

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 122 of 2017 (S.B.)

Smt. Saroj Wd/o Gangadhar Nandgave,
Aged about 63 years,
Occ. Nil, Resident of C/o B.J. Titamare,
Behind Sugar Traders, Magruji Fendarkar Ward,
Mama Chowk, Civil Lines, Gondia,
Tah. and District Gondia.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary, Department of Health,
Mantralaya, Mumbai-32.
- 2) Additional Secretary,
Public Health Department, G.T. Hospital Building,
10th floor, Mantralaya, Mumbai-400 001.
- 3) Deputy Secretary, Public Health Department,
G.T. Hospital Building, 10th floor,
Mantralaya, Mumbai-400 001.
- 4) District Health Officer,
Zilla Parishad, Wardha, District Wardha.

Respondents.

S/ Shri D.I. & I.S. Charlewar, A.S. Shrivastav, Advs. for the applicant.
Shri M.I. Khan, P.O. for respondent nos. 1 to 3.
Shri Jayant Mokadam, Advocate for respondent no.4.

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

Dated :- 16/09/2022.

JUDGMENT

Heard D.I. Charlewar, learned counsel for applicant, Shri
M.I. Khan, learned P.O. for respondent nos.1 to 3 and Shri Jayant
Mokadam, learned counsel for respondent no.4.

2. The learned counsel for the applicant has pointed out the order passed by respondent no.2 dated 10/12/2013 and submitted that as per the Govt. decision the suspension period of applicant's husband granted as a duty period.

3. Heard learned P.O. Shri M.I. Khan. He has pointed out the order dated 10/06/2014 passed by respondent no.3 by which the suspension period of applicant's husband was not granted as a duty period, but only subsistence allowance of 75% was granted during the suspension period.

4. The applicant's husband was suspended for accepting bribe of Rs.100/-. He was prosecuted for the offence punishable under Section 7,12,13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act. He was prosecuted before the Special Court, Bhandara. The applicant's husband was acquitted in the special case, therefore, the proposal was moved for revocation of suspension period. The applicant's husband was retired during the pendency of the suspension period.

5. As per the submission of learned counsel for applicant that no departmental inquiry was initiated against the applicant's husband. He was simply suspended during the pendency of the criminal case pending before the Special Court, Bhandara. The applicant's husband

was acquitted and no appeal was filed by the State Government for challenging the Judgment of acquittal before the Hon'ble High Court.

6. Heard Id. P.O. Shri M.I. Khan. He has pointed out the Judgment of Special Court and submitted that as per para-32 there was no sufficient evidence beyond reasonable doubt and therefore the applicant's husband was acquitted. This fact was not brought to the notice of respondent no.1 and therefore order dated 10/12/2013 was reviewed by the order dated 10/06/2014. There is no illegality in view of Rule 72 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 (in short "MCS (Joining time...) Rules, 1981").

7. The Rule 72 of the MCS (Joining time...) Rules, 1981 is very clear. As per Rule 72 for treating the suspension period as a duty period, the employer / disciplinary authority shall come to the conclusion that the suspension was unreasonable and on that ground the suspension can be revoked.

8. In support of the submission, the learned P.O. has pointed out the decision of Hon'ble Supreme Court in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & Ors. (1997) 3 SCC,636**, and the Judgment of Hon'ble Supreme Court in the case of **Ravindra Prasad Munneshwar Prasad Vs. Union of India, through**

Secretary, Ministry of Defence & Ors., 2022 SCC Online Bom,682.

In both the Judgments, the same ratio is laid down holding that the employer / disciplinary authority shall come to the conclusion that the suspension was “**wholly unjustified**”.

9. From the perusal of the order dated 10/12/2013, the following decision was taken –

“ प्रस्तुत प्रकरणी डॉ. गंगाधर दादाजी नांदगावे, तत्कालिन वैद्यकीय अधिकारी, प्राथमिक आरोग्य केंद्र, धारगांव, जि. भंडारा यांना मा. विशेष न्यायालय, भंडारा यांनी निर्दोष मुक्त केले आहे. सदर न्याय निर्णयाविरुद्ध मा. उच्च न्यायालय येथे अपिल दाखल करण्यात आलेले नाही. त्यामुळे त्यांचे निलंबन असमर्थनीय ठरले आहे. या बाबी विचारात घेवून त्यांचा दिनांक १०/१२/२००९ ते ३०/०६/२०१० हा निलंबन कालावधी महाराष्ट्र नागरी सेवा (पदग्रहण अवधी ---- इ.)नियम,१९८९ मधीन नियम ७२ (३) अन्वये सर्व प्रयोजनार्थ कर्तव्य कालावधी म्हणून ग्राह्य धरण्यास व या कालावधीत त्यांना देण्यात आलेला निर्वाह भत्ता समायोजित करून उर्वरित वेतन व भत्ते अदा करण्यास मान्यता देण्यात येत आहे.”

10. From the perusal of the Govt. decision, it is clear that the applicant's husband was acquitted by the Special Court. No any appeal was preferred against the acquittal and therefore the suspension was wholly unreasonable. Therefore, it is clear that the Rule 72 of the MCS (Joining time...) Rules, 1981 is complied by the respondent no.2 and therefore passed the order dated 10/12/2013 holding that the suspension was wholly unreasonable. In view of the Govt. decision dated 10/12/2013, the cited Judgments by the side of respondents are not applicable. There is no dispute about the Rule 72 of the MCS (Joining time...) Rules, 1981 and as per said Rule 72, the

disciplinary authority / appointing authority shall come to the conclusion that the suspension was unreasonable. The Govt. decision in order dated 10/12/2013 clearly shows that suspension was unreasonable and therefore the applicant's husband was rightly granted the relief directing that suspension period shall be treated as a duty period.

11. There was no reason to review the order dated 10/12/2013. Nothing is on record to show that there was any mistake or error.

12. The learned P.O. has pointed out the para-32 of the Judgment of Special Court. From the perusal of para-32 of the Judgment of Special Court, it is clear that there was no sufficient evidence beyond reasonable doubt. It is not the case that only benefit of doubt was given to the applicant's husband. The Special Court has recorded its reason that there was no sufficient evidence and therefore the applicant's husband was acquitted. Para-15 and 17 of Judgment show that he was falsely involved in the case. Cross examination of complainant and panch no.1 show that there was no involvement of applicant's husband. There was no any departmental enquiry against the applicant's husband. He was simply suspended. On the basis of this Judgment, the respondent no.2 passed the order dated 10/12/2013.

13. Nothing is on record to show that any opportunity was given to the applicant's husband. Hence, impugned order dated 10/06/2014 appears to be not proper. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned order dated 10/06/2014 passed by respondent no.3 is hereby quashed and set aside.

(iii) The order passed by respondent no.2 dated 10/12/2013 is hereby restored.

(iv) The respondents are directed to give all benefits to the applicant as per the order dated 10/12/2013 passed by respondent no.2 within a period of three months from the date of receipt of this order.

(v) No order as to costs.

Dated :- 16/09/2022.

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 : 16/09/2022.

Uploaded on : 21/09/2022.

ok*