

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 55 OF 2019

DISTRICT:- JALGAON

Bhimrao S/o. Goba Bramahane
Age: 61 years, Occu.: Retired
R/o. Khadakdeola Tq. Pachora,
Dist. Jalgaon.

APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. Director General of Police,
Maharashtra State Mumbai,
Police Head Quarter, Near Old
M.L.A. Hostel and Regal
Cinema Mumbai, 400 001
3. Special Inspector General of Police,
(Administrative)
Director General of Police
Maharashtra State Mumbai
Police Head Quarter Near Old M.L.A.
Hostel and Regal Cinema,
Mumbai 400 001
4. Special Inspector General of Police
Nasik Region, Nasik.
5. Dist. Superintendent of Police,
Jalgaon.

.. RESPONDENTS.

APPEARANCE : Shri Prafullasingh H. Patil, learned
counsel holding for Shri Prakashsingh B.
Patil, learned counsel for the applicant.

: Shri B.S. Deokar, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 25.04.2023

ORAL ORDER

Heard Shri Prafullsingh H. Patil, learned counsel holding for Shri Prakashsingh B. Patil, learned counsel appearing for the applicant and Shri B.S. Deokar, learned Presenting Officer appearing for the respondent authorities.

2. The applicant has challenged the order dated 21.6.2018 passed by respondent No. 5 i.e. District Superintendent of Police, Jalgaon, whereby he has declined to hold the period in between 11.3.2010 to 7.9.2014 as duty period of the applicant and has directed to consider the said period only for the purpose of pension and not for any other purposes. It is the case of the applicant that since the applicant was given clean acquittal by the learned Sessions Court, Jalgaon in Criminal Appeal No. 58/2011 filed by him decided on 16.7.2014, he is entitled for full wages and allowances of the said period as if he was on duty during the said period. The applicant has relied upon Rule 70 and 71 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Rules of 1981').

3. The respondents have resisted the contentions raised, as well as, prayer made in the O.A. Respondent Nos. 4 & 5 have filed affidavit in reply contending therein that since in the impugned order, respondent No. 5 has recorded opinion that the applicant has not received clean acquittal and since during the entire said period the applicant did not work and having regard to the principle of 'No work No pay', the applicant is not entitled for any benefit i.e. pay and allowances of the said period. The respondents have also referred to Rule 70 while rejecting the claim of the applicant.

4. Learned counsel for the applicant submitted that the respondents have utterly failed in interpreting the provisions under Rule 70 of the Rules of 1981 and on wrong interpretation the claim of the applicant has been rejected. Learned counsel reading out the said Rule i.e. Sub-rule 1 and 2 of the Rule 70 of the Rules of 1981, submitted that case of the applicant fits in the aforesaid criteria and the applicant is, therefore, entitled for grant of wages of the entire said period as if he was on duty. Learned counsel referred to the judgment of the learned Sessions Court and pointed out that the Sessions Court has recorded unambiguous finding that the prosecution has failed in proving the very presence of the applicant on the spot of

occurrence at the relevant time. Learned counsel submitted that in the circumstances the applicant is entitled for all the benefits as provided under Rule 70 (2) read with Rule 71 of the Rules of 1981.

5. Learned Presenting Officer in his arguments reiterated the contentions raised in the affidavit in reply and submitted that the authorities concerned have taken a conscious decision and according to the respondents, the Sessions Court has not recorded clean acquittal in favour of the accused i.e. the applicant and in the circumstances the provision under Sub Rule 2 of Rule 70 may not apply. Learned Presenting Officer further submitted that admittedly during the entire said period the applicant did not perform any duty. In the circumstances, according to him, having regard to the principle 'no work no pay' also applicant cannot claim any relief in respect of pay and allowances of the said period. Learned P.O. submitted that the respondents have rightly taken the decision to consider the said period for the purpose of pension, so that the applicant may not suffer the impediment of break in service which would disentitle him for the pension.

6. I have duly considered the submissions advanced on behalf of the applicant, as well as, on behalf of the respondents.

The entire controversy revolves around the interpretation of the provisions of Rule 70 of the Rules of 1981. Rule 70, which is relevant for deciding the controversy arising in the present matter reads thus: -

“70. Regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside as a result of appeal or review and such Government servant is re-instated. –

1. *When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, 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 his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and*
- b) *Whether or not the said period shall be treated as a period spends on duty*

2. *Where the authority competent to order re-instatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:*

Provided that where such authority is of 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, subject to the provisions of sub-rule (7), be paid for the period of such delay,

only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule(2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In a cases other than those covered by sub-rule (2), (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held the Government servant shall, subject to the provisions of sub-rules (6) and (7) ,be paid such proportion of the full pay and allowances to which he would have been entitled., had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement,. As the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

Provided that payment under this sub-rule to a Government servant (other than Government who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936) shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a 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, 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 direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Note :- The order of competent authority under the 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 a temporary Government servant; and*
- b) leave of any kind in excess of five years in the case of a permanent Government servant.*

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

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 68.

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

7. In the present matter the respondents have interpreted the judgment of the Sessions Court in Criminal Appeal No. 58/2011. According to them, the acquittal granted by the Sessions Court is not a clean acquittal. I have carefully gone through the entire text of the said judgment. I may not refer to each and every finding recorded by the learned Additional Sessions Judge, however, the material discussion is in paragraph No. 23 of the said judgment. I deem it appropriate to reproduce the entire said paragraph, which reads thus: -

“23. I reflected over the submissions made by the learned advocate for the accused as well as the learned A.P.P. In the present matter, as I have already noted that, the

medical evidence is lacking. The reasons I have already noted herein above. So far as the question with regard to the oral testimony of all the four witnesses are concerned, first of all it is pertinent to note that the witnesses are relatives. Apart from that, there is material variance in between the testimonies of all the four witnesses and these material variance, contradictions, inconsistencies and discrepancies are also noted by the learned J.M.F.C., at paragraph No. 28 of the judgment, suggesting that as per the testimony of complainant-Bhivsan he was assaulted by the accused Nos. 1, 2 and 4, while as per the testimony of Ashabai (CW3) the complainant was assaulted by all the accused persons. However, while lodging N.C. No. 532/05 (Exhs.48 & 129), she mentioned the names of as many as only four accused persons, excluding the name of accused No. 4. Apart from that, as per the deposition of Ashabai (CW3), the complainant was taken to the hospital by Babulal (CW2) and Sambhaji (CW4) and she herself. While, as per the testimony of Babulal (CW2), the complainant was taken to the hospital by Ashabai, his wife and he himself. In view of these material variance, inconsistencies and discrepancies in between the testimonies of all these four witnesses, the N.C. No. 532/05 (Exhs. 48 & 129) and in view of the finding noted against point No. 1, that the accused No. 1 has satisfactorily proved that he was not present at the spot of incident on 13.10.2005, in between 11.00 a.m. to 2.00 p.m., I am of the considered opinion that the complainant has utterly failed to prove the guilt of the accused persons. Hence I reply point Nos. 3 and 4 in the negative”.

8. On perusal of the aforesaid discussion made by the learned Sessions Judge there remains no doubt that the

Sessions Court has not acquitted the applicant by giving him benefit of doubt or by observing that the evidence brought on record by the prosecution is insufficient to prove the guilt of the accused beyond reasonable doubt. On the contrary, conclusions recorded by the Sessions Judge in paragraph No. 23, reproduced above go to suggest that in opinion of the learned Sessions Judge there was material variance between the testimonies of all the witnesses and because of the contradictions, inconsistencies and discrepancies in the testimonies of the said 4 witnesses, the learned Sessions Judge has rejected the evidence of the prosecution. It is further significant to note that the Sessions Judge has recorded unambiguous finding to the effect that accused i.e. the present applicant has satisfactorily proved that he was not present at the spot of incident on 13.10.2005 in between 11.00 a.m. to 2.00 p.m. i.e. in which alleged incident was said to have occurred. The Sessions Court has further recorded that complainant has utterly failed to prove the guilt of the accused.

9. Having considered finding as recorded by the learned Sessions Judge whose judgment has not been challenged in any higher Court and has, therefore, attained finality, the applicant has to be held to have clearly acquitted from the offences alleged against him.

10. Now it has to be seen what would be the effect of the clean acquittal of the applicant? Rule 70 is material which I have reproduced hereinabove, which says that, whether the authority competent to order reinstatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated from the Criminal Case against him, the Government Servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled had he not been dismissed or removed. Sub-rule 1 of Rule 70 says that, when a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make specific order as about the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be and whether or not the said period shall be treated as a period spent on duty.

11. No doubt the disciplinary authority has been given power to exercise its discretion as to whether period spent by the

Government servant during pendency of the criminal prosecution against him or appeal filed in the said matter shall be as the period spent on duty. However, if sub-rule 2 is read, it appears that there is very little scope or little discretion to the disciplinary authority to take any other decision than envisaged in the said rule.

12. It is not in dispute that the applicant was compulsorily retired w.e.f. 11.3.2010 for the reason that he was convicted by the Criminal Court in RCC No. 1266/2005 on 17.12.2009 by JMFC Court at Pachora. In the said matter the applicant was held guilty for the offences punishable Under Sections 323 and 506 of IPC. In both offences applicant was sentenced to suffer simple imprisonment for the period of 6 months and fine of Rs. 300/- (Three Hundred Only), in default to suffer simple imprisonment for 15 days. It is the matter of record that in criminal appeal No. 134/2009 filed by the applicant the then learned Sessions Judge remanded the matter to the Trial Court with the direction to allow the application (Exh.70) and then to proceed further. Application (Exh. 70) was filed by the applicant seeking permission to lead evidence, while giving his statement Under Section 313 of Cr.P.C. Said request was rejected by the learned Magistrate. The Appellate Court i.e.

Sessions Court however, allowed the appeal in part directing the learned Magistrate to allow the said application and thereby to allow the applicant i.e. accused No. 1 in the said case to lead the evidence which was desired by him. It is further matter of record that the learned Magistrate after having permitted the applicant to lead evidence on his behalf, held the applicant guilty for both the offences i.e. offence U/Ss 323 and 506 of IPC and awarded same sentences for both offences i.e. simple imprisonment for 6 months but fine was enhanced to Rs. 1000/-. Accused No. 1 preferred Criminal Appeal against the conviction so recorded against him before the Sessions Court at Jalgaon. The said Criminal Appeal No. 58/2011 came to be decided on 16.7.2014 with the following order: -

“(1) Appeal is allowed.

(2) Judgment and order of conviction and sentence, dated 16.6.2011, passed by Judicial Magistrate, First Class, Pachora, in Summary Criminal Case No. 1266/2005, is hereby set aside.

(3) Appellant Nos. (1) Bhimrao Goba Bramhane, (2) Vishwajeet Bhimrao Bramhane (3) Pramilabai Bhimrao Bramhane and (4) Hirkanbai Goba Bramhane are hereby acquitted of the offences punishable under Sections 323, 506 r/w 34 of IPC.

(4) Their bail bonds stand cancelled.

(5) Accused persons to furnish fresh bail bonds of Rs. 75,00/- each with one surety of the like amount as per Sec. 437A of the Code of Criminal Procedure.”

11. I have referred to findings recorded by the learned Sessions Judge, which lead to the only inference that the applicant was given a clean acquittal in the said matter. In the circumstances, as I noted hereinabove a very little discretion was available with the disciplinary authority. Sub-section 2 is quite clear, which says that in such cases the Government servant shall subject to the provisions of Sub-Rule 6 be paid full pay and allowances to which he had been entitled, had he not been removed or compulsorily retired. It is true that during the entire said period the applicant did not perform any duty. The question arises whether in the circumstances as are in the present matter whether the principle of ‘no work no pay’ would be applicable. In my opinion, such principle cannot be applied in the present matter. It is not the case that because of any fault on the part of the applicant he did not perform the duties. In fact, when he was compulsorily retired in the year 2010, there was no question of performing any work by him. In the circumstances, the principle of ‘no work no pay’ would not be applicable. It is not the case of the respondents that the decision of the criminal appeal was delayed or prolonged

because of or at the instance of applicant. Had it been so there would have been some justification for not granting the wages of the said period to the applicant. Insofar as Sub-Rules 5 & 6 are concerned, sub-Rule 5 would come in picture if removal is based under Article 311 of the Constitution of India. That is also not the case in the present matter. In the circumstances, the applicant is entitled for the relief claimed by him. Hence, the following order is passed: -

ORDER

- i) The respondents are directed to pay to the applicant the pay and allowances of the period between 11.3.2010 to 7.9.2014 as if he was on duty in the aforesaid period within 3 months from the date of this order.
- ii) The O.A. is allowed in the aforesaid terms.
- iii) No order as to costs.

VICE CHAIRMAN