

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

WRIT PETITION NO. 933 OF 2004

DNYANESHWAR VITTHAL CHAVAN
VERSUS
STATE OF MAHARASHTRA & ORS

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Advocate for Petitioner : Mr. B N Patil
AGP for Respondents: Mr. D.B.Bhange
Advocate for Respondent 3 : Mr.S.R.Dheple

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CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

Dated: September 04, 2015

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PER COURT :-

1. Heard learned counsel for the respective parties.
2. Facts leading to this petition, in short, can be stated as under :-

The petitioner is an Assistant Teacher in the service of Zilla Parishad, Aurangabad. An offence was registered in Gangapur Police Station under section 498-A, 306, read with Section 34 of the Indian Penal Code against the parents and brother of the petitioner because wife of the petitioner's brother expired due to burn injuries. The petitioner was also included as an accused. He was also arrested. Since he remained in custody for more than 48 hours, he was suspended on 4.1.1995. The petitioner, however, secured acquittal on 29.6.1998. Thereafter, the petitioner requested his employer to re-instate him with full back wages. The

authorities however, ordered that the order utilizing the provisions of Rule 70 of The Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (for the sake of brevity hereinafter referred to as "*The Rules of 1981*") that, the period of suspension of the petitioner would be treated as Earned Leave, Extra Ordinary Leave and other kind of leave. This order is the subject matter of this Petition. The question is whether the facts of this case would attract the provisions of Rule 70 of The Rules of 1981 or other rule. On perusal of the rules, in the light of the facts of the case, we realize that, the situation had fallen squarely within the parameters of Rule 72 of The Rules of 1981. Rule 72 of The Rules of 1981 reads 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 been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the

date of his retirement on superannuation, as the case may be; and

- (b) whether or not the said period shall be treated as a period spent on duty.

(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 been 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 for the period 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 sub-rules (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 sixty days from the date on which the notice has been served, as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or court proceedings, any order passed under sub-rule(1), before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or (5), as the case may be.

(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.

3. Sub-Rule (3) had required the Chief Executive Officer of Zilla Parishad who was competent to order reinstatement of the petitioner to give him findings as to whether suspension was wholly unjustified. The learned Chief Executive Officer, apparently ordered reinstatement but did not express his opinion required under subject Rule 3 mainly because he did not utilize the Provisions of Rule 72 of the The Rules of 1981. It is because of this lapse, the entire exercise, in our view, went in wrong direction. On perusal of Rule 72 of the Rules of 1981, it is clear that, if the authority forms an opinion that the suspension was unjustified then there was no other alternative but to take steps according to sub-rule 4. It says that the period of suspension should be treated as period spend on duty for all purposes. We are reluctant to substitute our opinion on the question as to whether suspension was justified or not. We expect that the learned Chief Executive Officer to undertake such exercise and pass necessary order. The petition should

therefore succeed in terms of the following order.

O R D E R

i] The impugned orders are quashed and set aside.

ii] The Chief Executive Officer shall decide as to whether the suspension of the petitioner was justified or otherwise utilizing the provisions of Rule 72 of The Rules of 1981 and then take further action.

iii] Writ Petition accordingly disposed of. No costs.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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