

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

WRIT PETITION NO. 3829 OF 2006

**ABDUL TAHER ABDUL KARIM SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

Advocate for Petitioner : A. S. Deshpande
AGP for Respondents: Mrs.A.V.Gondhalekar**

CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 16/08/2017

PER COURT :-

The petitioner assails communication dated 19/08/2005 by virtue of which the State allowed petitioner the benefit of the vehicle allowance as per Government Resolution dated 05/12/1999 and not as per the Government Resolution of 2001.

2] Mr.Deshpande, learned counsel submits that at the relevant time, for the period 01/04/2003 to 01/04/2004 the Government Resolution dated 10/09/2001 was in force. The benefit of vehicle allowance as per G.R. dated 10/09/2001 ought to have been given. The vehicle that was allotted to the petitioner by virtue of he being Member of the Maharashtra Administrative Tribunal, was not in a

condition to ply on the road, so also the driver allotted to the petitioner was too rash and within four days, he had resigned and left the service. As such, the petitioner had no other alternative but to use his own vehicle and the driver. The learned counsel submits that the State and the Tribunal admitted that the petitioner would be entitled to the benefit of G.R. dated 10/09/2001, but are passing the buck on each other.

3] We have heard learned Additional Government Pleader also. The learned Addl.G.P. States that the Hon'ble Chairman, Maharashtra Administrative Tribunal may give direction and the same be communicated to the petitioner. The respondent no.4 has communicated that the respondent no.3 shall take decision at his level.

4] We have considered the submissions. The factual matrix is not disputed. It is also not disputed that the petitioner was awarded benefit of vehicle allowance for the period from 01/04/2003 to 01/12/2004. The only matter of debate is that as per the communication, the petitioner was allowed vehicle allowance as per G.R. dated 04/12/1999 and not as per G.R. dated 10/09/2001.

5] Respondent no.4 has filed affidavit in reply. Para 22 of the

said affidavit reads as under :

“22] Recently vide letter dated 29.09.2006 addressed to Respondent No.4, Deputy Secretary, General Administration Department has admitted that in impugned letter dated 19.08.2005 reference of G.R. Dated 04.12.1999 was wrongly mentioned and said letter is to be treated as cancelled. Directions were also given to the Respondent No.4 to get the order of implementation of G.R. dated 10.09.2001 issued from Hon'ble Chairman, Maharashtra Administrative Tribunal, Mumbai. This clearly shows that though the respondent No.3 is admitting that they have committed mistake they are now disowning their liability to rectify the order. Respondent No. 3 now wants that order of implementation of G.R. Dated 10.09.2001 should be passed by Hon'ble Chairman, Maharashtra Administrative Tribunal, Mumbai. Copy of letter dated 29.09.2006 is annexed herewith vide **Exhibit No.1.**

6] The respondent no.3 has filed affidavit in reply. Para 10 of the affidavit reads as under :

10] In reply to para No. 12 to 13 I say and submit that in the letter dated 19.08.2005 issued by the General Administration Department, M.S. Mumbai addressed to the Registrar, Maharashtra Administrative Tribunal, Mumbai the reference of GR dated 4.12.1999 has been quoted inadvertently and the same mistake was noticed after perusing the copy of the Writ Petition and therefore, vide letter dated 29.09.2006 issued by the office of the answering Respondent, the said letter dated 19.8.2005 is canceled. It is further communicated that the request of the Petitioner for vehicle allowance for the period 1.4.2003 to 1.12.2004 can be considered in view of the G.R. Dated 10.09.2001 and subsequent Government decision. It is further requested that if the Petitioner is entitled for the vehicle allowance in that case, the Hon'ble Chairman, Maharashtra Administrative Tribunal may give directions accordingly and the same may be

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communicated to the petitioner. The Government letter dated 29.9.2006 issued by the Deputy Secretary, General Administration Department, M.S. Mantralaya, Mumbai is annexed at **Exhibit R-1** with this reply for kind perusal. The Respondent No.4 vide his letter dated 5.3.2007 had conveyed to take the decision at the level of Respondent No.3. The Respondent No.3, then after receiving the necessary information from Finance Department and Respondent No.4, had communicated not entitled for the conveyance allowance as per Government Resolution dated 10.09.2001, but an appropriate decision may be taken by assuming that the Government Resolution dated 10.9.2001 was not in force vide letter dated 12.6.2007. The reason for non entitlement are mentioned in the said letter. It has also mentioned in the said letter that the said decision of Government shall be conveyed to Petitioner. As such Respondent No.4 had communicated the said decision vide his letter dated 20.9.2007. The copies of letter dated 12.6.2007 and 12.9.2007 are annexed herewith as Exh. R-2 and R-3 respectively for kind perusal.

The Government in his department vide letter dated 29.9.2006, had instructed to respondent no 4 take the decision about the petitioner at the level of Hon'ble Chairman, Maharashtra Administrative Tribunal, as it is the responsibility of respondent no 4 to provide the vehicle to the petitioner. But the respondent no 4 had requested the Government to take a decision at its level vide letter dated 5.3.2007. Hence the Government in his department had sought the necessary information from respondent no 2 and 4 vide letter dated 5.4.2007. A reminder was further sent to respondent no 4 to submit the said information vide letter dated 15.5.2007. It has been noticed by Government that the respondent no 4 is reluctant to submit the particular requisite information in present case since beginning. It can be seen from the letter dated 5.4.2007 of office of this respondent. The respondent no 4 had submitted its information vide letter dated 25.5.2007. In the said letter the respondent had submitted some information but has remained silent on action taken regarding petitioner's application dated 20.5.2003. The Government in this department had taken a decision on the basis of information received from respondent no 2 and 4 vide letter dated 12.6.2007. Thereafter the respondent no 4 vide his letter dated 3.8.2007, had raised some questions about the said

decision and refused in first instance to convey it to the petitioner. Government in this department vide letter dated 12.9.2007, had then answered all the questions of respondent no 4 and instructed to convey the decision to the petitioner. The respondent no 4 ultimately vide his letter dated 20.9.2007 had conveyed the said decision to the petitioner by mentioning that his office was not convinced with the said decision of the Government. It shows the reluctance of respondent no 4, as he had refused to take the decision in the present case at the level of Hon'ble Chairman, Maharashtra Administrative Tribunal and requested the Government to take proper decision. And when the Government had taken a decision on the basis of information received from respondent no 2 and 4, respondent no 4 is mentioning that his office is not convinced with the said decision. Primarily, it is the duty of respondent no 4 to either provide the vehicle to the petitioner, or maintain the vehicle in proper conditions or to sanction vehicle allowance in lieu of not providing the Government vehicle, as per rules in existence. But the respondent no 4, for reasons best known to him had not performed his duty with necessary responsibility. The Government in this department had instructed respondent no 4 time and again to file affidavit on behalf of respondent no 2 and 3, but he had not filed such affidavit so far.

7] The respondents 3 and 4 instead of taking a positive decision, are passing the buck on each other. Respondent no.4 insists that the Government should take a decision and the respondent no.3 insists that the respondent no.4 shall take decision.

8] It is not disputed that the vehicle allotted to the petitioner as a Member of the Maharashtra Administrative Tribunal, was not in a condition to ply on road, so also, the driver allotted had resigned in four days and no other driver was allotted to the petitioner nor a

better vehicle was allotted and the petitioner was required to use his own vehicle. In such a case. There was no impediment to apply the G.R. dated 10/09/2001. Perusing the affidavit in reply filed by respondents 3 and 4, it is manifest that both the respondents in principle do not specifically dispute that the petitioner would be entitled for vehicle allowance as per G.R. dated 10/09/2001. In that case, there would not be impediment to award said benefit to the petitioner.

9] It is submitted by learned counsel for the petitioner that even benefit of vehicle allowance as per the G.R. dated 04/12/1999 was also not extended to the petitioner. Respondents ought to have extended the benefit of vehicle allowance to the petitioner atleast as per the G.R. dated 04/12/1999 till date. More particularly when the same was sanctioned by respondent no.3. As even payment of vehicle allowance as per G.R.dated 04/12/1999 was not made though sanctioned, we are inclined to grant interest to the petitioner.

10] The respondents shall extend the benefit to the petitioner of vehicle allowance as per G.R .dated 10/09/2001 for the period from 01/04/2003 to 01/12/2004 alongwith interest @ 6% p.a. (simple interest). The payment as directed shall be made within a period of three months from today.

11] Writ Petition stands disposed of. Rule accordingly made absolute in above terms. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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