

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

WRIT PETITION NO. 10916 OF 2015

Shri Dinkar S/o Uttam Desale,
Age : 61 Years, Occu. : Retired,
R/o G. S. Society, Dhule Road,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
of Industries, Energy and Labour
Department, Mantralaya, Mumbai.

2. The Maharashtra State Electricity
Distribution Company Ltd.,
Prakashgad, fourth Floor,
Anant Kanekar Road,
Station Road, Bandra (East),
Mumbai - 400051
Through its Managing Director
(Distribution - 4 - Project)

3. The Maharashtra State Electricity
Distribution Company Ltd.,
Office of Regional Executive Director
at Pune, Building No. 2, Plot No. 1 and
2, Officers Colony, Ganesh Khind
Road, Pune - 411 016,
Through its Managing Director.

.. Respondents

Shri Deelip Bankar Patil, Advocate for the Petitioner.

Shri A. A. Jagatkar, A.G.P. for the Respondent No. 1.

Shri A. S. Bajaj, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.
DATE : 17TH MARCH, 2017.**

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

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner seeks directions against the respondents to treat the suspension period as duty period. So also the period from the date of termination till reinstatement as duty period and salary be paid for said period along with all consequential benefits. The petitioner also assails the order dated 24.03.2014 treating the period from dismissal till reinstatement as leave without pay and order dated 01.08.2015 treating suspension period as punishment.

3. Mr. Bankar Patil, the learned counsel for the petitioner submits that, the petitioner was suspended on 14.01.2011. The said suspension continued upto 01st August, 2012 and on 02nd August, 2012, the petitioner was terminated resorting to Regulation No. 90 of the Maharashtra State Electricity Distribution Company Ltd. Employees Service Regulation 2005 (for short "Service Regulation"). On 01.04.2014 the petitioner was reinstated in service after acquittal in the criminal case. The learned counsel submits that, the order of the authority treating

the suspension period as a punishment is erroneous and not in consonance with the existing regulations. The learned counsel submits that, the same is not in consonance with the Service Regulation No. 88(a)(vi). The said period has to be considered as duty period. The learned counsel further submits that, the order treating the period from termination till reinstatement as leave without pay is also erroneous and not supported by any service regulation. By resorting to Regulation No. 90, the petitioner was terminated. The said regulation 90 is held to be ultra vires by this Court. The said dismissal itself was illegal. The petitioner as such was required to be reinstated. For no fault of the petitioner, the petitioner has been terminated. The petitioner has been acquitted in the criminal case, the petitioner is entitled for the full wages for the period from the date of dismissal till his reinstatement. The learned counsel relies on the judgment of the Punjab and Haryana High Court in a case of **Narender Kumar Vs. Dakshin Haryan Bijli Vitran Nigam Ltd.** reported in ***2016 SCC Online P & H. 6297.***

4. Mr. Bajaj, the learned counsel for the respondent Nos. 2 and 3 submits that, it is the discretion of the authority to treat the suspension period either as duty period or as a punishment. According to the learned counsel, the authority has rightly exercised its discretion. The period from dismissal to reinstatement is considered as leave without pay. The same is

rightly considered in view of Service Regulation No. 10-A. The learned counsel relies on the judgment of the Division Bench of this Court at Bombay dated 03rd march, 2017 in Writ Petition No. 7763 of 2013. The learned counsel further submits that, even on the principle of "no work no pay", the petitioner is not entitled for the wages during the period the petitioner was terminated till his reinstatement. In support of his contentions Mr. Bajaj, the learned counsel for the respondent relies on following judgments of this Court as well as Apex Court.

- i) Ramchandra Bapusaheb Desai Vs. Maharashtra State Electricity Distribution Co. Ltd. dated 09.01.2017 in Writ Petition No. 2301 of 2013.
- ii) Vijay S/o Pandurang Joti Vs. The Managing Director, Maharashtra State Electricity Distribution Co. Ltd. and others dated 15.03.2012 in Writ Petition No. 8995 of 2011.
- iii) Ramesh Rangnathrao Sonawane Vs. Maharashtra State electricity Distribution Company Ltd. reported in 2012(3) All M. R. 78.

5. We have considered submissions canvassed by the learned counsel for respective parties. The petitioner was suspended on 14.01.2011 as criminal case was instituted against the petitioner under the provisions of the Prevention of Corruption Act. Subsequently, resorting to Regulation No. 90 of the Service

Regulations, the petitioner was terminated from service with effect from 02.08.2012. The said Regulation 90 is held to be ultra vires by this Court. There is no dispute about the said position. The dismissal of the petitioner was resorting to the wrong service regulation. It was without conducting any departmental enquiry as contemplated under Rule 88 of the Service Regulations. It is also not disputed that the petitioner has been acquitted in the criminal case filed against him. Prior to that the petitioner was dismissed with effect from 02.08.2012 and upon acquittal on 01.08.2012 and was reinstated on 01.04.2014.

6. The period of suspension of the petitioner has been held to be a punishment. No service regulation could be pointed out by the respondent to suggest that suspension period could be considered as a punishment. On the contrary service Regulation No. 88(a)(vii) would be relevant. In case of acquittal the period of suspension has to be treated as on duty in accordance with service regulation No. 88(a)(vi). It is only in case of conviction competent authority would view period of suspension as punishment. Once the petitioner has been given acquittal in the criminal case and the suspension of the petitioner was on account of filing of criminal case against the petitioner, service regulation No. 88(a)(vi), could not come to the aid of the petitioner and the suspension period will have to be treated as duty period. No discretion vest with the authority in that regard.

7. In the light of the above, the period from 14.01.2011 to 01.08.2012 will have to be treated as duty period of the petitioner and the petitioner would be entitled for the full salary for the said period.

8. The period from dismissal till reinstatement is also required to be considered as duty period. The petitioner is reinstated on account of acquittal in the criminal case. As stated hereinabove, no departmental enquiry under regulation No. 88 was conducted against the petitioner. As such, the dismissal was only on account of filing of criminal case. The respondents' resorting to regulation No. 90 was also erroneous. The same is impermissible. The said regulation No. 90 itself is held as ultra vires by this Court in catena of judgments. Considering the above the period from 02nd August, 2012 till the date petitioner was reinstated will have to be considered as duty period. Regulation No. 10(1)(A) dated 24.11.1992 may not enure to the benefit of the petitioner in as much as the said regulation applies in case the employee gets acquitted in appeal in the appellate Court. The said regulation does not take within its ambit the contingency of the employee getting acquitted by the Trial/Sessions Court. The principle deduced of no work no pay in said regulation No. 10(1)(A) is only considering the eventuality of an employee getting acquitted in appeal. In the present case, the

petitioner has been acquitted by the Trial Court itself. The said period will have to be considered for the purpose of continuity in service and all other further benefits. The question is about the wages from the period of dismissal till reinstatement. No straitjacket formula can be laid down in considering the case to award backwages. There is element of discretion in awarding backwages. The attending circumstances have to be taken into consideration while awarding backwages. No blanket rule can be laid down in this regard. The petitioner was terminated considering regulation No. 90 which is set aside by this Court. No doubt, during the said period, the petitioner had not worked. However, it was also not the fault of the petitioner. The petitioner is also acquitted in the criminal case.

9. Considering the above aspects of the matter, we deem it appropriate to award 50% backwages to the petitioner for the said period. In the result we pass following order.

10. The impugned orders are quashed and set aside. The period from 14.01.2011 to 01.08.2012 shall be considered as duty period. The petitioner shall be awarded salary for the said period after deducting subsistence allowance that may have been paid to the petitioner.

11. For the period from 02nd August, 2012 till 31.03.2014 the

petitioner shall be paid 50% backwages, however, the said period shall be counted for the continuity in service and all other consequential benefits arising therefrom.

12. Rule accordingly is made absolute in above terms. No costs.

Sd/-

[SANGITRAO S. PATIL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/March 17