

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6736/2015

Eknath S/o Ganpatrao Shinde
Age: 55 Years, Occu.Nil,
R/o Kanegaon Post Sakol,
Tq.Shirur Anantpal,
Dist.Latur.

..Petitioner..

Versus

1] The State of Maharashtra ,
Through its Secretary,
Marketing and Textile Department,
Mantalaya, Mumbai-32.

2] The Divisional Joint Registrar,
Co-operative Societies, Latur,
Tq.and Dist.Latur.

3] The District Deputy Registrar,
Co-operative Societies, Nanded.

4] The Agricultural Produce Market
Committee,Nanded, Through its
Administrator/Secretary.

...Respondents..

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Shri A.V.Patil, Advocate for the Petitioner.
Ms.S.S.Raut, AGP for Respondent Nos.1 to 3.
Shri S.B.Ghatol-Patil, Advocate for Respondent No.4.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 24.10.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken up for final disposal at this stage.

2] Learned counsel for the petitioner states that the petitioner was working as a Senior Clerk with respondent no.4 – APMC. The departmental enquiry was initiated against the petitioner and vide order dated 24.6.2006, the petitioner was terminated. The petitioner preferred an appeal before the Divisional Joint Registrar. The appellate authority allowed the appeal of the present petitioner vide judgment and order dated 5.11.2009. In spite of the fact that the said appeal was allowed, the respondents did not reinstate the petitioner. The respondent no.4 filed further appeal before the State Government. The State Government on 8.11.2012 dismissed the appeal filed by the respondent no.4. The learned counsel submits that the petitioner on 21.9.2013 gave resignation. The said resignation was rejected. Against the said action, present petitioner filed an appeal. The appeal came to be allowed and the

respondent no.4 was directed to accept the resignation of the petitioner. The learned counsel submits that the petitioner has not been paid the retiral benefits nor the petitioner is paid the salary for a period from 30.6.2006 to 21.9.2012. The learned counsel submits that Rule 70(4) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981, relied upon by the respondent no.4 would be inapplicable in the present case. According to the learned counsel, the petitioner is entitled for the salary for the said period.

3] Learned counsel for the respondent no.4 submits that though the appellate authority had allowed the appeal filed by the present petitioner, however, no directions were given with regard to the payment to be made to the present petitioner. More over, the appeal was allowed only on technical grounds i.e. proper procedure was not followed. According to the learned counsel, Rule 70(4) of the Rules, 1981, would squarely apply in the present case and the same has been applied. The learned counsel further submits that the petitioner has been paid the amount of gratuity so also the retiral

benefits totaling to Rs.6,40,400/- and the gratuity amount of Rs.3,08,641/-. The learned counsel submits that even subsistence allowance at the rate of 50% for six months and thereafter 75% of the salary for the period of 30 months preceding the date of termination of his service on account of his resignation as per the orders issued by the respondent no.2 has also been paid. No amount is now due and payable to the petitioner.

4] We have considered the submissions canvassed by the learned counsel for the respective parties.

5] The factual matrix is not disputed. The petitioner though was terminated on 30.6.2006, the appeal filed by the petitioner against the said termination order was allowed on 5.11.2009. Even the appeal preferred by the present respondent no.4 to the State Government against the said judgment of the appellate authority came to be dismissed. The appellate authority who had allowed the appeal of the present petitioner had not passed any orders with regard to the payment of the emoluments.

6] In such a case, Rule 70(4) of the Rules, 1981, can be resorted to. The said Rule reads as under:-

"Rule 70 - Regularisation 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) to (3)

(4) In cases other than those covered by sub-rule(2) [including case 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 the 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 six days from the date on which the notice has been served, as may be specified in the notice:

Provided that any payment under this sub-rule to a Government servant [other than a Government servant 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."

7] The said Rule will operate for a period the petitioner was dismissed from service and the order reinstating him is passed. The said Rule will not take into its fold the period after the date of setting aside the termination. The termination is set aside by the order dated 5.11.2009. There was no order staying the said order of setting aside the termination though the respondent no.4 had preferred the appeal and the said appeal also came to be dismissed. In the light of the aforesaid aspect of the matter, there will be no impediment for the respondent no.4 to make the payment of salary to the petitioner from 1.12.2009 till the date the petitioner had submitted his resignation.

8] Considering the above, we pass the following order.

O R D E R

a] The respondent no.4 shall pay salary as admissible to the petitioner alongwith the consequential benefits, if any, for the period from 1.12.2009 to 28.1.2013 i.e. the date the petitioner had submitted the resignation. While making the said payments, some payment if already made for the said period, be adjusted. The same be done expeditiously and preferably within a period of four months.

b] Rule is made partly absolute accordingly. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)