

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 3024 OF 2002

Baburao Bhagaji Pandit,  
Age 47 years, Occ. Nil  
R/o Shastri Colony, Sillod,  
District Aurangabad. ..Petitioner

Versus

1. The State of Maharashtra
2. The Additional Commissioner,  
Aurangabad Division, Aurangabad.
3. The Chief Executive Officer,  
Zilla Parishad, Aurangabad
4. The Education Officer (Primary),  
Zilla Parishad, Aurangabad. ..Respondents

...  
Advocate for Petitioner : Shri D.J.Choudhari  
AGP for Respondents 1 & 2 : Shri S.K.Tambe  
Advocate for Respondents 3 & 4 : Shri Deelip Patil Bankar

...

CORAM : RAVINDRA V. GHUGE, J.  
Dated: March 09, 2018

...

ORAL JUDGMENT:-

1. The petitioner is aggrieved by the orders dated 8.7.1999, 26.9.1999, 29.7.2000 and 14.2.2002 passed by respondent Nos.3,4 and 2 respectively. The petitioner has superannuated on 1.2.2011. While admitting this petition on 18.10.2002, this Court has not granted interim relief to the petitioner.

2. I have heard the strenuous submissions of the learned Advocates and the learned AGP for the respective parties.

3. The undisputed factors are as under:-

(a) A crime was registered against the petitioner bearing No. 16 of 1998 with the Police Station Cidco on 2.1.1998.

(b) He was arrested on 3.2.1998.

(c) He was produced before the learned Judicial Magistrate on 7.2.1998.

(d) Neither the petitioner nor respondents 3 and 4 have any knowledge as to whether he was granted bail on 7.2.1998 or any time thereafter.

(e) He was reinstated on 25.3.1999 by his employer / Zilla Parishad.

(f) For the said 415 days, from the date of arrest till his reinstatement, he was treated to be under suspension under Rule 3(2) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal), Rules, 1964.

(g) The Police Inspector of the Cidco Police Station

subsequently passed an order on 22.2.1999, releasing the petitioner under Section 169 of the Code of Criminal Procedure in Crime No.16 of 1998.

(h) The issue, therefore, is as to whether the period of 415 days should be treated as on duty or not.

5. There can be no debate that the order of the Police Inspector dated 14.2.1999 releasing the petitioner under Section 169 of the Cr.P.C. cannot be equated with an Honourable acquittal by a Court of Criminal Jurisdiction after trial. Section 169 provides for the officer in charge of the Police Station to release an accused from custody, after executing a bond, if he finds that there is insufficient evidence or a reasonable ground of suspicion, by which, he finds it appropriate not to refer the accused to the Magistrate for trial. However, subsequently, such an accused person can be subjected to trial as is provided under Section 169 of the Cr.P.C.

6. The petitioner has placed reliance upon the judgment of the learned Division Bench of this Court in the matters of Dattatray Wasudeo Kulkarni Vs. Director of Agriculture, Maharashtra [1984 Mh.L.J. 406] and Bhaurao Jairam Kadam Vs. Nanded Zilla Parishad [ 2000 (3) CLR 322].

7. The learned counsel on behalf of the Zilla Parishad submits that this petitioner himself had applied for grant of 'leave due admissible' for the period of suspension by tendering a prescribed leave application form, by which, he prayed that the leave that may have accumulated in his account or would be admissible to him in future, should be adjusted against the period of suspension so as to treat him on 'sanctioned leave'. It is, therefore, submitted that as the petitioner was never acquitted after trial by a Court, both the judgments cited, which are based on an acquittal by the trial Court, would not be applicable to the case of the petitioner.

8. It requires no debate that once an employer grants leave which is available or sanctions leave so as to adjust it with the period of suspension, the said period would no longer be a period of suspension. It would get converted into sanctioned leave *post facto*. Even otherwise, suspension from duty is never considered to be a break in service. The contention of Shri Choudhary that grant of leave would amount to a break in service and would affect the pensionary benefits, is a misconception.

9. In the cases of Dattatray and Bhaurao (supra), those petitioners who were involved in criminal cases were under suspension. After their acquittal by the trial Court, they were granted full salary by the learned Division Bench of this Court. In none of these two cases, Section 169 of the Cr. P.C. was applicable.

10. There is nothing placed before this Court to indicate either through any provision of law or any judgment delivered by the Court or a view taken by any Court that the order of the Police Inspector releasing an accused under Section 169 of the Cr.P.C. would be akin to an acquittal after trial thereby entitling such an employee to full salary for the suspension period.

11. The petitioner has been paid subsistence allowance as per Rules for the entire period that he was deemed to be under suspension. So also, he has been sanctioned leave on his request to adjust the 415 days of his suspension. The management Z.P. therefore has to consider whether it granted paid leave for the 415 days and paid subsistence allowance as well, which may amount to excess payment.

12. Considering all the above factors, as well as keeping in

mind that the period of suspension is not treated as a break in service and would not affect the pensionary benefits of the petitioner, this petition, being devoid of merits is dismissed. Rule is discharged.

( RAVINDRA V. GHUGE, J. )

...

akl/d