

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 268 of 2016

- 1) Shri Vilas S/o Maroti Guru,
Aged : Major, Occ. Nil,
R/o Post Aheri near Panchayat Samiti Office,
Tq. & Distt. Gadchiroli.
- 2) Shri Patru S/o Kawadu Pipare,
Aged : Major, Occ. Nil,
R/o Talodhi (Mokasa), Distt. Gadchiroli.
- 3) Shri Bhumayya S/o Malayya Kummari,
Aged : Major, Occ. Nil,
R/o Permali, Tah. Aheri, Distt. Gadchiroli.
- 4) Shri Pocham S/o Yellayya Madeshi,
Aged : Major, Occ. Nil,
R/o Sironcha, Distt. Gadchiroli.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Secretary, Mantralaya, Mumbai
(Public Health Department).
- 2) The Assistant Director,
Health Services (Malaria),
Nagpur Division, Mata Kacheri, Nagpur-15.
- 3) The Fileria Officer,
National Fileria Control Squad,
Dhanora, Distt. Gadchiroli.

Respondents

Shri S.A. & Smt. J.S. Kalbande, Advocate for the applicant.

Smt. M.A. Barabde, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 9th day of August,2017)

Heard Shri S.A. Kalbande, Id. Counsel for the applicant and Smt. M.A. Barabde, Id. P.O. for the respondents.

2. The applicants in this case were working as Class-IV employee in the office of respondent no.3. A show cause notice was issued to the applicants on 3/8/2001 and the applicants were asked to explain as to why they shall not be removed from services for submitting false school certificates for obtaining job. A joint charge sheet was issued to the applicants on 31/5/2002 by respondent no.3 and vide order dated 16/3/2004 the applicants were dismissed from the services. The applicants challenged the order of dismissal by filing O.A. nos. 312,314 & 316 of 2005. The Hon'ble Tribunal vide order dated 21/3/2012 was pleased to quash and set aside the order of dismissal of the applicants and liberty was granted to the respondents to make fresh inquiry. The question of back wages was kept open to be addressed by the respondents after decision of the inquiry.

3. The applicants accordingly participated in the fresh inquiry and again on 24/3/2015, the respondent no.3 passed an order

whereby the applicants were dismissed. The applicants have filed O.A.Nos. 1321 to 1324 of 2015 against the said orders of dismissal and these O.As. are pending.

4. The applicants made representations and claimed back wages and arrears of wages for the period from 16/3/2004 to 23/8/2012 in view of the directions given by this Tribunal in the common order passed in O.A.Nos. 312,314 & 316 of 2005. However their representations were not considered. The applicants issued legal notice to the respondents and thereafter also filed Contempt Petition along with Civil Application no. 496 of 2015 and vide order dated 7/1/2016 the applicants' claim for back wages was rejected.

5. The material point to be considered in this case is whether the order passed by respondent no.3 rejecting the representation to pay back wages for the period from 16/3/2004 to 23/8/2012 is legal and proper and if yes whether the applicants are entitled to claim those back wages.

6. The respondent no.3 has filed reply-affidavit and justified that the order of rejection of applicants' claim on the ground that the applicants have not worked during the aforesaid period from the date of dismissal till their reinstatement in view of the order passed by the

Tribunal. It is stated that on the basis of policy “No work No pay” the applicants are not entitled to claim pay arrears.

7. The learned counsel for the applicants submits that the directions were issued by this Tribunal in the order passed in O.A.Nos. 312, 314, 315 & 316 of 2005 on 21/3/2012. The copy of the said Judgment and order is placed on record is P.B. page nos. 14 to 32 (both inclusive). The relevant direction on the basis of which these O.As., is in paras A & B of the order and the same is as under :-

“(A) The impugned order of punishment of removal passed by the Disciplinary Authority dated 16/03/2004 is quashed and set aside. The order passed by the Appellate Authority confirming the order of the Disciplinary Authority is also quashed and set aside. The respondents are directed to reinstate the applicants forthwith to the post which they held prior to their removal from service by the impugned order.

(B) Liberty is granted to the respondents to hold a fresh inquiry touching the same charge from the stage of supply of the documents contained in Annexure-4 to the applicants and thereafter by recording evidence of witnesses afresh. The question of back wages is left open to be addressed by the Disciplinary Authority after conclusion of the fresh inquiry which we have permitted by this order. After conclusion of the inquiry, we permit the applicants to make appropriate representation in regard to the back wages to the Disciplinary Authority and at that stage, the Disciplinary Authority shall

consider the applicants' prayer for grant of back wages and pass an order in accordance with law."

8. Perusal of the order in clause (A) & (B) as above, clearly shows that even though the applicants were directed to be reinstated, the question of back wages was left open to be addressed by the Disciplinary Authority after conclusion of the fresh inquiry. It was also stated that after conclusion of the inquiry the applicants were to make appropriate representation in regard to the back wages. It seems that the applicants accordingly filed representation and their claim for back wages has been rejected.

9. The order rejecting the applicants' claim for back wages is placed on record at P.B. page nos. 12 & 13. Perusal of the said impugned order shows that the applicants were held not eligible for back wages on the ground that they have not actually worked during said period. The relevant communication is as under : -

*^vki .k fnukad 21@3@2012 P; k U; k; ky; hu vkn's kkuu' kj ; k dk; kzy; kl fnukad 16@3@2004 rs fnukad 23@8@2012 ; k dkyko/khr oru o HRRs %cWlost. d ½ nskckcr fuonu I knj dsysy vkgj i jarwvki .k I nj dkyko/khr 'kkI dh; I or ul Y; keiGsvki .kkd I nj dkyko/khrhy oru o HRRs %cWlost. d ½ egjik"V^aukxjh I ok ½ i nxxg.k vo/kh] i jdh; I ok vlf.k fuyau] cMrQh' o I oru dk<u Vkd.ks ; k dkGkrhy i nku½ fu; e]1981 P; k fu; e 71 ¼2½ ¼c½ o fu; e 70 ¼5½ ud kj fnukad 16@3@2004 rsfnukad 23@8@2012 i ; rpk dkyko/kh gk dkekoj 0; rhr u dj. ; kr vkysy dkyko/kh Eg.ku ekuyk tk.kkj vl Y; keiGsor u o HRRs %cWlost. d ½ vuKs jkg.kkj ukgh.***

10. It is material to note that after remanding inquiry to the Competent Authority, fresh inquiry was conducted and in the said inquiry the applicants have been found guilty and therefore the applicants have been again terminated. The second order of dismissal of the applicants is under challenge in O.A.Nos. 1321 to 1324 of 2015. The question of dismissal of the applicants is admittedly not before this Tribunal in the present O.A. as the same will be dealt with on merits in O.As. 1321 to 1324 of 2015. Admittedly the applicants were not in service from 16/3/2004 to 23/8/2012 and the Competent Authority has taken decision not to grant pay for such period to the applicants since they have not actually worked during that period of 8 years. There is nothing on the record to show that the applicants were out of service during this period or were in any manner unable to earn anything during this period of 8 years.

11. The learned counsel for the applicants has placed reliance on the Judgment reported in (1984) 3 SCC, 5 in the case of **Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. & Ano.** In para-3 the Hon'ble Apex Court has observed that "In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty."

12. The learned counsel for the applicants also placed reliance on the Judgment reported in **Commissioner, Karnataka**

Housing Board Vs. C. Muddaiah reported in 2008 (1) Mh.L.J.,546.

In the said case, the Hon'ble Apex Court has observed as under :-

“The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected.

13. Considering the particular facts of the case the Hon'ble Apex Court has made observations which are not analogous and applicable to the present set of facts.

14. The learned P.O. has placed reliance on the Judgment reported in 2011 (3) ALL MR 419 of the Hon'ble Apex Court in the case of **Chairman-Cum-MD, Coal India Ltd. & Ors. Vs. Ananta Saha & Ors.** In the said case it has been observed that the issue of entitlement of back wages has been considered time and again and consistently as discretionary. The learned P.O. further relied on the Judgment reported in (2007) 9 SCC,564 in the case of **Secretary, Akola Taluka Education Society and Ano. Vs. Shivaji & Ors.** In said case the Hon'ble Apex Court held that the back wages / full back wages should not be allowed automatically.

15. In the present case there is nothing on the record to show that the applicants were unable to obtain any alternative service or job during the intervening period. The respondents have therefore rightly taken decision not to grant back wages to the applicants and also considering the fact that the applicants have been held guilty in the departmental enquiry even after denovo inquiry. The decision taken

by the respondents at this juncture therefore cannot be faulted. In view thereof the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

**(J.D. Kulkarni)
Vice-Chairman (J).**

dnk.