

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.211 OF 2020

DISTRICT : MUMBAI

Shri Chandrakant D. Tikekar.)
Age : 49 Yrs., Occu.: Watchman,)
Working in the Office of General Manager,)
Greater Mumbai Milk Scheme,)
Worli, Mumbai – 400 018 and residing at)
Unit No.22, Chawl No.4, Aarey Milk Colony,)
Goregaon, Mumbai – 400 065.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fisheries Dept.)
Mantralaya, Mumbai – 400 032.)
2. The Commissioner.)
Dairy Development, M.S,)
Administrative Building, A.G. Khan)
Road, Worli, Mumbai – 400 018.)
3. The General Manager.)
Greater Mumbai Milk Scheme,)
Worli, Mumbai – 40 018.)...**Respondents**

Mr. U.V. Bhosle, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 22.10.2021

JUDGMENT

1. The Applicant has challenged the order dated 13.01.2020 whereby his out of duty period from 01.10.2014 to 30.06.2015 was treated as Extra-Ordinary Leave, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was appointed as Watchman on the establishment of Respondent Nos.2 and 3 by order dated 12.12.1997 on temporary basis. Later, by order dated 21.03.2001, he was made permanent w.e.f.15.12.2000. However, in the year 2014, the Respondent No.1 has declared 4445 posts on the establishment of Respondent Nos.2 & 3 surplus by issuing G.R. dated 13.08.2014 and decision was taken to adjust/accommodate them in other Departments. Consequent to it, the Applicant was relieved by order dated 30.09.2014 and he was adjusted on the establishment of Office of Labour Commissioner, Mumbai. Thus, he was supposed to join the Office of Labour Commissioner on 01.10.2014. However, he did not join. Later, Respondent No.3 by order dated 25.06.2015 took the Applicant back in his Department by way of adjustment of post and accordingly, the Applicant joined on 01.07.2015. After joining, he made representation on 03.07.2015 for pay and allowances for out of duty period i.e. from 01.10.2014 to 30.06.2015. Since it was not responded, the Applicant has filed O.A.No.904/2019 before this Tribunal which was disposed of by order dated 09.12.2019 giving direction to the Respondents to decide the representation within two weeks. However, Respondent No.3 asked the Applicant to submit leave application but Applicant refused to submit any such leave application for the said period. Ultimately, Respondent No.3 by order dated 13.01.2020 passed order treating absence period as Extra-Ordinary Leave invoking Rule 63(6) of Maharashtra Civil Services (Leave) Rules, 1981 which is impugned in the present O.A.

3. Shri U.V. Bhosle, learned Advocate for the Applicant submits that in fact, the posts were available in Dairy Development Department and

there was no necessity to declare the post of Applicant and others surplus. According to him, the very fact that Respondent No.3 by order dated 25.06.2015 on his own re-adjusted and took the Applicant on the establishment itself shows availability of post. On this line of submission, he urged that the Applicant was kept out of duty without any legal and valid reason, and therefore, entitled to pay and allowances for the said period instead of treating the said period as Extra-Ordinary Leave without pay and allowances.

4. Per contra, the learned P.O. urged that since 4445 posts were declared surplus in Dairy Development Department, the Applicant was required to join another Department viz. Labour Commission's Office for continuity of service, but he chose not to join, and therefore, the impugned order considering the period of absence as Extra-Ordinary Leave cannot be faulted with.

5. The factual aspects as adverted to above are not in dispute. In 2014, the Government had taken review of the posts in Dairy Development Department and has sanctioned new staffing pattern. In the said exercise, 4445 posts out of 8452 posts were found surplus. Therefore, policy decision was taken to adjust these 4445 surplus employees in various other Departments. Consequently, the Applicant was adjusted in the Office of Labour Commissioner. However, the Applicant chose not to join and remained absent. As such, this is not a case of illegal termination or removal from service, so as to claim back-wages. This is a case where the Applicant is declared surplus and was adjusted in another Department, but he chose not to join. Indeed, he ought to have joined in the Department allotted to him.

6. Needless to mention that in view of G.R. dated 30.08.2014, the Government had taken policy decision to review the post available in Dairy Development Department, so as to cut the expenditure on pay and allowances and at the same time to adjust those surplus employees in another Department so that they should also paid the benefit of

continuity in service. Such executive decision of declaring some employees surplus and adjusting them in another Department is administrative decision. It is policy decision taken by the Government which cannot be subject matter of juridical review. Only because Dairy Development Department itself later re-adjusted the Applicant and took him back in service by order dated 25.06.2015 that *ipso-facto* does not mean that there was no necessity of declaring employees surplus. This decision declaring employees surplus was executive decision which was not challenged at the relevant time.

7. Thus, when Applicant of his own chose to remain absent and not joined the Department allotted to him, he cannot be said entitled to pay and allowances on the principle of 'no work no pay'. Where employee keep himself away out of job without any valid reasons, he cannot claim pay and allowances for the absence period otherwise which would be giving the benefit to employees for his own wrong and would burden public exchequer. Suffice to say, principle of 'no work no pay' is squarely attracted.

8. In this behalf, reference can be made to the decision of Hon'ble Supreme Court in ***Sukhdeo Pandey Vs. Union of India (2007) 7 SCC 455***. In Para No.17, the Hon'ble Supreme Court held as under :-

"Before parting with the matter, however, we may make one thing clear. From the record, it appears that after the appellant was reverted from the cadre of Postman to his substantive post of EDBPM, he has not joined duty and has not worked. No interim relief was granted by any court including this Court in his favour. In the circumstances, it was obligatory on him to report for duty as EDBPM. He, however, failed to do so. We, therefore, hold that if the appellant has not worked, he will not be paid salary for the period for which he has not worked. It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of 'no work, no pay' is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied. In the present case, though the appellant ought to have joined as EDBPM, he did not do so. He, therefore, in our considered opinion, cannot claim salary for that period. But he will now be allowed to work as Postman. He will also be paid salary as Postman but we also hold that since the action of the respondent authorities in reverting him to his substantive post of EDBPM was strictly in consonance with law, the appellant would be entitled to pensionary and

other benefits not as Postman but as EDBPM which post he was holding substantively.”

9. In **Sukhdeo Pandey’s** case (cited supra), the Applicant was reverted from the cadre of Postman to the post of EDBPM which reversion was challenged by him. However, there was no interim relief in his favour. Therefore, it was incumbent on his part to join as EDBPM but he remained absent. In that case, material to note that, though Hon’ble Supreme Court ultimately allowed the Petitioner Sukhdeo to work as Postman, it is clearly held that he had not worked on the post of EDBPM on his reversion, and therefore, he was not entitled for the salary on the principle of ‘no work, no pay’. The Hon’ble Supreme Court has emphasized that the doctrine of ‘no work, no pay’ is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied. In the present case also, there are no such reasons much less valid to grant pay and allowances to the Applicant for the period in which he abstains from work at her own peril.

10. Indeed, the Respondents had already taken lenient view by treating absence period as Extra-Ordinary Leave. Therefore, the challenge to the impugned order is devoid of merit and the claim of the Applicant for pay and allowances for the said period is totally unsustainable in law. Hence, the order.

ORDER

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

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 22.10.2021
Dictation taken by :
S.K. Wamanse.

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