

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.31 OF 2018

DISTRICT : PUNE

Dr. Vishnu Manikrao Kute)
Age 61 years, Occ. Retired Govt. Service)
R/o. B- Shefalika Heights,)
Balwantpuram, Shivteerth Nagar, Paud Road,)
Kothrud, Pune 411 038.)

Since deceased through legal representative

Smt. Shunhangi Vishnu Kute)
Age : 56 years, Occ. Household)
(wife of deceased husband namely Vishnu Kute -)
Original Applicant))
R/o. B-501, 506, Shefalika Heights,)
Balwantpuram, Shivteerth Nagar, Paud Road,)
Kothrud, Pune 411 038.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary, Agriculture, Animal)
Husbandry, Dairy Development and)
Fisheries Dept., (ADF 1), Mantralaya,)
Mumbai - 400 032.)
2. The Commissioner, Animal Husbandry,)
Maharashtra State Opp. Spicer College,)
Aundh Pune -7.)
3. The Project Officer, District Rural)
Development Agency 1, Velesaly Road,)
Camp Pune, Pune.)...**Respondents**

Shri V. P. Potbhare, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 11.10.2019

JUDGMENT

1. Only issue posed for consideration in the present O.A. is whether the Applicant is entitled to the grant of increment during the period of his suspension.

2. Original Applicant namely Dr.V. M. Kute has filed the present O.A. seeking various reliefs but during the course of hearing, learned Counsel Shri V. P. Potbhare deleted all reliefs except prayer clause 10(e) which is as follows :-

“10(e) : That the respondent no.1 and 2 may kindly be directed to grant the benefits of increments to the applicant from 2004 to 2010 i.e. seven increments to the applicants with the arrears of difference of pay by revising pensionary benefits.”

3. Original Applicant Dr. V. M. Kute died during the pendency of O.A. and proceedings are continued by his wife as his legal representative.

4. The deceased Applicant was serving as Livestock Development Officer in Agriculture, Animal Husbandry, Dairy Development & Fisheries Department of Govt. of Maharashtra. He was posted at Pune. The charge sheet was issued to him and D.E. was initiated under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 by charge sheet dated 02.12.2002. In D.E., one charge was proved against deceased Applicant and by order dated 12.05.2010, the punishment of withholding of one increment with cumulative effect was imposed upon him. He was under suspension from 09.01.2003 to 15.07.2010. After imposition of punishment, the Disciplinary Authority had issued order under Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred as 'Joining Time Rules 1981' for brevity). By

order dated 05.03.2013, his suspension period was treated as a suspension for all purposes except for pension. Later, the Applicant made representation for grant of increment during the period of suspension. However, the Government rejected his request by order dated 29.04.2016 informing that increments cannot be released during the period of suspension in view of Rule 39(2)(b) of Maharashtra Civil Services (Pay) Rules, 1981 (hereinafter referred to as 'Pay Rules, 1981'). On the above background, the Applicant has filed present O.A. for grant of increments during the period of suspension.

5. Shri V. P. Potbhare, learned Counsel for the Applicant submits that though the charge sheet was issued in 2002, it took eight years for completion without any fault on the part of deceased Applicant and he was subjected to prolong suspension. He, therefore, submits that because of inordinate delay on the part of Respondents to complete D.E., the Applicant was compelled to continue in suspension and he is subjected to injustice in the form of denial of increment. As such, the ground of delay in completion of D.E. is the only ground raised in support of relief claimed.

6. Whereas, Smt. Kranti Gaikwad, learned Presenting Officer submits that punishment of withholding of increment with cumulative effect has attained finality without any challenge to the same, and therefore, now the ground of delay in completion of D.E. cannot be raised in this O.A. which is restricted to the relief of increment during the period of suspension. As regard claim of the Applicant for increment during the period of suspension, learned P.O. submits that the Disciplinary Authority has recorded specific findings treating the period of suspension as suspension period for all purposes except pension, and therefore, the question of increment during the period of suspension does not survive. Learned P.O. further referred to Rule 39

of 'Pay Rules 1981' to substantiate that the Applicant is not entitled to increment during the period of suspension.

7. Thus, admittedly the punishment of withholding of one increment with cumulative effect has attained finality and the Applicant has already suffered that punishment.

8. True, the D.E. initiated in 2002 was completed in 2010 only and there was delay of eight years in completion of the same. However, this aspect of delay in completion of D.E. is not relevant in the present O.A. as the punishment imposed in D.E. is not subject matter of the O.A. It has already attained finality without there being any challenge to the punishment. Suffice to say, the delay in completion of D.E. is not at all relevant to consider the Applicant's entitlement to the increments during the period of suspension.

9. At this juncture, let us see relevant Rules:

As per Rule 36 of Maharashtra Civil Services (Pay) Rules, 1981 (hereinafter referred to as 'Pay Rules 1981'), an increment shall ordinarily be drawn as a matter of course unless it is withheld as a penalty under the relevant provisions of 'Discipline and Appeals Rules 1979'. Needless to mention that the said Rule applies to an employee who is on duty and it has no application where the suspension period has been treated as suspension period by passing specific order on conclusion of D.E.

10. Needless to mention that for entitlement to increment, a Government servant must be on duty. As per Rule 9(14) of the 'General Conditions Rules 1981', the duty includes the services as probationer, joining time, etc. but it does not include period of suspension. The very fact that the period of suspension is not included in the definition of duty goes to show that the suspension period cannot be considered for grant of increment. When the

Government servant is put under suspension, he is paid Subsistence Allowance and not regular Pay and Allowances. By virtue of suspension, he is kept away from discharging the official duties, and therefore, the period undergone in suspension cannot be considered as period spent on duty, unless on conclusion in the Departmental Enquiry, the employee is fully exonerated and the order to that effect is passed by the Competent Authority under Rule 72 of 'Joining Time Rules 1981'. In this reference, it would be useful to refer Rule 39 'Pay Rules 1981'. The perusal of it shows that the duty period counts for increment includes leave, extra-ordinary leave, deputation period, period spent on training, etc. and importantly, it does not provide that the suspension shall be counted for increment.

11. Thus, there is conscious exclusion of treating suspension period as duty period in the Rules referred to above. This conclusion is obviously for the reasons that such period of suspension needs to be determined as to whether it is justified or not, only after conclusion in D.E. while passing the order to that effect after giving opportunity to the concerned delinquent. Thus, the conjoint reading of Rule 39 of 'Pay Rules 1981', Rule 72(7) of 'Joining Time Rules 1981' and Rule 9 of 'General Conditions Rules 1981', leaves no doubt that for entitlement to increment, the Government servant must be on duty.

12. Thus, position emerges from the conjoint reading of the above referred Rules that the suspension period cannot be equated with duty period unless the Competent Authority directs so, which normally happens where the employee is fully exonerated from the charges. In present matter, the department has passed specific order treating the period of suspension as such in view of finding of guilt in D.E. and therefore, the question of releasing increment during the period of suspension does not survive. Suspension is always regulated or governed by the subsequent orders to be passed on conclusion in D.E. or Criminal cases.

13. In view of the aforesaid legal position, there is no escape from the conclusion that Rules referred to above nowhere include suspension period as duty period, and therefore, the claim for increment during the period of suspension is misconceived and not tenable. The Competent Authority has already passed the order and treat the said period as a suspension period for all purposes except pension. Suffice to say, the claim of the Applicant is devoid of merit and deserves to be rejected. Hence, the following order :-

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J