

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4234 OF 2016

Takhatmal Kesharchand Gugale

.. **Petitioner**

Versus

State of Maharashtra and others

.. **Respondents**

Shri Satyajit S. Bora, Advocate for the Petitioner.

Shri P. S. Patil, Addl. G. P. for the Respondent Nos. 1 and 2.

Shri Shivaji T. Shelke, Advocate for Respondent No. 3.

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATE : 7th November, 2017

PER COURT :

1. Mr. Bora, the learned counsel for the petitioner submits that the petitioner was at the relevant time working as a Junior Assistant. The Departmental Enquiry was initiated against the petitioner on 5 charges. The petitioner was held guilty and punishment of dismissal of the petitioner from service was imposed. The petitioner filed an appeal before the Divisional Commissioner. The Divisional Commissioner allowed the appeal. The Divisional Commissioner only confirmed the charges to the extent of absentism and set aside the other findings. Even the finding about the loan from the Bank was set

aside by the Divisional Commissioner. According to the learned counsel, the punishment imposed upon the petitioner was withholding 3 increments permanently. Though, the order was passed in the year 2005 by the Divisional Commissioner the petitioner was not reinstated. The petitioner was time and again representing the respondents. The respondents on the ground that they have filed a Review were not reinstating the petitioner. The Review was subsequently rejected in the year 2015 and thereafter the petitioner was reinstated. The petitioner is entitled for the wages and other service benefits from 31.12.2004 till 5.8.2015 with the interest.

2. Mr. Shelke, the learned counsel for the respondent submits that the petitioner had submitted representation for joining the service only twice i.e. in the year 2009 and 2015 and had not turned up.

3. The decision is not yet taken by the Authorities with regard to the period 2005 to 2015 and the same is pending. The Authorities would take decision upon it.

4. Mr. Bora, the learned counsel submits that the respondent - Authority cannot again reopen and reconsider the issue which has been decided by the Divisional Commissioner in appeal, as such, there is no question to bring the certificate from the Bank about no dues.

5. We have considered the submissions.

6. In view of the fact that the decision is not yet taken by the Authority for a period 1.1.2005 till the date of joining and the same is subjudice it would not be appropriate for us to consider the matter on merits.

7. Considering the order dated 31.7.2015 passed by the Chief Executive Officer it appears that Chief Executive Officer would take the decision after receipt of No Dues Certificate from the Bank. In fact, the same is not necessary in view of the judgment of the Divisional Commissioner in appeal.

8. The respondent - Authority shall consider about the service benefits, continuity / back wages for the period 1.1.2005 till the date of reinstatement on its own merits, in accordance with law without insisting for No Dues Certificate from the Bank expeditiously and preferably within a period of four (4) months.

9. The writ petition accordingly disposed of with aforesaid observations. Respective contentions of the parties are kept open.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]