

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 618 OF 2022

(Subject:- Suspension Period)

DISTRICT:-BEED

Shivaji Maroti Palepad)
Age : 58 Years, Occ. Service as Naib Tahsildar))
R/o: Laxmi Colony, Old Ausa Road,))
Latur Tq. & Dist. Latur.))
Mo: 9404271942) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
(Through its Secretary,)
Revenue Department))
Mantralaya, Mumbai-32.))
2. **The Divisional Commissioner**)
Aurangabad, Division Aurangabad.) **RESPONDENTS**

APPEARANCE : Shri Avinash Khedkar, learned Counsel
for the applicant.
: Smt. Deepali S. Deshpande, learned
Presenting Officer for the respondent
authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **18.12.2023.**

PRONOUNCED ON : **08.01.2024.**

ORDER

Heard Shri Avinash Khedkar, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities.

2. By this Original Application, the applicant is challenging the order dated 13.06.2022 (Annexure 'A-8') passed by the Divisional Commissioner Aurangabad, Division Aurangabad rejecting thereby the claim for continuity of service for the period of 02.08.2019 to 12.05.2020 and pay and allowances of the suspension period.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant is working as Naib Tahsildar at Tahsil Office Shirur (Kasar) Tq. Shirur, Dist. Beed. In view of registration of crime No. 202/2019 dated 16.05.2019 under Section 12 of the Prevention of Corruption Act, 1988 at police station Shivaji Nagar, Latur wherein the applicant was arraigned as an accused No.2, the respondent No. 2 has suspended the applicant vide suspension order dated 02.08.2019 w.e.f. the same date. In view of same the applicant remained suspended for the period of 02.08.2019 to

12.05.2020 i.e. for the period of 9 months. Thereafter, the respondent No. 2 i.e. the Divisional Commissioner Aurangabad, Division Aurangabad has reinstated the applicant in service vide order dated 12.05.2020 (Annexure 'A-2).

(ii) In the meanwhile the charge sheet came to be filed against the applicant and another accused and the trial was commenced before the Special Judge, Latur. However, the applicant has filed the discharge application under Section 227 of Code of Criminal Procedure and after considering the submissions made on behalf of the applicant the learned Judge of the trial Court was pleased to discharged the applicant for the offence punishable under Section 12 of the Prevention of Corruption Act, 1988 in connection with Special Case (ACB) No. 03 of 2020 vide order below Exh. 16 dated 23.04.2021. Learned Judge of the Trial Court has observed that the charge as levelled against the applicant is not at all made out as the basic ingredients of the offence under Section 12 of the Act, 1988 are not attracted. The said copy of order is marked as document 'Annexure 'A-3'.

(iii) Further the applicant was also served the charge sheet as per the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (Annexure 'A-4' collectively). The applicant has also submitted his reply (Annexure 'A-5').

(iv) After taking into consideration the reply submitted by the applicant and the documents/communications on record the enquiry officer/ Divisional Commissioner Aurangabad was pleased to exonerate the applicant from all the charges vide order dated 04.02.2022 (Annexure 'A-6').

(v) Thereafter, as per Rule 72 (5) of the Maharashtra Civil Services (joining time, foreign service and payment during suspension, dismissal and removal) Rules, 1981 (hereinafter referred as 'Rule, 1981') the applicant was again informed and called upon to submit explanation for the proposal in respect of the continuity of service of said suspension period. The applicant has submitted his reply dated 29.04.2022. However, without considering the reply filed by the applicant, the respondent No. 2 i.e. the Divisional Commissioner Aurangabad, Division Aurangabad has rejected the claim for suspension period be treated as a period spent on duty and also rejected the claim of suspension subsistence allowance

and granted only 50% of amount for first 3 months and thereafter 75% to the extent of retirement only. Hence, this Original Application.

4. Learned counsel for the applicant submits that even though the applicant came to be discharged in connection with the said Special Case (ACB) No. 03 of 2020 by the Special Court and also exonerated from all the charges levelled against the him in the departmental enquiry, indirectly the applicant was punished by the respondent No.2 by passing the aforesaid order without any valid reason.

5. Learned counsel for the applicant submits that in terms of the Rule 72 (3) & (4) of Rules 1981, the period of suspension of the applicant required to be treated as period spent on duty with full pay and allowances from the date he would have been entitled. Learned counsel for the applicant submits that the Original Application deserves to be allowed by setting aside the order dated 13.06.2022 (Annexure 'A-8') passed by the respondent No.2 i.e. the Divisional Commissioner Aurangabad, Division Aurangabad.

6. The respondent No. 2 has filed the affidavit in reply and denied the contention raised in the application.

Learned Presenting Officer submits that the applicant was remained under suspension for the period of 02.08.2019 to 12.05.2020 i.e. for nine months and thereafter the respondent No.2 by order dated 12.05.2020 reinstated the applicant in service.

7. Learned P.O. submits that in view of registration of crime against the applicant the respondent No. 2 has passed the suspension order which cannot be said to be wholly unjustified. Further on the basis of registration of aforesaid crime, the Collector, Latur has forwarded the departmental enquiry proposal to respondent No.2 on 11.03.2020 and during pendency of the said departmental inquiry against the applicant, the Special Judge Latur by order dated 23.04.2021 discharged the applicant for the offence punishable under Section 12 of Prevention of Corruption Act, 1988. Thereafter the respondent No.2 has issued memorandum of remaining charges to the applicant under Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 on 07.10.2021 and after considering the defense submitted by the applicant, the respondent No.2 by order dated 04.12.2022 exonerated the applicant from departmental enquiry.

8. Learned P.O. submits that thereafter the applicant has approached the respondent No.2 and requested that since he has been exonerated, he should be paid the pay and allowances during said suspension period. Thereafter, the respondent No.2 had considered the explanation submitted by the applicant and having due regard of the Rule 72 (5) of Rules, 1981 and G.R. dated 24.12.198, rejected the claim of the applicant seeking suspension period to be treated as period spent on duty and further directed that the said suspension period be declared as suspension period and only for the sole purpose of retirement, the said period was regularized as duty period and 50% of pay and allowances stated to be admissible to the applicant for the first three months and 75 % of the subsequent period.

9. Learned P.O. submits that in terms of the ratio laid down by the Hon'ble Supreme Court in a case **Krishnakant Raghunath Bibhavnekar Vs. The State of Maharashtra and Ors. reported in (1997) 3 SCC 636** the respondent No.2 has passed the aforesaid order. The learned P.O. submits that there is no merit in the Original Application and the same is liable to be dismissed.

10. The applicant has filed the affidavit in rejoinder and learned counsel appearing for the applicant has placed his reliance on following three cases:-

(i) Writ Petition No. 1649 of 2006 in a case Khairunnissa Rasool Golandaj Vs. State of Maharashtra

(ii) O.A.No. 561 of 2020 in a case Namdeo Dhondiba Pawar Vs. The Chief Conservator of Forest (Regional)

(iii) Writ Petition No. 7366 of 2019 in a case Nagnath S/o Maloji Shinde Vs. The State of Maharashtra & Ors.

11. It is not disputed that the applicant came to be discharged in connection with the Special Case (ACB) No. 03 of 2020 for the offence punishable under Section 12 of Prevention of Corruption Act, 1988 by the learned Special Judge, Latur vide order dated 23.04.2021 (Annexure 'A-3') and the applicant was also exonerated in the departmental enquiry by respondent No.2 by order dated 04.02.2022 (Annexure 'A-6'). It is to be mentioned here that during pendency of the said departmental enquiry the applicant came to be discharged in connection with the said criminal case and as such, the charges levelled against him in connection with the said allegations in the departmental

enquiry came to be deleted. Thus only substantive charge for which the applicant has faced the departmental enquiry is that despite the additional charge was given to the applicant as Naib Tahsildar (Supply) he has not performed his duties diligently.

12. It is further appears that the enquiry officer has called the report of Collector office Latur to confirm whether the applicant was given additional charge of Naib Tahsildar (Supply) at Latur during the said period and in response to be same, the office of Collector Latur has informed that the applicant was not served with the order of the additional charge of Naib Tahsildar (Supply) kept with him. Thus the enquiry officer has concluded that the applicant is not responsible for the allegations made in connection with the said additional charge and thus exonerated him from the departmental enquiry.

13. Rule 72 of Rules, 1981 deals with the reinstatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty. Rule 72 of the Rules, 1981 reads as:-

“72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty.”-(1)

When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order –

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the presentation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would

have been entitled had he not been suspended, 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, as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the of the disciplinary or court proceedings, any order passed under sun-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) or sub-rule (5), as the case be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose. Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note.- The order of the competent authority under preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of temporary Government servant: and
- (b) leave of any kind in excess of five years in the case of permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sun-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 68.”

14. In terms of sub-rule (1) of Rule 72, the authority competent to order reinstatement shall also consider and make a specific order regarding the pay and allowances to be paid to the Government servant for the period of suspension

and whether or not the said period shall be treated as a period spent on duty. In terms of sub-rule 3 of Rule 72 the authority competent is of the opinion that the suspension is wholly unjustified, the Government servant shall be paid the full pay and allowances to which he would have been entitled, had he not been suspended and in terms of sub-rule (4) of Rule 72, the case falling under sub-rule (3), the said period of suspension shall also be treated as period spent on duty for all purposes. In terms of sub-clause 5 of Rule 72 in cases other than those falling under sub-rules (2) and (3), the Government servant shall be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, as the competent authority may determine.

15. In the case in hand as discussed in the aforesaid paragraphs, no case has been made out against the applicant for the offence punishable under Rule 12 or Prevention of Corruption Act, 1988 and learned Special Judge in connection with Special Case (ACB) No. 03 of 2020 has discharged the applicant. Further on the basis of the report submitted by the Collector, Latur stating therein that the order of additional charge of Naib Tahsildar (Supply) was not

served on the applicant, the applicant came to be exonerated in the departmental enquiry. In view of same, in terms of the provision of Rule 72 (3), it was incumbent upon the competent authority to form an opinion as to whether the suspension was wholly unjustified or not.

16. In the given set of facts which are undisputed, it can be concluded that the suspension order as passed against the applicant by the respondent No. 2 was wholly unjustified. Thus the case of the applicant squarely falls under the provision of sub-rules (3) and (4) of Rule 72 and the respondent No.2 ought to have been paid full pay and allowances to the applicant of the said suspension period and also ought to have been treated the suspension period as the period spent on duty for all the purposes.

17. In a case **Khairunnissa Rasool Golandaj Vs. State of Maharashtra** relied upon by learned counsel for the applicant in paragraph Nos. 29 and 30 the Hon'ble High Court of Bombay has made the following observations.

“29. It is settled principle of law that when the Disciplinary Authority has failed to bring home the charges and there was no basis whatsoever to hold that the charges against the deceased employee were proved, there was no question of such punishment to be imposed on the deceased employee. The Supreme Court in its decision in the case 'State of West Bengal & Others Vs. Bata Krishna Burman, (1970(3)

Supreme Court Cases 612)" has held that if the charges as levelled against the employee are not proved, the consequence would be that the employee cannot be held guilty of any misconduct and that being so one would failed to understand as to how the order of suspension and only payment of subsistence allowance as disciplinary measure can at all be passed.

30. In a recent judgment the Supreme Court in the case of "Sharda Singh Vs. State of Uttar Pradesh and others" reported in "(2009) 11 Supreme Court Cases 683" in the context of suspension and regularisation of suspension period concerning the appellant-employee in that said case, the Supreme Court has made the following observations:-

"12. It seems to us that the view taken by the High Court cannot be sustained. The Court while declining to set aside the order dated 13.9.2004 passed by the District Magistrate, Sitapur could have sustained the order passed by relying on the rules which govern the parties to the lis and in the alternative on the legal principles evolved by this Court. This appears to be not even attempted by the High Court. We say so for the reason that a government servant exonerated of the charges framed against him cannot be deprived of any portion of his pay for the period of suspension. ([See State of W.B.vs Bata Krishna Burman](#)).

13. Then again there could be a rule or regulation which may provide that during the period of suspension an employee would be entitled only for suspension allowance, dehors the ultimate result of the enquiry proceedings. This grey area either should have been determined by the Court or should have asked the authorities to determine the claim with reference to the prevailing rules/regulations."

18. In view of above observations, in paragraph No. 32 the Division Bench of Hon'ble High Court of Bombay has disposed of the said Writ Petition with the following direction.

" 32. In view of the aforesaid discussion, we direct the respondents to regularise the suspension period of the deceased employee from 27.10.1965 to 21.12.1967 and

grant all the benefits in regard to the said period to the Petitioner by calculating all the monetary/pensionary benefits to the petitioner within a period of four weeks. Taking into consideration the pain, agony and harassment as suffered by the petitioner, we direct the respondents to pay to the petitioner costs quantified at Rs.50,000/- (Rupees Fifty thousand only) to be paid within a period of four weeks.”

19. In a case **Namdeo Dhondiba Pawar Vs. the Chief Conservator of Forest (Regional)** relied upon learned counsel for the applicant in paragraph Nos. 8 & 10 this Tribunal has made following observations:-

“8. Learned Advocate for the applicant strenuously urged before me that once the applicant is acquitted in the criminal case on the basis of which he was put under suspension and when there is no disciplinary proceeding against the applicant, the applicant would be entitled for full benefits of pay and allowances under Sub-rule (3) of the Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. In this regard, he placed reliance on the citation of the Hon'ble Supreme Court reported in **1984 AIR (Supreme Court) 380** in the matter of **Brahma Chandra Gupta Vs. Union of India in Civil Appeal No. 730 of 1978**, dated 29.11.1983. In the said citation case, the appellant was suspended pending criminal prosecution. He was convicted in the said criminal case by Trial Court but he was acquitted in appeal. After conviction, he was dismissed from the service, but after acquittal, he was reinstated in service, but was given pay and allowances for the suspension period only to the extent of 75%. It is held that the appellant never hauled up for departmental enquiry. He was acquitted in judicial proceeding. In these circumstances, the appellant was entitled for full salary on reinstatement for the suspension period.

10. It is a fact that no Departmental Enquiry initiated against the applicant in respect of suspension. The applicant faced only criminal prosecution, in which the applicant is acquitted and no appeal is preferred by the State against the said order of acquittal. In these circumstances, the impugned order issued by the respondent dated 17.03.2020 (Annexure A-3) is not legal and proper and is not sustainable in the eye of law. The citation relied upon by the learned Advocate for the applicant would be aptly applicable in the instant case.

20. In a case **Nagnath S/o Maloji Shinde Vs. The State of Maharashtra & Ors. Writ Petition No. 7366/2019** the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad, in the similar set of facts in paragraph No. 4 has made the following observations.

“ 4. We find that both the objections are stated only to be rejected. It is settled law that once an employee is exonerated in the disciplinary proceedings, during pendency of which he is placed under suspension, the suspension period is required to be treated as duty for all purposes. On account of the appellate authority setting aside the penalty order, the petitioner is deemed to have been exonerated in the disciplinary proceedings. Therefore, the suspension period is required to be treated as duty for all purposes.”

21. In view of above discussion the applicant would be entitled for full pay and allowances under sub-rule 3 of Rule 72 of Maharashtra Civil Services (joining time, foreign service and payment during suspension, dismissal and removal)

Rules, 1981 and the period of suspension shall also required to be treated as period spent on duty for all the purposes in terms of sub-rule (4) of said Rule 72 of Rule 1981. Hence, the following order:-

ORDER

- (A) The impugned order dated 13.06.2022 passed by the respondent No.2 i.e. Divisional Commissioner Aurangabad, Division Aurangabad is hereby quashed and set aside.
- (B) The respondent No.2 is hereby directed to treat the suspension period of the applicant from 02.08.2019 to 12.05.2020 as a period spent on duty for all the purposes in terms of sub-rule (4) of Rule 72 of Maharashtra Civil Services (joining time, foreign service and payment during suspension, dismissal and removal) Rules, 1981.
- (C) The respondents are also directed to pay the full pay and allowances of the suspension period to the applicant within stipulated time in terms of sub-rule (3) of Rule 72 of Maharashtra Civil Services (joining time, foreign service and payment

during suspension, dismissal and removal) Rules, 1981.

(D) In the circumstances there shall be no order as to costs.

(E) The Original Application stands disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 08.01.2024

SAS O.A. 618/2022 (S.B.) VKJ suspension period