

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

WRIT PETITION NO.3932 OF 2017

Bibhishan s/o. Vishwanath Tutare,
Age : 51 years, Occ. Service,
r/o. Open Prison, Paithan,
Tq. Paithan, Dist. Aurangabad ..Petitioner

Vs.

The State of Maharashtra and anr. ..Respondents

Mr. S.D.Dhongade, Advocate for petitioner

Mrs. P.V.Diggikar, AGP for respondent no.1

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATE : NOVEMBER 28, 2018**

ORAL JUDGMENT (PER S.V. GANGAPURWALA, J.) :

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

2. At the relevant time in the year 2009, the petitioner was working as Jailer, Grade-II. He was posted on deputation at Taloja Central Prison, Navi

Mumbai, as an Orderly Officer at the main gate of the said prison. A departmental enquiry was initiated against the petitioner on ground that by accepting Rs.500/- from one Kishor Jadhav, the petitioner had allowed him to meet a jail inmate namely, Sanjay Jadhav and further allowed him to take certain eatables in the jail premises. Upon conclusion of the departmental enquiry, the disciplinary authority imposed punishment upon the petitioner of compulsory retirement from the service. The petitioner challenged the said punishment by filing Original Application before the Maharashtra Administrative Tribunal. The Tribunal allowed the Original Application, set aside the punishment imposed upon the petitioner and directed his reinstatement with continuity in service. The Tribunal, however, denied the back-wages to the petitioner.

3. Learned Counsel for the petitioner submits that the Tribunal has come to the conclusion that neither the evidence nor the charges were proved

against the petitioner. The Tribunal has set aside the order of compulsory retirement and directed reinstatement of the petitioner with continuity in service. He submits that when the departmental enquiry has been commenced on erroneous charges and punishment has been set aside, 100% back wages should have been awarded to the petitioner. According to the learned Counsel, no reasons are given by the Tribunal, while refusing the claim of the petitioner for back-wages. He submits that in the operative part of the impugned order, in one line, the Tribunal denied the back wages. Even in the whole judgment, the Tribunal has not discussed about payment of back-wages. Learned Counsel for the petitioner, in support of his contentions, relied on the following judgments:-

(i) Pyare Lal Sharma Vs. Managing Director, Jammu and Kashmir Industries Ltd. and ors., 1989 AIR 1854;

(ii) Vikramaditya Pandey Vs. Industrial Tribunal, Lucknow and anr., (2001)2 SCC 423;

(iii) State of U.P. Vs. Charan Singh,
(2015)8 SCC 150;

(iv) Unreported order of Bombay High Court in the case of Yogesh Gangadharrao Khanke Vs. The State of Maharashtra and ors., decided on 14.02.2018 (Writ Petition No.14755 of 2017)

4. The learned AGP submits that on technical grounds, the punishment imposed by the disciplinary authority has been set aside by the Tribunal. The evidence was led in the departmental enquiry. As the punishment has been set aside merely on the technical grounds, the petitioner is not entitled for the back wages. The principle of 'no work no pay' would apply in the present case.

5. We have considered the submissions advanced by learned Counsel for the parties.

6. The State has not challenged the order of the Tribunal directing reinstatement of the petitioner with continuity in service. The only issue before us, is about grant of back-wages.

7. The Tribunal has considered the entire evidence led in the departmental enquiry proceedings. However, the said Jadhav brothers were not examined. The only incriminating evidence, which was sought to be relied on by the respondent in the departmental enquiry, was presence of note of Rs.500/- in the wallet of the petitioner. The Tribunal has discussed about the evidence and observed that mere presence of Rs.500/- in the wallet of the petitioner, would neither be fatal nor the said amount was such that it was not possible to be maintained by the petitioner in his wallet. After the punishment has been set aside, the Tribunal ought to have discussed about payment of back-wages. No straitjacket formula can be applied for awarding back-wages to the petitioner. It

would depend on the facts and circumstances of each case.

8. In the present case, the petitioner was compulsorily retired by order dated 20.10.2012. Immediately, the petitioner filed a departmental appeal against the said order. The departmental appeal was dismissed on 20.12.2012. The petitioner filed the Original Application on 30.07.2014 i.e. almost two years after the order of the appellate authority in departmental enquiry proceedings.

9. Considering the delay caused by the petitioner in approaching the Tribunal, we are not inclined to award back-wages till the date of filing of the Original Application, which was filed on 30.07.2014.

10. However, considering the overall scenario, we direct the respondent to pay the back wages to the petitioner to the extent of 50% for the period from 01.08.2014 till the date of his reinstatement.

11. Rule is accordingly partly made absolute.
The Writ Petition is disposed of. No costs.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

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