

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.883 OF 2015

DISTRICT : PUNE

Mr. Balasaheb G. Palghadmal.)
Age : 53 years, Occu.: Joint Chief)
Executive Officer (Agri.), O/at : Joint)
Chief Executive Officer (Agriculture),)
Vasundhara Watershed Development)
Agency (SLNA), 1st Floor, Central Building,))
Maharashtra State, Pune - 1.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fisheries Dept,))
Mantralaya, Mumbai - 400 032.)
2. The Secretary.)
For the on. Governor of Maharashtra)
Rajbhavan, Malbar Hill, Mumbai-35.)
3. The Commissioner of Agriculture.)
M.S, Thane.)...**Respondents**

Shri K.R. Jagdale, Advocate for Applicant.

Smt. N.G. Gohad, Presenting Officer for Respondents.

PER : M.N. Gilani, J. (MEMBER-J)

DATE : 19.01.2016

O R D E R

1. While serving as Sub-Divisional Agriculture Officer, Karad, District Osmanabad, the Applicant was transferred on the same post, however, at Jalgaon on 8.6.2005. Instead of joining at Jalgaon, the Applicant proceeded on leave. On 31.5.2006, his earlier order of transfer was substituted with fresh transfer order, posting him as Sub-Divisional Agriculture Officer, Karad, District Satara. He obeyed the second transfer order and joined at new place of posting. As regards period of absence from 10.6.2005 to 5.6.2006, the Applicant requested for converting it into leave which was at his credit. The Respondent No.3 treated the period of absence from 10.6.2005 to 6.12.2005 (180 days) as Earned Leave. Thus, the period of absence of the Applicant from 10.6.2005 to 6.10.2005 was regularized.

2. However, vide order dated 7.7.2008, the Respondent No.3 annulled its own order, presumably, on the ground that he was not vested with the power to sanction leave for the period more than six months. The

period of absence of the Applicant was of more than six months.

3. On 8th January, 2015, the Respondent No.1 passed the following order :

३. श्री. बी.जी. पलघडमल, यांना अकार्यदिन (Dies-non) कालावधीत वेतनविषयक कोणतेही भत्ते अनुज्ञेय नाहीत, परंतु सेवेत खंड नाही. सदर सेवा कालावधी, सेवानिवृत्ती वेतनादी लाभांसाठी अहर्ताकारी सेवा म्हणून ग्राह्य धरता येणार नाही, तशी नोंद त्यांच्या सेवा पुस्तकात घेण्यात यावी.

४. हे आदेश, शासन निर्णय, वित्त विभाग, क.अरजा-२४९६/५९/सेवा-९, दि. १६.७.१९९४ अन्वये मंत्रालयीन विभागांना प्रदान केलेल्या प्राधिकारात व शा.नि. वित्त विभाग, क्रमांक-सेनिवे १००१/१३०/सेवा-४, दिनांक २/६/२००३ सोबतच्या परिशिष्ट एक मधील अ.क्र.३, नियम-६३ (६) (३) मधील तरतुदीनुसार निर्गमित करण्यात येत आहेत.”

4. It is contended on behalf of the Applicant that he was proceeded under Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and this resulted into imposing penalty of censure on him. In an Affidavit-in-reply filed by the Respondents, particularly in Para 34, this fact is admitted. For better appreciation, contents in Para 34 of the reply are reproduced below :

“34. With reference to para 7.10, I say it is submitted that, as the Applicant is punished

with minor punishment of Censure and as the decision on absence period of Applicant as dies-non is taken vide order dt. 08.01.2015, due to which the Applicant's annual increments were not released. Now as the final decision is taken, all the increments due will be released according to rules and action will be taken accordingly."

5. In the order dated 8th January, 2015, there is reference to the G.R. dated 2.6.2003. It empowers the authority to treat the period of absence, if found not justified, as break in service (Dies-non). For that, there is a rider which reads thus :

“रजेशिवाय अनुपस्थित राहिल्याच्या कारणास्तव विभागीय/न्यायिक चौकशी प्रलंबित नसावी.”

6. It seems that this condition has been incorporated to ensure that a Government servant is not vexed twice for same act of misconduct. In the present case, the departmental proceedings under Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules were initiated which culminated into imposition of penalty of censure on the Applicant. In that view of the matter, it was expected of the authority to resort to Rule 63 (6) of the Maharashtra Civil Services (Leave) Rules, 1981 (Leave

Rules hereinafter). Admittedly, by passing order dated 8th January, 2015, the period of absence has been condoned, since in the order, it is categorically stated that, "सेवेत खंड नाही". In fact, dies-non means break in service and that may entail a consequence laid down under Rule 47 of Maharashtra Civil Services (Pension) Rules, 1982. Having regard to the fact that the Applicant was departmentally punished with penalty of censure, the proper course of action was to resort to Rule 63(6) of the Leave Rules. It reads thus :

"6. The authority competent to grant leave may commute retrospectively periods of absence without leave into extraordinary leave."

7. For the reasons afore stated, the order dated 8th January, 2015 will have to be modified.

8. As regards release of annual increments, in Para 34 of the reply, it is stated that all the increments due to the Applicant will be released according to Rules. It will be suffice to stipulate limit to comply with the same.

9. Accordingly, OA is allowed in the followings terms:

The period of absence of the Applicant from 10.6.2005 to 3.5.2006 shall stand commuted retrospectively into extra ordinary leave in terms of Rule 63(6) of the Leave Rules. Consequently, the Applicant shall not be entitled for salary / wages for the said period.

To the above extent, the order dated 8th January, 2015 shall stand modified. There shall be no order as to costs.

Sd/-

(M.N. Gilani, J.)
Member-J
19.01.2016

Mumbai

Date : 19.01.2016

Dictation taken by :

S.K. Wamanse.

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