

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1253 OF 2009

DISTRICT : THANE

Shri Ajit Pandurang Tikar.)
1. Smt. Anjali Ajit Tikar.)
Age : 47 Yrs, Occu.: Housewife.)
2. Ms. Soniyas Ajit Tikar.)
Age : 22 Yrs, Occu.: Student.)
3. Ms. Manasi Ajit Tikar.)
Age : 17 Yrs, Occu.: Student.)
(Through Smt. Anjali Ajit Tikar)
Mother of Applicant Nos.2 & 3)
residing at Sopan Nagar Lane-1,)
Vadgaon Sheri, Pune - 14.)
)...Applicants
(Heirs & Legal
Representatives of
Deceased Applicant)

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department (A & S) Prison,)
Mantralaya, Mumbai - 400 032.)
2. The Inspector General of Prison,)
State of Maharashtra, 2nd Floor,)
Old Central Building, Pune 411 001.)...**Respondents**



Ms. S.P. Manchekar, Advocate for Applicants.

Shri K.B. Bhise, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)

DATE : 16.09.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is now being contested by the widow and two daughters of the late Shri Ajit A. Tikar, the original Applicant who passed away pending OA. It is directed that the description of the 3rd Applicant who must have attained majority now, be suitably amended and the said Applicant be shown to be contesting in her own right.

2. The deceased Applicant came to be appointed as Jailor, Grade-II by an order of 12.6.1986. He assumed the charge of the said post on 1st June, 1987. He was transferred to Nagpur on 29th August, 1988. In less than one month's time thereafter, however, he came to be terminated. The order of termination stated *inter-alia* that his services were no longer required. A copy of the said order is at Exh. 'B' (Page 16 of the Paper Book (P.B)). The



said Applicant preferred an appeal thereagainst to the Government. That appeal was rejected by the order of 7th June, 1990 (Exh. 'C', Page 18 of the P.B.). That appellate order was challenged before the Hon'ble High Court by way of Writ Petition No.3149/1990. In the meanwhile, this Tribunal was constituted and the said Writ Petition came to be transferred to this Tribunal and it was registered as T.A.No.511/1991. The said TA came to be dismissed on 26th March, 1997 and was then carried to the Hon'ble High Court by way of the Writ Petition No.6337/1997 which was allowed by the order of 16th June, 2008. In so far as this OA is concerned, it will be appropriate to quote fully a part of Para 3 and full Para 4 of the order in that Writ Petition.

“Taking overall view of the matter therefore, in our opinion, the order passed by the M.A.T. cannot be allowed to stand and as we find that the services of the petitioner were terminated as a measure of punishment, the order terminating the services of the petitioner would be that he will stand reinstated in services. Normally as a consequence of reinstatement, the petitioner would be entitled to back wages. However, before us there is no material to show whether the petitioner during the intervening period was

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gainfully employed or not. In our opinion, therefore, following order would meet the ends of justice.

4. The order dated 20th September 1988 terminating the services of the petitioner, the order passed by the State Government dated 7th June, 10 confirming that order and the order passed by the M.A.T. dated 26th March 1997 are set aside. The petitioner is reinstated in service. So far as the question of back wages is concerned, within a period of four weeks from today, the petitioner shall file an affidavit before the respondent No.1 claiming back wages, also disclosing whether he was gainfully employed during the intervening period or not. On receiving the affidavit, the respondent No.1 shall hold enquiry in accordance with law and shall make an order about the quantum of back wages to which the petitioner is entitled within a period of eight weeks. The petitioner shall be paid his back wages as per the aforesaid order by the respondent No.1 within four weeks from the date of that order. If the decision is adverse to the interest of the petitioner, the petitioner shall be



free to adopt appropriate remedy. It is clarified that as the petitioner was on probation when his services were terminated, on reinstatement he shall be on probation. The Government will be at liberty to hold departmental enquiry is so advised. Rule is made absolute accordingly with no order as to costs.”

3. It would become very clear from the above order of the Hon'ble High Court that the case of the deceased Applicant was accepted and in so far as the back-wages were concerned, the directions as mentioned in the above passage came to be given. The Applicant moved the present Respondent No.2 in deference to the order of the Hon'ble High Court. However, somewhat unfortunately, the matter was dealt with quite casually and vide Exh. 'A' (Page 15 of the OA) dated 2.1.2009 (in Marathi) the request for back-wages was turned down because during 20.9.1988 and 5.11.2008, the deceased Applicant did not discharge any official function. How one wishes such a casual approach was not adopted and the order of the Hon'ble High Court was seriously grasped and implemented. But that was not to be, and therefore, the present OA was filed by the deceased Applicant and was amended also. In view of his unfortunate demise pending



OA, his heirs and LRs were required to be brought on record and have since been impleaded.

4. The perusal of the record would show that several Rules have been quoted at different places in difference Affidavits and at Exh. 'R-J 1' (Page 55 of the P.B.), there is a document to show as to what was the income and earning of the deceased Applicant during the time he was out of Government job. No doubt, at Serial Nos. I to III for the period from 24.5.1991 to 31.3.1992, from 1.4.1992 to 31.3.1993 and for 1.4.1993 to 31.3.1994, his monthly salary has been shown in five figures, like Rs.12007/-, 16007/- and 20007/-. However, that quite clearly does not seem to be accurate and the submission on behalf of the Applicants that it must have been a typing slip appears to be quite correct, because the income in the subsequent block of years would bear it out. The monthly income for the period from 1.4.1994 to 31.3.1995 was shown as Rs.2,500/-, from 1.4.1995 to 31.3.1996 as Rs.3000/-, from 1.4.1996 to 31.3.1997 as Rs.3700/-, from 1.4.1997 to 31.3.1998 as Rs.4500/-, from 1.4.1998 to 31.3.1999 as Rs.4900/-, from 1.4.1999 to 31.3.2000 as Rs.5200/-, from 1.4.2000 to 31.3.2001 as Rs.5600/-, from 1.4.2001 to 31.3.2002 as Rs.6100/-, from 1.4.2002 to 30.11.2002 as Rs.6300/-. He has mentioned there that



during 1.12.2002 and 3.1.2004, he was totally unemployed and his wife was working as an Assistant Teacher at the Private School and he was sitting at home looking after his children. From 4.1.2004 till 26.12.2004, he was working at Market Yard, Pune on a monthly salary of Rs.4000/- p.m. and was again unemployed during 20.6.2004 to 10.2.2005. From 11.2.2005 till 31.5.2006, he was working at a Private School at Pune as Office Assistant on a monthly salary of about Rs.4500/-. From 1.6.2006 to 30.7.2007, he was unemployed and had no income and in fact, no source of income. From 1.8.2007 to 30.9.2008, he was working with the Private Builder on a monthly salary of Rs.4500/- and then it appears that in November, 2008, after the orders of the Hon'ble High Court, he got his employment with the Respondents back.

5. A Chart has been submitted to me to show as to what would have been the salary position of the Applicant during October, 1988 to October, 2008 and that has been in terms of the salary structure under the 4th, 5th and 6th Pay Commissions. From October, 1988 to December, 1995, the total income has been shown as 1,33,800/- from January, 1996 to December, 2005, his total salary has been shown as 6,15,750/- under 5th Pay Commission. From January, 2006 to October, 2008, under 6th Pay



Commission, his total salary has been shown as Rs.4,87,352/- from these amounts, an amount of Rs.6,61,800/- have been shown as deduction as his income from private sources.

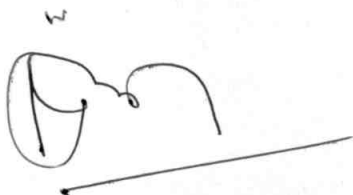
6. Now, before I proceed further, be it noted that the reason why I have somewhat closely examined this aspect is that, now the deceased Applicant is no more and had he been alive even then, by now he would have retired, there is no point in sending back the matter for fresh calculation and if without injuring any law, rules or principles of law, if the present Applicants who I guess must already have been through hell could be saved from further botheration, there is no reason why an appropriate course of action to save them therefrom should not be adopted. The manner in which post Judgment of the Hon'ble High Court, one of the senior-most authorities viz. the Respondent No.2 conducted himself for which I have passed strictures is not the only reason why I am trying to decide the matter with as much exactitude as possible.

7. I have carefully perused the document above referred to when I discussed the income of the deceased Applicant in terms of 4th 5th and 6th Pay Commissions. The income from the private sources during the period when he

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was out of Government job, by and large appears to be free from any serious mistake. I am, however, so disposed as to round off the difference between the amount he could have got, had he been in Government service and what he actually earned to Rs.6,00,000/- instead of Rs.5,75,102/-. The Respondent No.2 for completely unsupportable reasons did not grant the back-wages, but then from then, on the deceased Applicant was getting salary till such time when he was alive and I am sure, the family pension aspect of the matter must have been taken care of to the benefit of the present Applicants. Therefore, as of now, I decide against imposing any interest, but then if the entire arrears are not cleared within four weeks from today, then the said amount shall carry interest a well.

8. The order herein impugned stands hereby quashed and set aside. The Applicants are held entitled to receive as and by way of back-wages an amount of Rs.6,00,000/- (Rs. Six Lakhs) as discussed above within four weeks from today, failing which the said amount shall carry an interest @ Rs.12% p.a. from the dates of accrual till actual payment. The Applicants shall be entitled if Rules permit to all the pensionary and other benefits admissible to them by virtue of they being heirs and legal representatives of the deceased Applicant. The Original



Application is allowed in these terms with no order as to costs. Applicants to comply with the directions in Para 1 hereof within one week.

Sd/-

(R.B. Malik)
Member-J
16.09.2016

16.09.16

Mumbai

Date : 16.09.2016

Dictation taken by :

S.K. Wamanse.

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