proceeding be sent back to the lower court.”

8. The Sessions Judge has recorded the specific findings that the petitioner was working as a Chief Executive Officer. The work done by him was as per his official duty and no overact was found in respect of act done by him. Hence, he was acquitted in the Criminal Case. On the basis of the same, he can be discharged in this case also. Specific findings show that the applicant had not committed any crime and therefore he was discharged from the criminal case.

9. There is no dispute that no any departmental inquiry was initiated against the applicant. There was no any opportunity for the applicant to explain as to how he was not at fault, even though the suspension was continued till the retirement. The suspension period was not treated as a duty period. The Judgment of the Sessions Court shows that the applicant had not committed any Crime. Therefore, the following order is passed –

ORDER

(i) The O.A. is allowed.

(ii) The impugned order passed on 08/08/2019 (P-39) is hereby quashed and set aside.

(iii) The suspension period shall be treated as a duty period. The respondents shall pay all the consequential benefits to the applicant.

(iv) No order as to costs.

Dated :- 22/06/2023.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 22/06/2023.