

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.433 OF 2020
(Subject:- Suspension Period/ Pay & Allowances)**

DISTRICT:-AURANGABAD

Ajay S/o Rajendra Lahot,)
Age:- 26 years, Occ. Service as Sweeper,)
R/o. Chota Murlidhar Nagar,)
Osmanpura, Rly, St. Road,)
Aurangabad.)....**Applicant**

V E R S U S

- 1. The State of Maharashtra,**)
Through: The Secretary,)
Home Department,)
Mantralaya, Mumbai -32)
- 2. The Director,**)
Directorate of Forensic Laboratory)
Vidyanagri, Kalina (Santakruj) East,)
Maharashtra State, Mumbai-40098.)
- 3. The Dy. Director,**)
Regional Forensic Science Laboratory,)
Nijam Bunglow Campus,)
Cantonment, Aurangabad.)...**Respondents**

APPEARANCE : Shri K.B. Jadhav, learned Advocate for
the Applicant.
: Shri V.R. Bhumkar, learned Presenting
Officer for the Respondent.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **12.01.2022**

O R D E R

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed seeking the relief of regularization/ treating the suspension period of the applicant from 10.08.2018 to 22.07.2019 as duty period by directing the respondent No.2 to consider and decide the representation dated 24.09.2019 (Annex. 'A-6') made by the applicant in this regard and also granting pay and allowances for the said period.

2. **The facts in brief giving rise to this application can be summarized as follows:-**

- (i) The applicant was initially appointed on 23.03.2014 as a Sweeper. While working on the post of Sweeper in the office of respondent No.3 i.e. Deputy Director, Regional Forensic Science Laboratory, Aurangabad, one Crime No.93/2018 under Section 452, 354, 326, 324, 323, 504 and 34 of Indian Penal Code was registered against the applicant and his family members in the Osmanpura Police Station, Aurangabad.
- (ii) In view of same, the respondent No.2 i.e. the Director, Directorate of Forensic Science, Laboratory, Mumbai issued suspension order dated 10.08.2018 (Annex. 'A-1'), suspending the applicant with retrospective effect

from the date of registration of crime i.e. on 17.07.2018. Cross complaint was also made on the other side in respect of said incident.

- (iii) It is further contended that both the parties decided to settle the dispute. Accordingly, the applicant and his family members filed Criminal Application No.2479/2018 and opposite party filed Criminal Application No.2477/2018 before the Hon'ble High Court of Judicature at Bombay bench at Aurangabad. The Hon'ble High Court vide order dated 01.10.2018 (Annex. 'A-2') was pleased to quash and set aside the Crime No.93/2018 registered against the applicant and his family members subject to deposit of the amount of Rs.25,000/- (Twenty five thousand). Similar order was also passed quashing and setting aside the crime no.96/2018 registered against the opposite party under Section 452, 354, 324 and 34 etc. of Indian Penal Code.
- (iv) In view of above, the applicant made representation dated 22.10.2018 (Annex. 'A-3') to the respondent No.3 for revocation of suspension order dated 10.08.2018 on the ground that crime registered against him was quashed and set aside by the Hon'ble High Court by order dated 01.10.2018. However, the respondent Nos.2 and 3 have not taken any decision on the said representation. No departmental enquiry is initiated against the applicant in that respect. No criminal case or crime is pending against the

applicant. The crime registered against the applicant and his family members is already quashed and set aside by the Hon'ble High Court. Therefore, the applicant filed Original Application No.607/2019 before this Tribunal challenging the suspension order dated 10.08.2018 (Annex. 'A-1').

- (v) This Tribunal by order dated 08.07.2019 (Annex. 'A-4') allowed the said Original Application and directed to take decision of continuation of the suspension of the applicant. Pursuant to that, the respondent No.2 vide order dated 19.07.2019 (Annex. 'A-5') revoked the suspension of the applicant and the respondents were directed to reinstate the applicant in service. At that time, the respondent No.3 directed the applicant to submit undertaking that in future he will not do any illegal act. The applicant submitted the undertaking dated 22.07.2019 to the respondent No.3. The respondent No.3 issued order dated 22.07.2019 and reinstated the applicant in service. The applicant joined the service on 22.07.2019 but the suspension period was not regularized by the respondents. Hence, the applicant submitted representation dated 24.09.2019 (Annex. 'A-6') to the respondent No.2 requesting to regularize the suspension period from 10.08.2018 to 22.07.2019 and to consider the said period as duty period and to grant him pay and allowances for the said period. The respondents however, have not taken any decision on the said

representation till date. Hence, this Original Application.

- (vi) It is contended that as the criminal application filed against the applicant is quashed and set aside, the applicant is entitled for the benefit of regularization of suspension period as duty period and requisite pay and allowances for the period of suspension from 10.08.2018 to 22.07.2019 in accordance of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 to 3 by one Shri Rajendra Ramchandra Mavle presently working as Deputy Director, Regional Forensic Science Laboratory, Aurangabad. The factual aspect of the matter as contended by the applicant from the period of 10.08.2018 i.e. the date of registration of crime till dated 22.07.2019 when the applicant was reinstated and joined the service is admitted. It is also admitted that in respect of said matter, no departmental enquiry was initiated against the applicant. According to him, the representation dated 24.09.2019 made to the respondent No.2 is under consideration. It is however, stated that work of the applicant is not satisfactory and therefore, the respondent issued show cause notices dated 20.07.2016 and 30.11.2019 (Annex. 'R-1' collectively) to the applicant about his misbehavior while working in the office. In these circumstances, the Original Application is liable to be dismissed.

4. Affidavit-in-rejoinder is filed by the applicant denying the adverse contentions raised against him in the affidavit-in-reply and reiterating that he is entitled for benefits under Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 which deals with 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. Sub Rules 1 and 6 of the said Rule which would be relevant for the purpose of decision in the matter is as follows:-

“(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.

.....

(6) Where suspension is revoked pending finalization 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) or (5), as the case may be.”

5. In the background of the abovesaid Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, if the facts of the present case are considered undisputedly, the respondent No.2 suspended the applicant vide order dated 10.08.2018 (Annex. 'A-1') with retrospective effect from 17.07.2018, the date on which the crime No.93/2018 was registered under Section 452, 354, 324, 323, 504 and 34 of I.P.C. against the applicant and his family members. In respect of very incident, crime No.96/2018 under Section 452, 354, 323 and 34 of I.P.C. was registered against the opposite party. Both the crimes were quashed and set aside by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad by order dated 01.10.2018 (Annex. 'A-2') filed by both the parties being Criminal Application No.2477 of 2018 filed by opposite party and Criminal Application No.2479 of 2018 filed by the applicant and his family members. Undisputedly, no departmental enquiry is initiated in respect of said event against the applicant. However, undisputedly, the respondent No.2 vide order dated 19.07.2019 (Annex. 'A-5') revoked the suspension of the applicant and reinstated him in view of order dated 08.07.2019 passed by this Tribunal in O.A.No.607/2019 (Annex. 'A-4') as well as order of the Hon'ble High Court dated 01.10.2018 (Annex. 'A-2') passed commonly in Criminal Application No.2477/2018 and in Criminal Application No.2479/2018 quashing and setting aside the crime registered against the applicant and others and also against the opposite party.

6. In such circumstances, the said revocation of suspension is under Sub Section 6 of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 as reproduced above.

7. The said order, however, does not speak of regularization of suspension period as duty period and payment of pay and allowances for the said suspension period of 10.08.2018 to 22.7.2019. It is pertinent to note that infact the order of suspension dated 10.08.2018 is with retrospective effect from 17.07.2018 when the crime was registered against the applicant and others.

8. It is a fact that the applicant made representation dated 24.09.2019 (Annex. 'A-6'), seeking relief from the suspension period and grant of pay and allowances thereof. Perusal of order dated 19.07.2019 (Annex. 'A-5') revocation of suspension and reinstatement of the applicant would show that there is no mention of regularization and grant of pay and allowances of the suspension period. In the said order no adverse observation is made against the applicant that he is not entitled for the said relief as contemplated under Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. It is the contention of the respondents in the affidavit-in-reply that the said representation dated 24.09.2018 made by the applicant is still under consideration. However, on other hand it is also pleaded on behalf of the respondents that show cause notices dated 20.07.2016 and 30.11.2019 (Annex. 'R-1' collectively) were

issued to the applicant about his misbehavior while on duty and therefore, he is not entitled for the same.

9. However, perusal of both these show cause notices would show that the same are not concerning the reason behind the suspension of the applicant vide order dated 10.08.2018 (Annex. 'A-1'). The reason behind the suspension is the registration of crime No.93/2018 against the applicant and his family members under Section 452, 354, 326, 324, 323, 504 and 34 of I.P.C. However, the said crime is quashed and set aside by the Hon'ble High Court. In view of the same, contention raised in the affidavit-in-reply for resisting the application is misconceived. In view of same, in my considered opinion, the respondents are under the obligation to consider the representation dated 24.09.2019 made by the applicant favorably in accordance with the Provisions of Sub Rules 1 and 6 of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 and to grant appropriate relief. I therefore proceed to pass following order:-

ORDER

- (i) The Original Application No.433 of 2020 is allowed.
- (ii) The respondents are directed to consider and decide the representation dated 24.09.2019 (Annex. 'A-6') made by the applicant in accordance with Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 to the extent of granting regularization/treating suspension period as duty

period from 10.08.2018 to 22.07.2019 and to grant requisite pay and allowances within the period of one month from the date of this order.

(iii) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad

Date :- 12.01.2022

SAS. O.A.No.433/2020. Suspension Period/Pay & Allowances