

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1116 OF 2016

DISTRICT : PUNE

Smt. Ulkar Sachin Salunke,)
Aged 40 years, Working as Computer)
Instructor, having Office at Government)
Technical High School, Kavathe Mahankal)
Dist. Sangli, R/O. Survey No.32,)
Ambegaon (B.K.), Guru Krupa Niwas,)
Opp. Mahadik Hostel, Pune-411 046.) **...Applicant**

Versus

1. Appellate Authority, (Services and)
Accounts Related matters),)
Vocational Education and Training)
Directorate (M.S.) Having Office at)
3, Mahapalika Marg, P.B. No. 10036)
Mumbai - 400 001.)
2. The State of Maharashtra.,)
Through Principal Secretary,)
Skill Development and)
Entrepreneurship Department,)
Having Office at Mantralaya,)
Mumbai - 400 032.) **...Respondents**

Applicant in Person.

Ms. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 05.11.2019



JUDGMENT

1. The present Original Application is filed invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for following reliefs:-

“a] By a suitable order/ direction, this Hon’ble Tribunal may be pleased to set aside the order dated 4.3.2015 passed by the Respondent No.1 [EXHIBIT-A] only to the extent under which he has not fully exonerated the Petitioner and accordingly the Petitioner be fully exonerated and granted all the consequential service benefits, as if the impugned order had not been passed, only to that extent alongwith the interest @ 18% p.a. from the date on which the order of removal from service was passed till the date of realization.

b] By a suitable order/ direction, this Hon’ble Tribunal may be pleased to set aside the order dated 30.7.2016 passed by the Respondent No.1 under which he declined to grant to the Petitioner, the pay and allowances of the period namely from removal of the Petitioner till her reinstatement, namely from 17.12.2008 upto 30.4.2015 and accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed, along with the interest @ 18% p.a. from the date on which the order of removal from service was passed till the date of realization.

c] Cost of Rs. Two Lacs of this petition be provided for.”

2. At the very outset, it needs to be stated that except interest part, all other grievances raised by the Applicant, as set out in Prayer Clause are redressed and the present O.A. survives to the extent of interest part only. The Applicant is vociferously harping for grant of interest contending that she has been subjected to mental torture and

harassment, and therefore, entitled to the interest on the pay and allowances paid to her during the pendency of this O.A.

3. The following are the events and development giving rise to the present O.A.

(i) The Applicant was appointed as Computer Instructor and posted at Maharashtra State Technical and Industrial High School, Solapur. However, she was served with the Charge-sheet alleging misconduct i.e. for contravention of Rule 3(1)(2)(3) of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules 1979' for brevity) on the ground of absenteeism. She was absent during 14.08.2003 (date of joining) to 15.04.2007. In this period, she was absent unauthorisedly. As per second charge, she remained absent again from 16.04.2007 till 24.07.2008.

(ii) Accordingly, the Enquiry Officer was appointed who held Applicant guilty of the charges.

(iii) By order dated 17.12.2008, the Applicant was removed from service.

(iv) Appeal preferred by the Applicant against the order dated 17.08.2008 was dismissed by Appellate Authority.

(v) The Applicant has filed O.A.98/2010 before this Tribunal challenging punishment of removal from service.

(vi) The Tribunal allowed the said O.A. on 01.07.2014 with finding that the Charge No.1 regarding absence pre-15.04.2007 was unsustainable on the ground that for absence period, leave was already sanctioned by the Principal. The Tribunal,

W. S. Kulkarni

therefore, held that once, the period of absence was regularized by granting leave, the charge of unauthorized absence would not survive.

(vii) As regard second charge i.e. absence from 16.04.2007 to 24.07.2008, the Tribunal observed that the Applicant was on Maternity Leave and was applying for leave on monthly basis, and therefore, the finding recorded by the Disciplinary Authority that she was unauthorizedly absent for the period from 16.04.2007 to 24.07.2008 is unsustainable and matter was remitted back to the Appellate Authority to decide the appeal afresh after affording opportunity of hearing to the Applicant as well in the light of observations made in the Judgment.

(viii) The Appellate Authority re-heard the Applicant and by order dated 04.03.2015 allowed the appeal with following order:-

“श्रीमती उ.स.साळुंखे यांनी दि.१६/०४/२००७ पासून दि १६/०९/२००७ पर्यंत च्या कालावधीत संस्था प्रमुखाना डॉक्टरांनी विश्रांतीची गरज असल्याने कामावर हजर राहू शकत नाही असे कळविले असून प्रसुतीसाठी रजेवर आहे असे कुठेही कळविले नाही. तसेच दि.१६/०४/२००७ ते दि.०६/११/२००७ पर्यंतचे अर्ज विहित प्रपत्रात सुध्दा भरून दिलेले नाहीत तसेच प्रसुतीकारणास्तव त्या वेळोवेळी रजेवर होत्या याबाबत विभागीय चौकशी अधिका-याच्या चौकशीच्या वेळी सुध्दा निदर्शनास आणलेले नाही. त्यामुळे श्रीमती उल्का साळुंखे यांचा सुध्दा सदर प्रकरणात दोष असल्याचे दिसून येते. त्यामुळे महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ नियम क्र २३ (२) (क) (एक)” मधील तरतूदीचा विचार करून श्रीमती साळुंखे यांना सहसंचालक, व्यवसाय शिक्षण व प्रशिक्षण, प्रादेशिक कार्यालय, पुणे यांनी सेवेतून कमी करण्याची दिलेली शिक्षा कमी करून समवेतन श्रेणीतील पदावर पुनःस्थापित करण्यात येत आहे. सहसंचालक, व्यवसाय शिक्षण व प्रशिक्षण, प्रादेशिक कार्यालय, पुणे यांनी श्रीम. उल्का साळुंखे यांचे पुणे विभागात रिक्त जागी पुनःस्थापित करण्याचे आदेश निर्गमित करावेत तसेच श्रीमती साळुंखे यांनी ज्या कालावधीच्या रजेचे अर्ज विहित नमुन्यात भरून दिलेले आहेत, त्या कालावधीची रजा मंजूर करावी व ज्या कालावधीच्या रजेचे अर्ज भरून दिलेले नाहीत तो कालावधी अकार्यादिन म्हणून गणण्यात यावा.”

(ix) In pursuance of order dated 04.03.2015, the Director, Vocational Training and Education passed order dated 30.07.2016 to the effect that the period from removal from service till the date of reinstatement in service should not be treated as period spent on duty and she would not be entitled for pay and allowances as provided under Rule 70(1)(a) and

(1)(b) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Joining Time Rules of 1981' for brevity).

(x) Accordingly, the Applicant was reinstated in service by order dated 30.03.2015 and she resumed service on 30.04.2015.

(xi) The Applicant made representation on 16.09.2016 for grant of Pay and Allowances during the period from removal of service till the date of reinstatement.

4. On the above background, the Applicant has filed the present O.A. seeking relief of setting aside the orders dated 04.03.2015, 30.07.2016 as well as Pay and Allowances for the period from removal of service till reinstatement with interest at the rate of 18% p.a.

5. After filing of the O.A, having observed that the impugned action is *prima-facie* amount to contempt in the teeth of the observation recorded by this Tribunal in O.A.98/2010 decided on 01.07.2014, the Hon'ble Chairman passed order on 11.09.2018. Para No.7 onwards of the Judgment are material, which are as follows:-

7. Prima facie the factual correctness of the matter is not open for adjudication being governed by the findings recorded in para nos 12 & 13 of the judgment of this Tribunal in O.A 98/2010.

8. Initially this Original Application was heard yesterday in the morning session and was adjourned for enabling the Director, Vocational Education to appear in person to explain the situation in which the judicial pronouncement recorded in O.A 98/2010 is open for debate in absence of which impugned communication may amount to contempt.

9. Yesterday, at the request of learned P.O, hearing was deferred and adjourned to afternoon session. Thereafter, the case was called out, in afternoon session. At that time learned P.O accompanied by

W. D. Singh

Shri R.S. Sonawane, Assistant Director, (Non-Technical), was present. Learned P.O has reported on instructions that the Director is out of India and Joint Director, did not arrive, because he did not receive correct message from learned P.O, Ms Suryavanshi, nor that he is formally put in to the charge of the post of Director.

10. Today Shri A.M Jadhav, I/C Director & Shri P.M Wakde, Joint Director, Directorate of Vocational Education & Training, Mumbai are present. He was asked to read out para 12 and 13 of the judgment in O.A 98/2010. Shri A.M Jadhav, states that it prima facie appears that this Tribunal has taken cognizance of the fact that present applicant had intimated that she was on maternity leave, and her request was to be decided by the appellate authority.

11. Shri A.M Jadhav, was called to state as to whether in the background of judicial pronouncement, it is open to the Respondents to urge to the contrary to what the judicial pronouncement is. At this stage, he prays for time to take corrective measures.

12. It was clarified that corrective measures would mean accepting the fact that applicant had proceeded on maternity leave and that her leave needs to be dealt with in accordance with rules, if required by permitting the applicant to take measures for rectification of deficiency if any in relation to earlier leave application.

13. It implies that applicant shall cooperate.

14. In view that Learned Presenting Officer has prayed for time for re-examining the matter and for reporting substantial compliance,, time is granted till 25.09.2018 with a hope that Respondents would not aggravate the matter and would take proper and prudent steps for effectively implementing the judgment and order passed in O.A 98/2010.

15. S.O to 25.10.2018.

16. Steno copy and Hamdast is granted. Learned P.O is directed to communicate this order to the Respondents.”

6. Then again, the matter was taken up for hearing on 03.11.2018 and Hon'ble Chairman has passed the following order :-

“6. What prima facie emerges is that after the charge sheet was quashed, hardly any discretion was left to the Appellate Authority to go into the question of the matter of misconduct. There was no question of reducing the punishment and applicant was liable to be unconditional reinstated.

7. In so far as the period of forced unemployment is concerned, by virtue of Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and

Removal) Rules 1981, the applicant was entitled to be dealt with in accordance with the mandate of the said rules. It is seen that the Competent Authority, the then Director, Services and Accounts took a decision adverse to the applicant.

8. After applicant had filed present Original Application, Member (A) passed order on 24.7.2018 and directed the Competent Authority to take a decision.

9. Thereafter, this O.A was heard on 11.9.2018. This Tribunal passed order and interalia observed as follows:-

“11. Shri A.M Jadhav was called to state as to whether in the background of judicial pronouncement, it is open to the Respondents to urge to the contrary to what the judicial pronouncement is. At this stage, he prays for time to take corrective measures.”

(Quoted from order of this Tribunal dated 11.9.2018)

10. When the matter was taken for final hearing, learned P.O has tendered a compilation accompanied by letter dated 21.9.2018. This letter is signed by Shri A.M Jadhav, Director, Vocational Education, who has written to the learned P.O that the decision rendered by the Directorate earlier, i.e. probably order dated 6.9.2016 is thereby confirmed and no change in the matter is considered necessary.

11. It prima facie, appears that the Officer really did not understand the effect of the order which he has passed which is apparently contrary to the order of this Tribunal passed in O.A 98/2010.

12. In the result, it is considered necessary to call upon the Officer, who has written letter to the learned P.O on 21.9.2018, Shri A.M Jadhav, Director, Vocational Education & Training, Mumbai, to explain by filing affidavit as to under what authority of law he has taken a view of not reviewing the orders passed earlier. While filing affidavit, he is expected to take into account the order dated 1.7.2014 passed by this Tribunal in O.A no 98/2010 and orders passed thereby his office thereby sanctioning applicant's leave.

13. If corrective action is taken, this Tribunal may exempt Shri A.M. Jadhav from filing affidavit.

14. O.A be listed for compliance and further hearing on 28.11.2018.”

7. Subsequent material developed is that in pursuance of the orders passed by this Tribunal on 11.09.2018 as well as 03.11.2018, the Director, Vocational Education & Training, Mumbai reconsidered

the matter and passed order on 03.12.2018 thereby treating absence period i.e. from removal of service to reinstatement (17.12.2008 to 30.04.2015) as duty period and granted Pay and Allowances. This order was passed invoking Rule 70((a)(1-b) of 'Joining Time Rules 1981'.

8. In pursuance of aforesaid order dated 03.12.2018, the Pay and Allowances for the absence period (17.12.2008 to 30.04.2015) were paid along with difference of 6th Pay Commission. Besides, the benefit of 1st Time Bound Promotion was also accorded.

9. The sum of Rs.16,46,331/- was paid on 28.02.2019 and Rs.3,57,755/- was paid on 02.04.2019 whereas remaining amount of Rs.11,56,861/- was paid on 29.04.2019. Thus, the total amount of Rs.31,30,947/- has been paid to the Applicant towards Pay and Allowances for the period from 17.12.2008 to 30.04.2015.

10. The Applicant is represented by her husband who made fervent plea for grant of interest contending that the Applicant was subjected to harassment by denying the benefit of Maternity Leave and belatedly granted Pay and Allowances and the Respondents cannot avoid the liability to pay interest on the same. In this behalf, he referred to certain decision of Hon'ble High Court/Hon'ble Supreme Court and also placed reliance on G.R. dated 22.11.1994.

11. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer submits that all grievances of the Applicant are taken care of and the claim of interest is untenable. She submits that indeed, the Department itself has taken sympathetic view by treating absence period as duty period and has paid Pay and Allowances. Thus, according to her, this is not a case of administrative lapses for grant of interest, and therefore, the O.A. is infructuous.

12. The Applicant has placed reliance upon certain Judgments, which are as follows :-

- (a) **O.A.No.16/2016 (Sunil Gaikwad Vs. Commissioner of Police) decided by this Tribunal on 19.09.2016**, wherein interest at the rate of 18% was granted on the amount recovered from the Leave Encashment of the Applicant. The directions were given to refund the amount with interest at the rate of 18% in view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))** wherein recovery of excess payment from the employee from retiral benefits is held impermissible in law.
- (b) Judgment of Hon'ble High Court in **Writ Petition No.3492/1994 (Yuvraj Rodye Vs. Chairman, MSEB) decided on 18th September, 2008**. In that case, there was delay in payment of arrears of pay which were due and payable in the year 1989, but actually paid in September, 2004. In that context, the Hon'ble High Court has granted interest at the rate 8% p.a. from due date of payment till actual payment.
- (c) The Hon'ble Supreme Court in the matter of **Dr. Uma Agarwal Vs. State of U.P. and Anr.) decided on 22.03.1999** wherein interest was granted on delayed payment of retiral benefits because of lethargy on the part of Department to release retiral benefits within reasonable time of retirement.
- (d) **AIR 2008 SC 1007 (S.K. Dua Vs. State of Haryana & Anr.)** wherein in Para No.11, the Hon'ble High Court made following observations :-

"The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were



given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

- (e) **AIR 1996 SC 715 (Delhi Development Authority Vs. Skipper Construction and Anr.)** wherein the Hon'ble Supreme Court observed as follows :-

"A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless."

- (f) **O.A.No.611/2017 (Naresh A. Polani Vs. State of Maharashtra) decided on 23.10.2017** wherein O.A. was allowed subject to cost of Rs.20,000/- in the matter of suspension of a Government servant.
- (g) The decision of Hon'ble Supreme Court in **Writ Petition (Civil) No.933/2014 (Dr. Ram Lakhani Singh Vs. State of U.P.)** wherein Hon'ble Supreme Court awarded compensation of Rs.10 lakh to the Petitioner on account of trauma suffered by him for fighting legal battle for about a period of ten years and for spending eleven days

in Jail in absence of any proof or charges of corruption against him.

- (h) Judgment of Hon'ble Madras High Court in ***Writ Petition No.20062 of 2013 (B. Thirumoorthy Vs. Secretary to Government, Highway Department)*** decided on **22.03.2017** wherein interest at the rate of 10% on the belated salary was granted having noticed inordinate delay in payment of amount.
- (i) Judgment of Hon'ble Delhi High Court in ***Writ Petition No.7719/2015 (Union of India Vs. Gir Raj)*** decided on **14.08.2015** wherein interest was paid on belated payment of arrears of pension.
- (j) Judgment of Hon'ble Supreme Court in ***Civil Appeal No.7113/2014 (D.D. Tiwari Vs. Uttar Haryana Bijli Vitaran Nigam)*** decided on **1st August, 2014** wherein interest at the rate of 9% was granted on the delayed payment of pension and gratuity with observation that there would be miscarriage of justice in denying the interest to the employee from the date of entitlement till the date of actual payment.
- (k) ***O.A.No.547/2016 (Prakash Warpe Vs. Principal Secretary, Water Supply)*** decided on **31.01.2017** wherein interest at the rate of 12% was granted on the belated payment of gratuity having noticed administrative lapse, as provided under Rule 129(a) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982' for brevity).
- (l) ***O.A.No.15/2016 (Arun Thakare Vs. Divisional Commissioner, Pune)*** decided on **05.01.2017** wherein interest on belated payment of regular pension and gratuity was granted, as provided under Rule 129(a) and 129(b) of 'Pension Rules 1982'.



13. There could be no dispute about the settled legal position that in case of belated payment of retiral benefits due to administrative lapses, the Government cannot shirk its' liability to pay interest, so as to compensate the employee. In the Judgment referred by the Applicant, the interest was granted on the belated payment of retiral benefits having noticed administrative lapses on the part of Government. However, in so far as the facts of the present case are concerned, what Applicant is claiming is the interest on Pay and Allowances of the period which was earlier treated as 'absence period' in view of removal from service. This is a case where after completion of D.E, the Applicant was removed from service and later she was reinstated. Initially, her absence i.e. from the date of removal of service till reinstatement was not treated as 'period spent on duty' and held not entitled for Pay and Allowances. However, in view of interim orders passed by the Tribunal as referred to above in Para Nos.5 and 6 of this order, the Respondents took remedial measures and by order dated 03.12.2018 treated absence period as 'duty period' and granted Pay and Allowances for the period from 17.12.2008 to 30.04.2015. Accordingly, the sum of Rs.31,30,947/- was paid toward Pay and Allowances for the period in which she was out of duty. Suffice to say, this is a case where the Applicant is reinstated in service after reversing the decision of her removal by the Respondents at their own.

14. At the cost of repetition, it would be apposite to mention here that the Respondents at their own took remedial measures during pendency of this O.A. and granted Pay and Allowances for the period from 17.12.2008 to 30.04.2015. In other words, after reinstatement, 100% Pay and Allowances was paid by the Respondents themselves. The Applicant is now claiming interest on this Pay and Allowances for the period from 17.12.2008 to 30.04.2015.

15. True, in view of the decision of Hon'ble Supreme Court in **S.K. Dua's** case (cited supra) even in absence of statutory Rules,

administrative instructions or guidelines, the employee can claim interest under Part (iii) of Constitution on the basis of Articles 14, 19 and 21 of Constitution of India. Therefore, the moot question posed for consideration is whether in facts and circumstances of the case, the Applicant is entitled to interest. Before any interest can be granted on equitable considerations, it is necessary to see whether there are any special equities, which would justify the ground of interest although there is no provision in law for such grant of interest. As stated above, the Applicant is claiming interest on back-wages, which was already paid to her. Needless to mention where the termination or removal from service is found illegal and the employee is reinstated in service, he is entitled to back-wages. In the present case, in pursuance of directions issued by this Tribunal suggesting to take remedial measures, the Respondents themselves granted 100% Pay and Allowances. The order of payment for 100% Pay and Allowances was passed on 03.12.2018 and within six months, the sum of Rs.31,30,947 was paid as per the details mentioned in Para No.9 of this Judgment.

16. The G.R. dated 22.11.1994 relied by the Applicant provides for interest on the belated payment of Pay and Allowances where the delay is caused due to administrative lapses. This G.R. is hardly of any assistance to the Applicant in the present situation where interest is claimed on Pay and Allowances paid on reinstatement in service. The Applicant could not point out any provision which provides for grant of interest on Pay and Allowances paid towards back-wages after reinstatement in service. All that, the Applicant was entitled to back-wages in view of reversal of decision of removal from service and 100% Pay and Allowances are already granted and paid. True, in view of the decision of Hon'ble Supreme Court in **S.K. Dua's** case, the Court can grant interest in absence of any statutory provision having regard to the facts of the case. However, for grant of such interest, there has to be some equitable consideration in favour of the

Applicant. In the present case, there are no such special equities which would justify grant of such interest. Indeed, the main grievance of the Applicant was pertaining to non-payment of Pay and Allowances during the period from removal from service till reinstatement. True, he had claimed interest at the rate of 18% in prayers of O.A. However, considering the facts of the case, in my opinion, no special equitable consideration exists to grant interest on Pay and Allowances. She is fully compensated by payment of full back-wages of the period though she did not work in that period, and therefore, it would not be appropriate to saddle the State with interest in absence of any such special equitable consideration.

17. For the aforesaid reasons, I am not inclined to grant interest to the Applicant since the main grievance is already redressed. All other consequential benefits are already granted. The O.A, therefore, deserves to be disposed of. Hence, the following order.

ORDER

The Original Application is disposed of with no order as to costs.

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Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 05.11.2019
Dictation taken by :
S.K. Wamanse.