

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

WRIT PETITION NO.6669 OF 2015

Smt.Shakuntala w/o Ramkrishna Dhere,
Age 52 yrs., Occu. Presently working in
the Office of Taluka Agricultural Office,
At Hingoli, R/o. "Lokrang", Rahul Nagar,
Parbhani Tq. & Dist. Parbhani.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary in there under,
Department of Agriculture,
Mantralaya, Mumbai.
2. Directorate of Agriculture
Maharashtra State, Pune.
3. The Dev.Assist.Director of Agriculture,
Latur Division, Latur.
4. The District Superintendent of Agriculture
Officer, Parbhani.
5. The Taluka Agriculture Officer,
Purna, Tq. Purna, Dist. Parbhani.

...RESPONDENTS

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Shri V.M.Mane, Adv., for petitioner.
Shri S.B.Yawalkar, AGP for respondent State.

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CORAM: S.S.SHINDE

AND

P.R.BORA, JJ.

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**Dt.of reserving
the judgment:22/1/2016
Dt.of pronouncing
the judgment:9/2/2016
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JUDGMENT: (PER P.R.BORA, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for respective parties.

2. The order passed by the Maharashtra Administrative Tribunal on 1st of April, 2015, in Original Application No.312/2013 is questioned in the present petition so far as it relates to not granting of the salary and other emoluments during the period the petitioner was out of service.

3. The petitioner was serving as an Assistant Superintendent of Agriculture in the Department of Agriculture of the State of Maharashtra. On promotion, after being transferred to Purna, district Parbhani, the petitioner issued a notice of voluntary retirement on 1st of January, 2013, on the ground that she was not keeping her health well. As per the said notice, the petitioner was to get retired with effect from 31st March, 2013, after acceptance of the voluntary retirement application by the Government. Subsequently, the petitioner, however, withdrew the said notice of voluntary retirement vide her letter dated 1st of February, 2013, and also applied for her appointment on deputation at Parbhani on health grounds. The request so made by the petitioner was favourably considered and, accordingly, she was posted at Parbhani on deputation in the office of District Soil Survey and Soil Testing

Office, Parbhani. However, to the surprise of the petitioner, she was relieved by the Office of the District Soil Survey and Soil Testing, Parbhani, on 29.3.2013, so as to join her parent office on the ground that her notice for voluntary retirement was accepted. The petitioner though immediately approached her superior officer, raising grievance that she had already withdrawn her resignation, she was not heard and was ultimately relieved from the services after office hours on 31.3.2013. The petitioner, therefore, approached the Maharashtra Administrative Tribunal by filing Original Application No.312/2013. The Application so filed by the petitioner was opposed by the respondents. The Tribunal, after having heard the learned Counsel appearing for the parties, partly allowed the application vide its order dated 1st of April, 2015. The Tribunal quashed the order dated 26.3.2013, whereby respondent no.3 had accepted the application of voluntary retirement submitted by the petitioner on 1.1.2013. The Tribunal directed the respondents to reinstate the applicant with all benefits of pay and seniority within four weeks of the receipt of the order passed by it but further ordered that on reinstatement the petitioner will not be entitled to draw salary and other emoluments during the period when she was out of service. Aggrieved by the said part of the order, dis-entitling the petitioner from claiming salary and other emoluments of the intervening period, the petitioner has filed the present petition.

4. Heard Shri V.M.Mane, learned Counsel appearing for the petitioner and Shri S.B.Yawalkar, learned A.G.P. appearing for the respondent. The learned Counsel for the petitioner submitted that for refusing the salary and other emoluments of the intervening period, the Tribunal has not provided any

reason. The learned counsel further submitted that when the action of the respondents relieving the petitioner from services by accepting her notice of voluntary retirement was held to be unsustainable and was, therefore, quashed by the Tribunal, the natural consequence ought to have been followed of granting reinstatement with full backwages. The learned Counsel submitted that the petitioner remained out of job not because of any fault on her part but because of the wrong and erroneous decision of the respondents. According to the learned Counsel for the petitioner, in such circumstances, there was no reason for the Tribunal to deprive the petitioner from the back-wages of the said period. The learned Counsel, therefore, prayed for setting aside the order of the Tribunal to the extent it relates to non grant of salary and emoluments to the petitioner of the period she was out of services and consequently the direction to the respondents to pay the wages of the said period.

5. The learned A.G.P. has supported the order passed by the learned Tribunal. Relying upon the contentions raised in the affidavit in reply filed on behalf of respondent nos. 2 to 5, the learned A.G.P. submitted that the Tribunal has rightly denied the salary and other emoluments of the period when the petitioner was out of service. The learned A.G.P. has further submitted that when the petitioner had not performed any work, having regard to the principle of "No work, no pay" the Tribunal has rightly refused the relief of back-wages to the petitioner. The learned A.G.P., therefore, prayed for dismissal of the petition.

6. We have carefully perused the order dated 1st of April, 2015, passed by the learned Tribunal in O.A.No.312/2013. The Tribunal has held that the respondents could not have rejected the applicant's request for withdrawing her notice of voluntary retirement without giving reasons, or without considering the grounds on which she has applied for withdrawal. The Tribunal has, therefore, quashed the order dated 26.3.2013 by which the applicant's request for withdrawing her notice of voluntary retirement was rejected and, consequently, she was relieved with effect from 31.3.2013. The order of the Tribunal reveals that all sorts of objections were raised by the respondents and every effort was made to justify the order dated 26.3.2013 impugned in the said application. The Tribunal has, however, turned down all the objections raised by the respondents and has ultimately recorded a conclusion that the respondents should not have rejected the applicant's request of withdrawing her application for voluntary retirement without giving any reasons and without considering the ground on which she has applied for withdrawal. The Tribunal, therefore, directed reinstatement of the petitioner with all benefits of pay and seniority. The Tribunal, however, did not grant the back-wages of the intervening period to the petitioner of the period she was out of service.

7. In the judgment, the Tribunal has, admittedly, not provided any reason for dis-entitling the petitioner from drawing the salary and other emoluments of the period during which she was out of service. In normal course, the relief of reinstatement is followed with the the further relief of backwages and continuity in service. Reinstatement entitles

an employee to claim full backwages. After granting the relief of reinstatement if the relief of back-wages is to be refused, the Tribunal, or the Court, as the case may be, has to provide sufficient and cogent reasons therefor. From the discussion made by the Tribunal in its judgment, it is quite clear that no such argument was advanced by the respondents that in case the reinstatement is granted the back-wages shall not be granted to the petitioner. The Tribunal, thus, at its own discretion, entitled the petitioner from claiming the back-wages and the other emoluments of the period during which she was out of service, and while doing so, has not provided any reason therefor. The order passed by the Tribunal, to that extent, thus, apparently appears to be unsustainable.

8. If the relief of back-wages is to be refused, the same cannot be refused without assigning sufficient and cogent reasons therefor. More particularly, in cases of wrongful termination of service, reinstatement with continuity of service and full back-wages is the normal rule. In the instant case, it is the specific contention of the petitioner that though she had issued the notice for voluntary retirement on 1.1.2013, before expiry of three months' period, she withdrew the said notice of voluntary retirement under Rule 65 (3) of the amended Maharashtra Civil Services (Pension Rules 1982) by issuing another letter dated 1st of February, 2013. It is the further case of the petitioner that after withdrawing the notice of voluntary retirement, she had applied for her transfer on deputation at Parbhani on the ground of her ill-health and that was accepted. It is not in dispute that the respondents did not take any decision on the notice of withdrawal dated 1st of February, 2013, issued by the petitioner, and acted upon the

notice of voluntary retirement given by the petitioner.

9. The Tribunal has, therefore, recorded a clear finding that the respondents could not have rejected the applicant's request for withdrawing her notice of voluntary retirement without giving any reasons, and without considering the grounds on which she has applied for withdrawal. It is, thus, evident that the respondents have acted in gross violation of the statutory provisions and / or the principles of natural justice.

10. In above circumstances, we fail to understand as to why the Tribunal did refuse to grant the relief of back-wages to the petitioner. As held by the Hon'ble Apex Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyaypak Mahavidyalaya and Ors (2013 (10) SCC 324)**, the cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. The Apex Court has further observed that,

" The Courts must always keep in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages. "

Further, in paragraph No.22 of the judgment, the Hon'ble Apex Court has observed that,

" The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

11. In the instant case, the decision of the respondents to relieve the petitioner from her post w.e.f. 31.3.2013 was preceded by wrongful acceptance of her notice of voluntary retirement which was, in fact, withdrawn by her before expiry of the period of the said notice. In the circumstances, if the petitioner has remained out of service w.e.f. 1.4.2013, till her reinstatement, in pursuance of the decision by the Tribunal, no blame can be attributed on her part and she cannot be deprived of the backwages. The Tribunal has, thus, erred in disentitling the petitioner from claiming the backwages and other emoluments of the said period. The said part of the order of the Tribunal, thus, deserves to be quashed and set aside.

12. For the reasons stated above, we are inclined to pass following order:

ORDER

- 1) The Writ Petition is allowed.
- 2) Clause (d) in the order passed by the Maharashtra Administrative Tribunal on 01st April, 2015, in Original application No.312/2013 is quashed and set aside.
- 3) The respondents are directed to pay to the petitioner full backwages and other emoluments of the period from 1.4.2013 till the date of her reinstatement.
Rule is accordingly made absolute.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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AGP/6669-15wp