

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

BENCH AT AURANGABAD.

WRIT PETITION NO.13962 OF 2017

Vasant S/o Madhavrao Khare ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...

Mr.U.R.Awate, advocate holding for Talekar and
Associates for the petitioner.
Mrs.Vaishali Patil Jadhav, A.G.P. for the State.

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**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

Date : 04.04.2018.

PER COURT :

1. The petitioner assails the order passed by the Maharashtra Administrative Tribunal, thereby dismissing the Original Application. The petitioner claimed benefit of continuity in service from 1.9.1992. Mr.Awate, learned counsel submits that in the Departmental Inquiry, the

petitioner was exonerated and because of which the petitioner was reinstated in service. The reinstatement would relate back to his initial date of appointment. When the petitioner is exonerated in the Departmental Inquiry, so also his services are regularised, the regularisation relates back to his date of appointment. The decision taken by the Respondents to treat the period from 1.10.1992 to 20.3.2002 as non-duty period is illegal and erroneous. The petitioner was initially terminated in the year 1994 retrospectively w.e.f. 1.10.1992. The petitioner had challenged the said order by filing Original Application No.940/1995. The Original Application was allowed. The petitioner was reinstated. Under order dated 17.1.2006, the petitioner's services were regularised. According to the learned counsel, the Respondents have not properly appreciated Rule 44(2) of the Maharashtra Civil Services (Pension) Rules, 1982 and thereby has wrongly come to the conclusion that the applicant is not entitled to regularise his absence period as duty period. According to the learned counsel, the Respondents have no

authority to contend otherwise as in the Departmental Inquiry the charges against the petitioner could not be proved.

2. Learned A.G.P. supports the order and submits that the petitioner all along was absent from duty from the date of his appointment as a part time sweeper. At the relevant time, he was also serving with MSRTC. The said fact has been brought on record on the basis of communication received from the MSRTC. Even the petitioner had filed ULP before the Labour Court against the MSRTC in the year 1992 and had secured interim order and subsequently his complaint came to be allowed, thereby holding that he is serving as part time sweeper with MSRTC. The Tribunal has rightly considered all these aspects properly.

3. We have gone through the judgment delivered by the Tribunal, so also considered the documents. It has been observed that the petitioner was absent from duty from 1992. Rule 44(2) of Maharashtra Civil Services (Pension) Rules, gives powers to the employer to consider

the absence period either as absence period/non duty period and/or service period.

4. The facts on record are abundantly clear. The petitioner had in fact, played a fraud while taking up his employment with the Respondent. In the year 1992, the petitioner was employed by the Respondent. The petitioner at the relevant time suppressed that he is also serving as part time sweeper with the MSRTC. It would appear that petitioner even filed ULP before Labour Court against the MSRTC bearing ULP No.25/1991 and in the said ULP has secured orders of stay. He was working up to the year 1995 with MSRTC. It appears that the petitioner has also filed ULP No.339/1994 against MSRTC. The MSRTC had filed Revision against the order of Labour Court before the Industrial Court and subsequently the Revision came to be allowed. The petitioner did not disclose all these facts with the Respondent. The petitioner can not be heard to say that he was serving with the Respondent from 1.9.1992, when at the relevant date he was serving with MSRTC and has also secured orders of

stay from the Labour Court. He was terminated from service only on 18.8.1995 by MSRTC. The Court can not come to the aid of such litigant who had secured employment by playing fraud. The Tribunal has rightly considered the said aspect and has negatived the relief to the petitioner.

5. This Court in its writ jurisdiction would not come to the aid of such litigant who is guilty of fraud. The observations of this Court are with regard to the period from the year 1992 to 2002. It is submitted that the petitioner has already retired. The Respondent would process the retiral benefits as may be permissible in law.

6. The Writ Petition is disposed of. No costs.

(A.M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

