

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 1820 OF 2013

Ramesh s/o. Rangnathrao Sonawne,
Age 53 years, Occu. Service,
R/o. SBH Colony, Latur, Dist. Latur.

....Petitioner.

Versus

1. Maharashtra State Electricity
Distribution Company Ltd.,
Through Director, (operation),
M.S.E.D.C.L. Disciplinary action
section, Prakashgad, 4th Floor
station Road, Bandra (E),
Mumbai.

....Respondent.

Mr. N.B. Khandare, Advocate for petitioner.

Mrs. D.S. Jape, AGP for State.

Mr. A.S. Bajaj, Advocate for respondent sole.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : MAY 03, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed under Articles 226 and 227 of the Constitution of India to challenge the order made by respondent employer on 12.3.2012. By this order, the employer has treated the period from date of dismissal from service till the date of

reinstatement of the petitioner as the period of extraordinary leave without pay.

3) The petitioner was working as Executive Engineer with respondent in Konkan Division. Criminal case was filed against him under the provisions of section 13 (1)(d) r/w. section 13 (2) of the Prevention of Corruption Act. The petitioner came to be acquitted in the said case by the Trial Court on 21.4.2011 when the case was filed in the year 2010. The petitioner was placed under suspension with effect from 2.2.2010 by order dated 15.2.2010 as he was arrested in aforesaid crime on 2.2.2010.

4) Departmental inquiry was started against the petitioner and chargesheet was served on him on 26.3.2010. As per the Rule 90 of M.S.E.B. Employees Regulation Rules, the inquiry was conducted summarily. When the inquiry was started the petitioner filed Writ Petition No. 2809/2010 and sought stay to the inquiry on the ground that on the basis of the same material criminal case was filed and the case was still going on. No interim relief was granted by this Court. After the aforesaid inquiry, the petitioner came to be dismissed by order dated 19.7.2011. This order gave rise to new cause of action and the petitioner filed Writ Petition No. 6513/2011. This Court allowed the writ petition and set aside the order of

dismissal. The writ petition was decided on 23.12.2011. The order of employer under challenge shows that the employer considered the period from the date of dismissal till the date of reinstatement after the decision of the writ petition and held that the said period needs to be treated as extraordinary leave without pay.

5) The learned counsel for respondent employer produced copy of MSEDCL Employees Service Regulations, 2005. This Court has carefully gone through those Rules. Those Rules do not provide for giving power to the employer to take decision in respect of the aforesaid period. Ordinarily under such Rules, the power is given to the employer to take decision in respect of the suspension period. When the Court considers the legality or propriety of order of dismissal, it is up to the Court to decide as to how the period of this nature needs to be treated. In Writ Petition No. 6513/2011 this Court has held that the order of dismissal was illegal and the order is set aside. Thus, due to that order the petitioner stood reinstated with effect from the date when the order of dismissal was made by the employer in departmental inquiry. It needs to be kept in mind that the petitioner was acquitted by the Trial Court in criminal case on 21.4.2011 and so, on the date of the decision of the Writ Petition i.e. on 23.12.2011, there was order of acquittal in his favour. In view of these circumstances, there was no other option before the

respondent than to reinstate the petitioner in service as per the order made by this Court in Writ Petition No. 6513/2011. It is already observed that the employer has no power to take decision of aforesaid nature in respect of the period between the date of dismissal and the date of reinstatement in service. Even in the Rules of the respondent, there is no whisper about such period. There was no question of imposing 'penalty' in respect of this period by the employer. Further, the departmental inquiry which was conducted is held to be illegal as it was not possible under Rule 90, as held by this Court in aforesaid writ petition. Due to all these circumstances, this Court holds that the order under challenge cannot sustain in law.

6) The learned counsel for respondent employer placed reliance on some cases as under :-

(i) (2016) 14 SCC 208 [Mulin Sharma Vs. State of Assam and Ors.],

(ii) Writ Petition No. 10916/2015 [Shri. Dinkar s/o. Uttam Desale Vs. The State of Maharashtra and Ors.] decided by this Court on 17.3.2017 and

(iii) Writ Petition No. 7763/2013 [Mohan Moreshwar Agashe Vs. The Managing Director, M.S.E.D.C.L. and Anr.] decided by this Court at Principal Seat on 3.3.2017.

The facts of the aforesaid three cases were totally different. Limited point is involved in the present matter which is already discussed

and so, the observations made by this Court and Hon'ble Apex Court in the aforesaid cases are of no use to the present respondent in the present matter to support the order under challenge. In the result, following order :-

ORDER

- (I) The petition is allowed.
- (II) The order of respondent dated 12.3.2012, which is under challenge in this writ petition and due to which the period from the date of dismissal to the date of reinstatement is treated as extraordinary leave without salary, is hereby set aside.
- (III) No order as to costs.

Rule is made absolute in aforesaid terms.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/