

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 581 OF 2011

DIST. : BEED.

Mahadeo S/o Uttamrao Khade,
Age-55 years, Occ. Service as
Asstt. Sub-Inspector,
Police Station, Ambajogai (Rural),
Tq. Ambajogai, Dist. Beed
(Died) Through its legal heirs

1-A. Chandrakala W/o Mahadeo Khade,
Age-50 years, Occu. Household,
Opposite Gajanan Maharaj Mandir,
Beed Tq. & Dist. Beed.

1-B. Ganesh S/o Mahadeo Khade,
Age-30 years, Occu. Service,
R/o as above

1-C. Anita W/o Sanjay Aghav,
Age-32 years, Occu. Household,
R/o Rudrapur, Tq. & Dist. Beed.

1-D. Manisha W/o Santosh Rakh,
Age-26 years, Occu. Household,
R/o Therla, Tq. Patoda, Dist. Beed.

1-E. Sonali W/o Ganesh Sanap,
Age-24 years, Occu. Household,
R/o Tadalwadi Bhilla,
Tq. & Dist. Beed.

.. APPLICANTS.

V E R S U S

1. The District Superintendent of Police,
Beed, Dist. Beed. .. RESPONDENT.

respondent took action of dismissal of the applicant as per Article 311 (2)(b) of the Constitution of India.

3. The applicant challenged the order of his dismissal by filing Original Application No. 267/2008. In the said Original Application the Hon'ble Tribunal vide its order dated 4.9.2009 quashed and set aside the order of dismissal dated 11.5.2008. The applicant filed representation for reinstatement on 11.9.2009 and accordingly, the applicant was reinstated on 29.9.2009 and joined his service on 25.10.2009 and he was to retire on superannuation on 31.05.2015. However, unfortunately during the pendency of this Original Application the applicant Mahadeo S/o Uttamrao Khade has expired on 15.12.2013, which is evident from the pleadings made in M.A. No. 211/2016, which was filed by the LRs of the applicant viz. Mahadeo S/o Uttamrao Khade, for permission to bring them on record.

4. The learned Advocate for the applicant submits that the applicant is restricting his claim to relief clause 'C', which reads as under: -

“C) The respondent no. 2 may kindly be directed to pay the house rent allowance to the applicant from 19.06.2008 and for that purpose issue necessary orders.”

5. According to the applicant, though the applicant joined the service after reinstatement, he was not given the arrears of house rent allowance from 19.6.2008 till he was reinstated in service.

6. The respondent No. 2 admitted the facts as regards applicant's dismissal, reinstatement etc. According to the respondents, the house rent allowance from 25.10.2009 to 30.9.2010 worth Rs. 20,510/- has been paid to the applicant. The applicant was out of employment from 12.5.2008 to 30.9.2009 and, therefore, he is not entitled to claim the house rent allowance for that period. It is also the case of the respondents that the applicant has not vacated the Government quarter at Georai after dismissal and he kept the quarter in his possession illegally from the period from 18.7.2007 to 19.6.2008 and an amount of Rs. 58,089/- is to be recovered from the applicant.

7. Heard Shri R.D. Khadap, learned Advocate holding for Shri S.S. Thombre, learned Advocate for the applicant and Smt. Resha S. Deshmukh – learned Presenting Officer for the respondents. I have also perused the affidavits, affidavit in reply and documents placed on record by the respective parties.

8. From the facts emerged, it seems that the applicant is claiming house rent for the period during which he was under dismissal. It is admitted fact that the applicant was dismissed from service from 11.5.2008 and was reinstated vide order dated 29.9.2009 and thereafter, he joined the service on 25.10.2009. It is also admitted fact that from 11.5.2008 to 30.10.2009 the applicant has not been paid the house rent allowance. It is stated that he was not paid so, as he was not in service. It is, therefore, necessary to see as to whether the applicant is entitled to house rent for such period. Secondly, so far as the question of applicant's illegal occupation of quarter at Georai is concerned, it must be noted that it is totally different issue and since the said issue is not challenged before this

Tribunal, there is no need to look into such issue. The question is, therefore, whether the applicant is entitled to claim house rent allowance during the date of his dismissal till the date of reinstatement.

9. According to the learned Presenting Officer, since the applicant was not in service during the period from 11.5.2008 till his reinstatement and joining of service on 25.10.2009, there was no question of granting house rent allowance to the applicant.

10. The learned Presenting Officer has invited my attention to the Rule 70 (5) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 (for short hereinafter referred to as Rules of 1981), for the purpose of convenience and submitted that as per the said Rule the period of absence from duty including the period of suspension preceding period of dismissal, removal or compulsory retirement shall not be treated as a duty period unless the competent authority specifically directs

that it shall be treated so and, therefore, the applicant is not entitled to claim house rent allowance.

The perusal of the papers on record shows that the competent authority has not decided the period from 12.5.2008 to 30.9.2009 as duty period and decision was to be taken in future. However, it is material to note that in reinstatement order or in any other order, there is no specific mention that the period shall be treated as suspension period.

11. Rule 71 of Rules 1981 deals with regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside by a Court of law and such Government servant is reinstated. The said rule reads as under: -

71. Regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside by a Court of law and such Government servant is reinstated.-

(1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2) (a) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 70, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsorily retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period which in no case

shall exceed Sixty days from the date on which the notice has been served, as may be specified in the notice :

Provided that any payment under this sub-rule to a government servant [other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)] shall be restricted to a period of three years immediately preceding the date on which the judgment of the Court was passed or the date of retirement on superannuation of such Government servant, as the case may be.

(b) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court, shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 70.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal,

removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his re-instatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the pay and allowances admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.”

12. In this case, the competent authority has not taken specific decision and in fact, it ought to have taken the

decision as to whether the applicant shall be entitled to house rent allowance or not? In fact, when the order of dismissal has been set aside by the Tribunal and the applicant has been reinstated and has been paid all his legitimate dues, there was absolutely no reason as to why the applicant was not given house rent allowance. The result of the reinstatement is that the dismissal order has been set aside and the applicant is presumed to be in service and, therefore, in such circumstance, there is absolutely no reason as to why the decision to pay house rent allowance was not taken by the competent authority. The order of reinstatement dated 24.9.2009, which is at page-29 (Exhibit 'C') is silent on the following aspects:

- (i) Whether the applicant has been reinstated with all benefits like TA, DA, HRA etc.?
- (ii) It is not specifically mentioned as to whether he will be entitled to HRA?
- (iii) Whether the period of the applicant from the date of dismissal till the date of reinstatement shall be treated as duty period?

It was duty of the respondents to regularize the said period immediately. Now looking to the fact that the applicant has already died during the pendency of the present Original Application and his legal heirs had persuaded the present Original Application, it is expected that the respondent authorities shall take immediate decision on the issue and shall intimate the applicant accordingly and shall pay the allowances, if any to the applicant's heirs within stipulated period.

13. In view of the above, I pass the following order: -

ORDER

- (i) The present Original Application is partly allowed.
- (ii) Respondent No. 2 is directed to take decision to pay the house rent allowance to the applicant from 19.6.2008 till the date of applicant's reinstatement in the service as per the provisions of law. Such decision shall be taken within 2 months from the date of this order and shall communicate to the LRs of the deceased employee in writing.

- (iii) The arrears of the house rent allowance, as admissible, shall be paid to the LRs of the applicant within further a period of 2 months from the date of such decision.
- (iv) Accordingly, the present Original Application stands disposed of with no order as to costs.

MEMBER (J)

O.A.NO. 581-2011(hdd)-2017 (Pay fixation)