

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1851 OF 2014

MARUTI SOPAN SARATE
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS

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Advocate for Petitioner : Mr. A.R. Devakate
AGP for Respondents: Mr. G.K. Naik Thigle

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: July 03, 2015

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PER COURT :-

1. Mr. Devkate, the learned counsel for the petitioner, states the petitioner was suspended vide order dated 23.4.2004 and on 18.11.2005 the petitioner was re-instated in service, however, the period from 23.4.2004 to 18.11.2005 is not considered as duty period by the Respondents. Learned counsel submits that, upon conclusion of the inquiry, the petitioner was imposed with minor punishment. According to the learned counsel, when an employee is imposed with minor punishment only and not with major punishment, then in such case, suspension period is to be considered as duty period. Learned counsel relies on the judgment of this Court in case of **S.P.Naik Vs. Board of Trustees, Mormugao Port Trust reported in 1999 (3) Mh.L.J. 351.** Learned counsel further submits that as per rule 72 (1) (b) of The Maharashtra Civil Service (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rule, 1981, the employer has to take a decision as to whether suspension period shall be treated as period spend on duty or not. At the time

of re-instatement, no such decision was taken, as such it will have to be presumed that suspension period will have to be considered as duty period. According to the learned counsel, the Tribunal has also not considered this aspect of the matter. Even before the appointing authority, no opportunity was given of hearing to the petitioner. On this ground the order stands vitiated.

2. Learned AGP submits that, in view of Rule 72 (3) to (5) of the said Rules, the decision has been rightly taken. The petitioner was issued notice. After considering his reply, the authority has taken decision. Even the Tribunal has considered all aspects in its correct perspective.

3. The Authority while passing an order of re-instatement has not passed any order as to whether period spent under suspension has to be counted as a period on duty or otherwise as is required under Rule 72 (1) (b) of said Rules. The authority has placed reliance on Rule 72(3) of the said Rules.

4. It cannot be said that, if the authority while passing an order of reinstatement does not pass an order with regard to the period of suspension, then the period of suspension is to be automatically considered as a duty period.

5. It is also not a matter of dispute that petitioner has been awarded with minor penalty and was not awarded with major penalty. Say has been filed by the petitioner before the authority. It is expected from the authority passing order to give reasons. Whenever an order quasi judicial or administrative is passed, same has to be supported by reasons. Reasons are life line of quasi judicial or administration order passed. It depicts the application of the mind by the person passing the order. In the present case, order is bereft of any reasons. Authority has not considered that petitioner has been awarded with minor punishment. Say given by the petitioner was not considered at any point time. Even the Tribunal has failed to consider the said aspect. Authority is required to consider all these relevant aspects of the matter and then arrive at any conclusion. Perusal of the order passed by the Authority, same is bereft of reasons, same cannot be sustained.

6. In light of that, above order dated 7.1.2006 passed by the Authority, so also judgment and order of the Tribunal are quashed and set aside. The Authority shall decide about the period of suspension whether the same is to be treated as period spent on duty or not, afresh after hearing the petitioner. The said decision be taken expeditiously, preferably within three months from today. Learned AGP shall communicate this fact to the authority.

7. The petitioner is permitted to file its written say, which would be considered by the Authority while passing by the order.

8. Writ Petition accordingly disposed of. No costs.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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aaa/-