

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 584 OF 2022**

**(Subject:- Minor Punishment)**

**DISTRICT:-NANDED**

**Balaji s/o Tulshiram Kedare,** )  
Age : 50 years, Occu. Service (as Clerk, )  
Tahsil Office, Hadgaon), )  
R/o : Kadam Nagar, Dongargaon Rd., )  
Hadgaon, Dist. Nanded. )  
Mobile No.: 9552271717 )....**APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,** )  
Through its Addl. Chief Secretary,) )  
Revenue & Forest Department, )  
M.S., Manatralaya, Mumbai-32. )
- 2. The Divisional Commissioner,** )  
Aurangabad, )  
Near Collector Officer, )  
Aurangabad. )
- 3. The Collector,** )  
Nanded, Collector Office, Nanded.)**RESPONDENTS**

-----  
**APPEARANCE** : Shri A.S. Deshmukh, learned counsel  
for the applicant.  
: Shri N.U. Yadav, learned Presenting  
Officer for the respondent authorities.

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

**RESERVED ON** : **15.02.2024.**

**PRONOUNCED ON** : **06.05.2024.**  
-----

## **ORDER**

Heard Shri A.S. Deshmukh, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the impugned orders dated 04.12.2018, 08.03.2019, 10.03.2022 passed by respondents and also seeking direction to respondent No.3 to grant leave admissible to the applicant from his leave account for the period of 07.08.2016 to 27.07.2017 but for the intervening periods from 01.02.2017 to 30.04.2017 and 08.05.2017 to 15.06.2017 and further to pay consequential leave salary for that period. The applicant is also seeking direction to respondent No.3 to treat total period of suspension of the applicant from 28.07.2017 to 20.11.2017 as is duty period for all purposes and consequently to pay him full pay and allowances for that period.

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

(i) The applicant has initially entered in the service on 25.03.1996 as a Peon in Group-D/Class-IV category of State

Service and he has entered the in the cadre of Clerk in Group -C/Class-III category on 01.02.2000 and since then he is working therein and is presently posted in the Tahsil Office at Hadgaon in Nanded District.

(ii) It is the further case of the applicant that in early 2017 i.e. on 17.01.2017, the respondent No.3 was pleased to issue a Memorandum of Charge under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as "Rules, 1979") initiating thereby a Departmental Enquiry (in short "D.E.") against the applicant. Neither before nor at the time of initiation of said D.E., the applicant was placed under suspension by the respondent No.3. However, it was after more than six months from the date of initiation of D.E. on 28.07.2017 the applicant was placed under suspension by respondent No.3. As such, the period of applicant's suspension began from 28.07.2017 and the said D.E. has been initiated against the applicant on the basis of alleged dereliction of duty by unauthorized absence from duty and neglecting the work.

(iii) It is the further case of the applicant that by order dated 17.11.2017 passed by the same authority, his suspension

was revoked. In pursuance thereto the applicant had joined back the duty on 21.11.2017. As such, the total period of the applicant's suspension was from 28.07.2017 to 20.11.2017. The applicant was not paid the subsistence allowance during the said period.

(iv) It is the further case of the applicant that the D.E. against him was initiated by the respondent No.3 by appointing an Enquiry Officer, who in turn has submitted his Enquiry Report to respondent No.3 on 13.10.2017. Thereafter, on 16.11.2017 the respondent No.3 had issued a Memo supplying copy of Enquiry Report to him and directed him to submit his reply thereto, which was submitted by the applicant on 28.12.2017. Thus on 02.02.2018, the respondent No.3 was pleased to issue an order imposing minor punishment of withholding of applicant's next increment for two years without affecting his future increments. The applicant did not challenge the said order of punishment imposed upon him by respondent No.3. However, fact remained that the applicant was not paid the subsistence allowance during the total period of his suspension.

(v) It is the further case of the applicant on 19.03.2018 the applicant has submitted an application to respondent No.3 urging therein that his period of suspension be treated as his duty period and the period of his absence from duty from 07.08.2016 to 27.07.2017 be sanctioned as leave. However, the respondent No.3 was pleased to issue a notice to him on 01.06.2018 that as to why the total period of his suspension should not be treated as under suspension and period of absence of to be treated as extraordinary leave. The applicant has submitted his reply on 16.08.2018. The copy of said reply is marked as Annexure 'A-5'. The applicant in detail pointed out as to how and why the total period of his suspension is required to be treated as duty period and his absence period may also require to be sanctioned as leave, which was balance in his leave account. However, the respondent No.3 was pleased to issue an impugned order dated 04.12.2018 directing thereby that the absence of the applicant from duty from 07.08.2016 to 27.07.2017 was converted into his extraordinary leave and that the period of his suspension from 28.07.2017 to 20.11.2017 was treated as suspension period itself and that he would not be entitled for

any pay and allowances for that period. The said order is marked as Annexure 'A-6'.

(vi) It is the further case of the applicant that being aggrieved by the same, the applicant has preferred the departmental appeal before the respondent No.2 on 31.12.2018 and by order dated 08.03.2019 the respondent No.2 has dismissed the appeal filed by the applicant. Being aggrieved by the aforesaid order of dismissing appeal, the applicant has preferred the Revision Application/II Appeal before the respondent No.2 on 29.07.2021 and the respondent No.1 through the Hon'ble Revenue Minister had decided the said appeal and by impugned order dated 10.03.2022 rejected the same. Hence, this Original Application.

4. Learned counsel for the applicant submits that the applicant was not paid the subsistence allowance during the whole period of his suspension i.e. from 28.07.2017 to 20.11.2017. In view of same, the very order of punishment dated 02.02.2018 issued by the respondent No.3 is rendered untenable and unsustainable. Learned counsel for the applicant submits that it is true that the applicant has not

challenged the order of punishment dated 02.02.2018 and suffered the same, however, it did not permit the respondent No.3 to reach the conclusion that applicant's suspension was justified and therefore, the suspension period could not be treated as his duty period.

5. Learned counsel for the applicant submits that the impugned order dated 04.12.2018 is also with regard to the absence of the applicant from duty from 07.08.2016 to 27.07.2017. The respondent No.3 has however, lost sight of important aspect that the applicant was infact on duty from 01.02.2017 to 30.04.2017 and from 08.05.2017 to 15.06.2017 at Tahsil Office, Dharmabad on the post of Revenue Assistant and not only that the applicant had worked during the said period but he was even paid salary for that period by the Tahsil Office, Dharmabad. Learned counsel for the applicant has pointed out the said communication issued by the Tahsildar, Dharmabad dated 14.03.2022 (Annexure 'A-7'). In view of the said communication, the alleged absence on duty of the applicant for the said period from 07.08.2016 to 27.07.2017 is rendered factually incorrect. Learned counsel for the applicant submits that the said period indicating that the applicant was

on duty, should not have been included by the respondent No.3 in the total period of absence of the applicant from 07.08.2016 to 27.07.2017.

6. Learned counsel for the applicant submits that apart from this, the remaining period of the applicant's absence from duty could not have been legally treated as applicant's extraordinary leave because in view of the provisions of Rule 63 of the Maharashtra Civil Services (Leave) Rules, 1981 when the applicant did have balance admissible leave in his leave account and furthermore he had not himself given in writing that the period of his absence from duty be treated as extraordinary leave. It was not open, legal and permissible for the respondent No.3 to direct under the impugned order that the said remaining period of applicant's absence from duty be treated as his extraordinary leave. Learned counsel for the applicant in this context further submits that Sub Rule (6) of Rule 63 of the M.C.S. (Leave) Rules, 1981 appears to be contrary to Sub Rule (1) of Rule 63 of the M.C.S. (Leave) Rules, 1981. In terms of Sub-Rule (1) of Rule 63 of M.C.S. (Leave) Rules, 1981 the extraordinary leave is permissible in special circumstances (a) when no other leave is admissible; (b) when other leave is



admissible but the Government servant applies in writing for the grant of extraordinary leave. Whereas Sub-Rule (6) permits the competent authority to grant leave may commute retrospectively periods of absence without leave into extraordinary leave.

7. Learned counsel for the applicant submits that due to failure of respondent No.3 to pay subsistence allowance to the applicant during the whole period of his suspension only renders the basic action of suspension and consequential punishment imposed thereafter void ab-initio and illegal pre-se. Further, the impugned order passed by respondent No.3 treating the said period of applicant's suspension as under suspension and not entitled for any pay and allowances for that period is liable to be quashed and set aside with the further directions to the respondent No.3 to treat the whole period of the applicant's suspension as his duty period and pay him pay and allowances for that period.

8. Learned counsel for the applicant submits that the departmental appellate authority have also not considered the said aspect in terms of the provisions contained in Rule 63 and 68 of the Maharashtra Civil Services (Leave) Rules, 1981

and Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 respectively. Learned counsel for the applicant thus submits that the Original Application deserves to be allowed in terms of its prayer clauses.

9. Learned counsel for the applicant in order to substantiate his contention placed reliance in a case **M. Paul Anthony Vs. Bharat Gold Mines Limited**, reported in 1999 DGLS (SC) 368.

10. On the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 learned Presenting Officer submits that the applicant who was working as a Clerk (Revenue Assistant) at Tahsil Office, Hadgaon came to be transferred to Tahsil Office, Dharmabad vide order dated 31.05.2016. However, the applicant had joined Tahsil Office, Dharmabad on 30.07.2016 i.e. after two months from the date of order of transfer and he did not bother to inform about delay in joining the office to the concerned authority. Learned P.O. submits that next day i.e. 31.07.2016 was holiday and the day after was Revenue Day. Therefore, the applicant did not come to office until 04.08.2016. On 04.08.2016, the applicant left

the office giving the reason that he had to hand over the charge of Government foodgrain godown, Hadgaon. The next two days he remained absent from work without permission. Learned P.O. submits that subsequently the applicant has sent an unsanctioned medical leave application for the period from 07.08.2016 to 31.08.2016 through post. Further the applicant neither intimated his office about his absence nor attended the office more than a month even after the end of period of his unsanctioned medical leave on 01.09.2016. Subsequently, on 06.09.2016, Tahsildar, Dharmabad issued the first notice seeking explanation for his absence from duty since 05.08.2016 without prior permission. The said notice was served on the applicant on 12.09.2016 through Tahsildar, Dharmabad and on 29.09.2019 through Tahsildar, Hadgaon. The applicant had never replied to this notice. As the absence of the applicant was affecting the work and causing inconvenience to public on 30.06.2016, Tahsildar, Dharmabad has requested the respondent No.3 to initiate disciplinary action against the applicant. Thus competent authority i.e. Collector, Nanded has issued a show cause notice to the applicant for his unauthorized leave and willful absence from office vide office letter dated 05.10.2016.

11. Learned Presenting Officer submits that the applicant has submitted his reply on 26.10.2016 to the said show cause notice dated 05.10.2016 stating therein that his health was deteriorating and he was advised to take rest for one more month by the Medical Superintendent, Sub-District Hospital, Hadgaon, Dist. Nanded. Therefore, considering applicant's continuous absence from the office on allegedly medical grounds, the respondent authority directed him under Rule 40 (1) (b) of the Maharashtra Civil Services (Leave) Rules, 1981 to appear before medical examination before Medical Board at Dr. Shankarrao Chavan Government Medical College and Hospital, Vishnupuri, Nanded vide the office letter dated 18.11.2016. Accordingly, the applicant had appeared before the said Medical Board 28.12.2016. Subsequently, the Medical Board had communicated to the office regarding the health report of the applicant vide letter dated 02.01.2017 and as per the said report, the applicant could not be recommended for previous leave on medical grounds.

12. Learned Presenting Officer submits that it is clear that the applicant was healthy and not suffering from any

health issue during the period of his absence from office allegedly on medical grounds as the Medical Board found it unwarranted to advise him to take leave on medical grounds for the period of his absence. Thus, the respondent No.3 had issued the memorandum and charge sheet to the applicant underlining charges (i) delay in joining the new office after transfer, (ii) giving no reply to show cause notice dated 06.09.2016 issued by Tahsildar, Dharmabad; and (iii) unauthorized leave and absence from work without intimation to the office.

13. Learned Presenting Officer further submits that the applicant returned to the Tahsil Office, Dharmabad on 23.01.2017 i.e. after remaining absent in office from 05.08.2016 to 22.01.2017. Subsequently, he replied to the said charge sheet on 04.02.2017 stating therein that he was on leave on medical ground. The defence is contrary to the findings recorded by the Medical Board. The reply was not satisfactory. Therefore, the respondent No.1 i.e. the Collector, Nanded appointed Shri S.P. Thakur as an inquiry officer vide order dated 23.03.2017 and accordingly, initiated Departmental Enquiry against the applicant for breach of service Rules.

14. Learned Presenting Officer submits that the applicant has attended the office about one to one and half month only between 23.01.2017 to 02.04.2017 and went on earned leave for the period from 03.04.2017 to 30.04.2017. Later on, he resumed his office, however, from 16.06.2017 to 30.06.2017, he remained absence from office without permission. Learned Presenting Officer submits that the applicant's habitual absence was affecting the office work and therefore, the Tahsildar, Dharmabad has sent second proposal requesting for disciplinary action against the applicant vide order dated 30.06.2017. Eventually, the applicant was suspended by the respondent No.3 i.e. the Collector, Nanded vide its order dated 28.07.2017.

15. Learned Presenting Officer submits that the enquiry officer completed his Departmental Enquiry and submitted its report to the Collector, Nanded on 13.10.2017. The Enquiry Officer found the applicant guilty of the following charges which were proved against the applicant at the end of enquiry:-

- (i) delay in joining the new office after transfer.
- (ii) No reply to show cause notice dated 06.09.2016

issued by Tahsildar, Dharmabad.

- (iii) Absence from work without intimation, unauthorized leave from office, willful Disobedience of the order of the superior authority and failure in discharging his functions properly.

16. Learned Presenting Office submits that the said enquiry report was served on the applicant on 16.11.2017. Later on, the applicant who was suspended was reinstated in the service subject to the final outcome of the departmental enquiry vide order dated 17.11.2017 and subsequently, the applicant had joined Tahsil Office, Bhokar on 21.11.2017. Learned P.O. submits that the District Collector, Nanded passed an order of punishment against the applicant under Rule 5 (1) (4) of the Maharashtra Civil Services (Conduct) Rules, 1979, thereby temporarily withholding one annual increment of the applicant for couple of years vide office order dated 02.02.2018.

17. Learned Presenting Officer submits that later on the applicant has submitted an application to Tahsildar, Bhokar with the request; (i) to treat applicant's suspension period from 28.07.2017 to 17.11.2017 as service period; (ii)

approve and sanction the leave for the period 08.08.2016 to 22.01.2017 and from 16.06.2017 to 28.07.2017. Learned Presenting Officer submits that as per Rule 72 (7) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, the suspension period from 28.07.2017 to 20.11.2017 is required to be treated as suspension period and no salary, allowances shall be given for the said duration/period. Further the period of unauthorized absence from 07.08.2016 to 27.07.2017 is treated as unearned leave under Rule 63 of M.C.S. (Leave) Rules, 1981. By order dated 04.12.2018, the Collector, Nanded has treated the said period of suspension as a period of suspension as per Rule 72 (7) of (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 and no salary, allowances shall be given for the said duration/period and further the said period from 07.08.2016 to 27.07.2017 of unauthorized absence from duty be treated as unearned leave under Rule 63 of the M.C.S. (Leave) Rules, 1981.

18. Learned Presenting Officer submits that being aggrieved by the same, the applicant has appealed against the said order dated 04.12.2018 before the respondent No.2 i.e.



the Divisional Commissioner, Aurangabad and by order dated 23.01.2019, the Divisional Commissioner, Aurangabad has dismissed the said appeal and upheld the order of Collector, Nanded. Further aggrieved by the said order, the applicant has filed an appeal before the Minister, Revenue and Forest, Department, Government of Maharashtra on 29.07.2021. By order dated 10.03.2022, the Minister has dismissed the said appeal and upheld the order of the Divisional Commissioner, Aurangabad.

19. Learned Presenting Officer submits that it is clear from the above facts and circumstances of the matter that the applicant had made it his habit to remain absent unauthorizedly from the office. His insincere behavior and attitude of undermining service rules has caused inconvenience to the office and general public. Thus the action taken by the respondent authorities and superior authorities is fair, impartial and in accordance with the service Rules. There is no substance in the Original Application and the same is liable to be dismissed.

20. The applicant was subjected to departmental enquiry on account of his frequent absence on duty. The

Enquiry Officer has submitted his report to the Collector, Nanded on 13.10.2017. The Enquiry Officer has found the applicant guilty of the following charges:-

- (i) Delay in joining the new office after transfer
- (ii) No reply to show cause notice dated 06.09.2016 issued by Tahsildar, Dharmabad
- (iii) Absence from work without intimation, unauthorized leave from office, willful disobedience of the order of the superior authority and failure in discharging his functions properly.

21. The District Collector, Nanded has passed an order of punishment against the applicant thereby temporarily withholding one annual increment of the applicant for a period of couple of years vide his office order dated 02.02.2018. Admittedly, the applicant has not challenged the said punishment order and the finding recorded by the Enquiry Officer and the order of punishment has attained finality.

22. The applicant was working as a Clerk (Revenue Assistant) at Tahsil Office, Hadgaon. He came to be transferred to Tahsil Office, Dharmabad vide order dated

31.05.2016. However, he joined Tahsil Office, Dharmabad after two months i.e. on 30.07.2016 from the date of order of transfer and he did not bother to explain about the delay in joining the office. After joining on 04.08.2016, the applicant left the office under the pretext that he had to hand over the charge of Government foodgrain godown, Hadgaon. Thus on next two days he remained absent from work without permission and thereafter, the applicant sent an unsanctioned medical leave application for the period from 07.08.2016 to 31.08.2016 by post. He never bothered to give intimation to his office about his absence not attended the office for more than one month even after the end of the period of his unsanctioned medical leave on 01.09.2016. Consequently on 06.09.2016, Tahsildar, Dharmabad had issued the first notice seeking the explanation about his absence from work since 05.08.2016 without prior permission. Thus the applicant has replied to the said notice. His absence from work was affecting the work and causing inconvenience to the public. Thus on 30.08.2016, the Tahsildar, Dharmabad requested the respondent No. 3 to initiate disciplinary action against the applicant. Thus the respondent No. 3 i.e. the Collector, Nanded has issued a show

cause notice to the applicant for his unauthorized leave and willful absence from office vide letter dated 05.10.2016. Though the applicant has submitted his reply explaining the reason of his absence prominently as due to health issues, the certificate issued by the Medical Board communicated to the office of respondents is contrary to the stand taken by the applicant.

23. Therefore, the respondent No.3 has issued a memorandum of charge sheet to the applicant, which was served on the applicant on 30.01.2017. The applicant returned to the Tahsil Office, Dharmabad on 23.01.2017 i.e. after remaining absent in the office from 05.08.2016 to 22.01.2017. Subsequently, the applicant has replied to the said charge sheet on 04.02.2017 reiterating his previous stand about the leave on medical ground. It is the specific case of the department that the applicant has attended the office about one to one and half month only between 23.01.2017 to 02.04.2017 and went on Earned Leave for the period from 03.04.2017 to 30.04.2017. Later on, though the applicant has resumed his office, however, from 16.06.2017 to 30.06.2017, he remained absent from office without

permission. Due to his habitual absence affecting the office work, the Tahsildar, Dharmabad sent second proposal requesting for disciplinary action against the applicant vide letter dated 30.06.2017. Eventually, the applicant was suspended by the respondent No.3 i.e Collector, Nanded its order dated 28.07.2017.

24. The facts reproduced in above two paragraph Nos. 22 and 23 are specifically pleaded in the affidavit in reply filed on behalf of the respondent Nos. 1 to 3 and the same has not been specifically denied by the applicant by filing the rejoinder.

25. In the backdrop of the aforesaid facts, the findings recorded by the Enquiry officer and the punishment which is not severe in nature as inflicted on the applicant, the question arises as to whether the suspension of the applicant was wholly justified.

26. The applicant has submitted an application to the Tahsildar, Bhokar with a request to treat his suspension period from 28.07.2017 to 17.11.2017 as service period. In terms of the provisions of Rule 72 of Rule, 1981, 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 is prescribed. So far as the aforesaid contentions raised by the applicant is concerned, the respondent No.3 i.e. Collector, Nanded has directed to treat the said suspension period of the applicant from 28.07.2017 to 20.11.2017 as the suspension period and no salary and allowances shall be paid to the applicant for the said duration/period. So far as the period of unauthorized absence from the duty which is treated and converted by the respondent authorities into the extraordinary leave is concerned, the same would be discussed in the later part of the order. However, so far as the aspect about the suspension period to be treated as suspension period and pay and allowances to be paid to the applicant for the said period of suspension, it is necessary to reproduce Rule 72 of the Rules 1981 as under.

***“72. 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.- (1) When a Government servant who has been suspended is reinstated or would have so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement 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 re-instatement 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 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 servant, 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 representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid 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 subrules (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 sunrule (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."*

27. In terms of Sub-Rule (3) of the Rule 72 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.



28. On careful perusal of the impugned order dated 04.12.2018, I find that the competent authority has rightly observed in the order that the suspension of the applicant is justified. In view of same, the applicant is not entitled for the full pay and allowance to which he would have been entitled, had he not been suspended.

29. In view of above, the cases other than those falling under sub-rules (2) and (3) of Rule 72, sub-rule (5) of the Rule 72 is applicable. In terms of Sub-Rule (5) of the Rule 72 of Rules, 1981 the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being whole) of the pay and allowances to which he would have been entitled, had he not been suspended, as the competent authority may determine. In my considered opinion, the applicant is entitled for such an amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended. It is for the competent authority i.e. the respondent No.3 herein to determine the same. In both the cases i.e. in terms of sub-rules (2) and (3) so also in terms of sub-rules (5) and (7), the period of suspension cannot be treated as period spent on duty unless the competent authority specifically directs that

it shall be so treated for any specified purpose. In the instant case, I do not find any case made out in favour of the applicant to treat the said period of suspension as period spent on duty or that the period of suspension may be converted into leave of any kind due and admissible to the Government servant. Even there is no specific prayer of the applicant to the extent that his suspension period shall be converted into leave of any kind.

30. In terms of Rule 68 of Rules, 1981 the applicant is entitled for subsistence allowance and compensatory allowances during suspension. In the instant matter, admittedly the applicant has not been paid the subsistence allowance during the said period of suspension. It is well settled that an order of suspension is not an order imposing punishment on a person found to be guilty. It is a matter made against him before he found guilty. The subsistence allowance is paid by the Government to the Government servant against whom an order of suspension is passed on account of pendency of any disciplinary proceedings or criminal case instituted against him to maintain himself and his dependents until the disciplinary proceedings or criminal case as the case may be came to an end. It is for the

competent authority to decide the quantum of the subsistence allowance. In the instant case, the competent authority has failed in its duty to give effect to the provisions of Rule 63 of the M.C.S. (Leave) Rules, 1981. In a case **M. Paul Anthony Vs. Bharat Gold Mines Limited** reported in **1999 DGLS (SC) 368 (SC)**, in paragraph Nos. 25 to 30 has made the following observations:-

*“(25) BEFORE us, it is not disputed on behalf of the respondents nor was it disputed by them before the High Court, that Subsistence Allowance was not paid to the appellant while the proceedings against him were being conducted at the departmental level.*

*(26) TO place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including Government of India and the State Governments. Even under the [General Clauses Act](#), 1897, this right is conceded to the employer by [Section 16](#) which, inter alia, provides that power to appoint includes power to suspend or dismiss.*

*(27) THE order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only Subsistence Allowance which is less than his salary. (See: [State of M.P. vs. State of Maharashtra](#).)*

*(28) SERVICE rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53). This constitutes the "Subsistence Allowance". If there is no provision in the Rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would*

*be liable to pay full salary even during the period of suspension.*

*(29) EXERCISE of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of Subsistence Allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "Subsistence Allowance", so that the employee may sustain himself. This Court, in [O.P. Gupta vs. Union of India & Ors.](#) (1987) 4 SCC 328 made the following observations with regard to Subsistence Allowance :*

"AN order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in [Khem Chand v. Union of India](#) is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance- generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol.II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means

- means of supporting life, especially a minimum livelihood."

(30) (Emphasis supplied) If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of Subsistence Allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of Subsistence Allowance, would gradually starve himself to death."

31. So far as the second limb of the submissions from both the sides is concerned, it is about the absence period of the applicant on duty i.e. from 07.08.2016 to 27.07.2017 is converted in to the extraordinary leave by respondent No.3 i.e. Collector, Nanded by passing the impugned order dated 04.12.2018 by invoking the provisions of Rule 63 of M.C.S. (Leave) Rules, 1981, which is reproduced herein below:-

***"63. Extraordinary leave.— (1) Extraordinary leave may be granted to a Government servant in special circumstances-***

- (a) when no other leave is admissible;*
- (b) when other leave is admissible but the Government servant applies in writing for the grant of extraordinary leave.*

*(2) Unless Government in view of the exceptional circumstances of the case otherwise determines, no Government servant who is not in permanent employ shall be granted extraordinary leave on any one occasion in excess of the following limits:-*

- (a) three months;*
- (c) six months, where the Government servant has completed three years continuous service on the date of expiry of leave of the kind due and*

*admissible under these rules, including three months extraordinary leave under clause (a) and his request for such leave is supported by a medical certificate as required by these rules;*

- (d) twelve months, in the case of a Government servant who has completed five years' continuous service on the date of expiry of leave due and admissible under the rules including extraordinary leave under (a) and (b) of sub-rule (2) above, if the extraordinary leave is required on account of illness of the Government servant as certified by a Civil Surgeon or Superintendent of Government Hospital, as the case may be;*
- (d) twelve months, where the Government servant who has completed one year's continuous service is undergoing treatment for cancer, or for mental illness, in an institution recognised for the treatment of such disease or under a Civil Surgeon or a Specialist in such disease;*
- (e) eighteen months, where the Government servant who has completed one year's continuous service is undergoing treatment for-*
  - (i) pulmonary tuberculosis or pleurisy of tubercular origin, in a recognised sanatorium;*

*Note.- The concession of extraordinary leave upto eighteen months shall be admissible also to a Government servant suffering from pulmonary tuberculosis or pleurisy of tubercular origin who receives treatment at his residence as such by the State Administrative Medical Officer concerned and produces a certificate signed by that specialist to the effect that he is under his treatment and that he has reasonable chances of recovery on the expiry of the leave recommended.*

- (ii) tuberculosis of any other part of the body by a qualified tuberculosis specialist or a Civil Surgeon, or*
- (iii) leprosy in a recognised leprosy institution or by a Civil Surgeon or a specialist in leprosy hospital recognised as such by the Director of Health Services;*
- (f) twenty-four months, where the leave is required for the purpose of prosecuting studies certified to be in the public interest, provided the Government servant concerned has completed three years continuous service*

*on the date of expiry of leave of the kind due and admissible under these rules, including three months extraordinary leave under clause (a) of sub-rule (2) above.*

*(3) (a) Where a Government servant is granted extraordinary leave in relaxation of the provisions contained in clause (f) of sub-rule (2), he shall be required to execute a bond in Form 6 in Appendix V, undertaking to refund to the Government the actual amount of expenditure incurred by the Government during such leave plus that incurred by any other agency with interest thereon in the event of his not returning to duty on the expiry of such leave or quitting the service before a period of three years after return to duty.*

*(b) The bond shall be supported by sureties from two permanent Government servants having a status comparable to or higher than that of the Government servant.*

*(4) Government servants belonging to the Scheduled Castes or the Scheduled Tribes may, for the purpose of attending the Pre-Examination Training Course at the centers notified by the Government from time to time, be granted extraordinary leave by Head of Department in relaxation of the provisions of sub-rule (2).*

*(5) Two spells of extraordinary leave, if intervened by a spell of vacation or by any other kind of leave, shall be treated as one continuous spell of extraordinary leave for the purposes of sub-rule (2).*

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

32. Learned counsel for the applicant has vehemently submitted that in terms of sub -rule (1) of the Rule 63 of M.C.S. (Leave) Rules, 1981 the extraordinary leave may be granted to a Government servant in special circumstances; (a) when no other leave is admissible; (b) when other leave is admissible but the Government servant applied in writing for the grant of extraordinary leave. However, the aforesaid two

clauses are not applicable in a case of the applicant and as such, the said absence period of the applicant without leave cannot be converted into extraordinary leave and in terms of provisions of sub rule (6) of Rule 63 of M.C.S. (Leave) Rules, 1981.

33. In do not find any substance in the submissions made on behalf of the applicant. Sub-rule (1) of Rule 63 of M.C.S. (Leave) Rules, 1981 makes it obligatory to grant extraordinary leave in special circumstances. However, sub-rule (6) of Rule 63 of M.C.S. (Leave) Rules, 1981 is an exception to the said rule whereby the competent authority to grant leave may commute retrospectively periods of absence without leave into extraordinary leave. So far as the period of absence from duty is concerned, Rule 70 of Rules, 1981 takes care of it only when the dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such Government servant is reinstated. In terms of sub-rule (2) of Rule 70 of Rules, 1981, if the Government servant has been fully exonerated, he be paid the fully pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired as the



case may be and in terms of sub-rule (3), the said period shall be treated as period spent on duty for all the purposes. However, in terms of sub-rule (5) of Rule 70 of Rules, 1981, in case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty. However, the competent authority if the Government servant so desires shall convert the same the said period into leave of any kind due and admissible to the Government servant.

34. In the instance case, the provisions of Rule 70 of Rules, 1981 as aforesaid are not applicable to the case of the applicant and thus the Rule 63 of M.C.S. (Leave) Rules, 1981 can be made applicable to the case of the applicant and the respondent authorities have rightly done so. I don't find any fault in the impugned order dated 04.12.2018 to the extent as aforesaid.

35. In view of the discussions above, the impugned order dated 04.12.2018 is required to be quashed and set aside to the extent that the respondent authorities have committed an error of law in not applying the provisions of

Rule 72 (5) of Rules, 1981 to the applicant so also the provisions of Rule 68 of the said Rules, 1981 to not granting the subsistence allowance to the applicant during the suspension period. The rest of the impugned order dated 04.12.2018 is proper, correct and legal and call for no interference. However, it is for the competent authority to determine the quantum of subsistence allowance in terms of Rule 68 of said Rules, 1971 so also to determine the quantum of pay and allowances to be paid to the applicant in terms of sub Rule (5) of Rule 72 of Rules, 1981. The matter needs to be remanded to that extent with the rider that the respondent authorities shall determine and pay the same to the applicant in a time bound manner. Hence, the following order:-

### **ORDER**

The Original Application is partly allowed in the following terms:-

- (A) The impugned order dated 04.12.2018 is hereby quashed and set aside to the extent of failure on the part of the respondent authorities to determine and grant the pay and allowances to the applicant which would have been entitled, had he not been

suspended in terms of provisions of sub-rule (5) of Rule, 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

- (B) The respondent authorities shall pay the pay and allowances to the applicant which would have been entitled, had he not been suspended in terms of provisions of sub-rule (5) of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.
- (C) The respondent authorities shall also grant the subsistence allowances to the applicant in accordance with the provisions of Rule 68 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.
- (D) The respondent authorities shall pay aforesaid amounts as per clause (B) and (C) as expeditiously as possible preferably within the period of three months from the date of this order.

- (E) The rest of the impugned order dated 04.12.2018 stands confirmed.
- (F) In the circumstances, there shall be no order as to costs.
- (G) The Original Application is accordingly disposed of.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : .06.05.2024**

SAS O.A. 584/2022 (S.B.)Minor Punishment