

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.49 OF 2019

DISTRICT : PUNE

Dr. Sanjay Narendra Kundetkar )  
Aged 54 yrs, Occu.: Service , )  
R/at : 13/10, Anamika Apartments, behind )  
Sharda Centre, off Karve Road, Pune 411 004, )  
Dist. Pune. ) ....Applicant

**Versus**

1. The State of Maharashtra, )  
Through the Chief Secretary, )  
Revenue & Forest Dept., )  
Mantralaya, Mumbai. ) ...Respondent.

Shri Amol Joshi , Advocate for the Applicant.  
Shri S. D. Dole, Presenting Officer for the Respondent.

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

**DATE** : **08.07.2019**

**J U D G M E N T**

1. In the present O.A., the Applicant is seeking directions to the Respondent to regularise his period of suspension as a duty period and to extend the consequential benefits to him invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. **Factual matrix is as follows:-**

At the relevant time, the Applicant was serving as Deputy Collector and the Competent Authority No.3 to ULC office at Swargate, Pune on 03.01.2006. FIR No.02/2006 was registered against him and Ors. for the offences u/s 420,467,460,471,472 r/w 120 (B) of IPC and u/s 13(2), 13(1) (d) of Provision of Corruption Act, 1988. He came to be arrested and was kept in custody for more than 48 hours. Consequently, by order dated 15.02.2006 he was suspended w.e.f. 15.01.2006 i.e. the date of arrest. Thereafter, in view of directions given by the Hon'ble High Court Bombay in PIL No.6/2008, one more offence vide FIR

No.252/2010 was registered against him and others in Shivajinagar Police Station for the offences u/s 420, 467, 468, 471, 472 & 120B of IPC & u/s 13(2) & 13(1) (d) of the PC Act, 1988 on 04.12.2010. Thereafter, the suspension order dated 15.02.2006 was revoked by the Hon'ble Minister and he was reinstated in service. By order dated 18.06.2013, he was reinstated in service on the post of SDO, Koregaon, Dist. Satara. While he was serving as SDO, Koregaon, Dist. Satara, he was again arrested by CID, Pune on 19.11.2014 in connection with Crime No.252/2010 which was registered against him and others in Shivajinagar Police Station on 04.12.2010. He was again placed under suspension by order dated 05.12.2014. Thereafter, he had filed O.A.No.926/2016 to challenge the suspension order dated 05.12.2014 and for reinstatement in service. However, during pendency of O.A., the Applicant was reinstated by the Government by order dated 10.07.2017 w.e.f. 12.07.2017 and posted as Deputy Collector at Parbhani. The Applicant then filed representation with Respondent on 25.09.2018 to regularise the period of suspension from 05.01.2006 to 09.07.2013 as well as subsequent period of suspension from 19.11.2014 to 13.06.2017. Since he did not receive any communication in this behalf, he has filed the present O.A. for directions to treat the suspension period as duty period.

3. Respondents resisted the application by filing Affidavit-in-Reply *inter-alia* denying the entitlement of the Applicant to relief claimed. The Respondents contend that the Applicant was found involved in serious offences while working as public servant and abused his position for personal gain. The Respondent contends that while reinstating the Applicant by order dated 18.06.2013, the Hon'ble Minister ordered that the decision about the suspension period of the Applicant (15.01.2006 to 09.06.2013 i.e. 1<sup>st</sup> suspension period) will be taken after conclusion of criminal trial or departmental enquiry, as the case may be. The Applicant has not challenged this order dated 18.06.2013 and, therefore, O.A. being premature not maintainable. The charge-sheet has been filed in the court of law pertaining to FIR No.02/2006 registered on 03.01.2006 as well as pertaining to FIR No.252/2010 registered on 04.12.2010. Besides, the charge sheet in departmental enquiry has been issued on 04.06.2019 and it is in progress. The Respondent thus contends that having regard to the serious allegations / charges against the applicant, at this stage the request of

the Applicant to regularise the suspension period as duty period is premature and not acceptable in law.

4. Shri Amol Joshi, learned Counsel for the Applicant mainly placed reliance on Rule No.72 (6) of Maharashtra Civil Services (Joining Time, Foreign Service and Payment during suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'MCS Joining Rule 1981' for brevity). He contends that there is no bar to regularise the suspension period even before conclusion of departmental proceedings or criminal case. According to him, Rule 72 (6) of 'MCS Joining Rules 1981' empowers the disciplinary authority to regularise the suspension period which can be subjected to review on conclusion of departmental proceedings or criminal trial. He sought to contend that the Applicant is unnecessarily victimised and despite reinstatement in service for no valid reasons, the period of suspension is not regularised. He, therefore, prayed for direction to Respondent accordingly.

5. Per contra, Shri S.D.Dole, learned Presenting Officer for the Respondent sought to contend that the application is premature as the departmental enquiry as well as criminal trial is not yet concluded and, therefore, Original Application be dismissed.

6. Prima-facie, the allegations / charges leveled against the Applicant are serious. Firstly, FIR No.02/2006 was registered against him at Pimpri-Chichwad Police Station on 03.01.2006 for the offences u/s 420, 467,468, 471, 472 & 120B of IPC & u/s 13(2) and 13(1) (d) of the Prevention of Corruption Act, 1988 and he was placed under suspension. Secondly FIR No.252/2016 was registered against him with Shivajinagar Police Station on 04.12.2010. Material to note that one Shri Madhav J. Bhandari had filed criminal PIL No.06/2008 before the Hon'ble High Court wherein by order dated 22.02.2011 directions were given to the Government to constitute Special Investigation Team headed by the officer of the rank of Deputy Commissioner of Police and to register fresh offences against the officials on the basis of One Man Committee report. It was observed by the Hon'ble High Court that number of competent authorities appointed under Urban Land (Ceiling & Regulation) Act, 1976 have abused their powers and passed various fraudulent

orders. The name of the Applicant was amongst those officials as noted in the judgment. It was further found that 29 CRs were already registered by the Economic Offences Wing, State CID, Pune in December 2010 and January 2011 but there was no satisfactory progress in the investigation. As such, having regard to the magnitude of the crime, various directions were issued by the Hon'ble High Court.

7. Thus, what transpires from the record that the Applicant was suspended twice but reinstated in service. While reinstating the Applicant by order dated 18.06.2013 the Hon'ble Minister passed following order.

“आदेश

१. अर्जदाराचा अर्ज मंजूर करण्यात येतो.
२. अर्जदाराचे निलंबन रद्द करून त्यांना शासन सेवेत पुनःस्थापित करण्यात यावे.
३. निलंबन कालावधी हा निलंबन कालावधी म्हणून समजावयाचा किंवा कर्तव्यकाळ कालावधी समजावयाचा, याबाबतचा निर्णय अर्जदाराच्या फौजदारी दाव्याच्या व यथास्थिती विभागीय चौकशीचा निकाल लागल्यानंतर घेण्यात यावा.
४. सदर आदेश सर्व संबंधितांना कळविण्यात यावेत.

मुंबई  
दिनांक: १८ जून २०१३

Sd/-  
(बाळासाहेब थोरात)  
मंत्री (महसूल)”

8. Admittedly, the Applicant has not challenged the order dated 18.06.2013. After reinstatement in service in pursuance of order dated 18.06.2013 again he was suspended by order dated 05.12.2014, in pursuance of FIR No.02/2010 registered with Shivajinagar Police Station as well as directions given by the Hon'ble High Court in Criminal PIL No.06/2008.

9. True, the representation made by the Applicant has not been responded by the Respondent for treating the suspension period as duty period. However, fact remains that the said issue was already dealt with by the Hon'ble Minister in order dated 18.06.2013 wherein it was directed that the decision about the regularisation of suspension period will be taken after conclusion of criminal trials and D.E., as the case may be.

10. There is no denying that in pursuance of the offences registered against the Applicant, two criminal prosecutions vide Criminal Case No.24/2010 and Criminal Case No.ACB/14/2018 are instituted and trials are pending in Sessions Court and Special Court respectively. Furthermore, the Respondent had also initiated D.E. by issuance of charge sheet on 04.06.2019. The Enquiry Officer is appointed and D.E. seems to be in progress. This being the position, the Applicant's claim to regularise the period of suspension as duty period is definitely premature. This issue still have to be decided by the competent authority on conclusion of criminal case or D.E.

11. The whole emphasise of the learned Counsel for the Applicant was on Rule No.72 (6) of 'MCS Joining Rules 1981, which is as follows:-

*"Rule 72(6) of The Maharashtra Civil Services (Joining Time, Foreign Service and Payment during suspension, Dismissal and Removal) Rules, 1981 as below :-*

*"6. Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule(3) of sub-rule (5) as the case be".*

12. The reading of above Rule goes to show that if any order is passed by the competent authority under Rule 72(1) regarding the pay and allowances of the Government servant during the period of suspension ending with reinstatement then it shall be subjected to review after conclusion of criminal trial or D.E. In the present case, the competent authority has already passed order on 18.06.2013 stating that the decision of regularising the suspension period will be taken after conclusion of criminal case or D.E. Admittedly, the criminal prosecution as well departmental proceedings are underway, therefore, reliance placed by the learned Counsel for the Applicant on Rule 72(6) of 'MCS Joining Rules 1981' is misconceived and misplaced. Indeed, the Rule 72 needs to be read as a whole and not in isolation and in piecemeal. Rule 72(3) provides that where the authority competent to order reinstatement form opinion that suspension was wholly unjustified, in that event only the Government servant shall be entitled to full back wages. In other words competent authority has to follow opinion as to whether the suspension period was

wholly unjustified and this stage would come only after conclusion of criminal trial or D.E. Needless to mention that even mere acquittal *ipso facto* does not entitle the delinquent to full back wages for the period of suspension. The competent authority is required to examine the nature of evidence lead in criminal case, findings recorded by the Court and other attending circumstances. This being the legal position, at this stage Applicant's claim for treating the suspension period as duty period is definitely premature and misconceived.

13. The necessary corollary of the aforesaid reason leads me to sum-up that the Original Application is premature and deserve to be dismissed. Hence, the following order.

**ORDER**

Original Application is dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member(J)**

**Place : Mumbai**

**Date : 08.07.2019**

**Dictation taken by : V.S.MANE.**