

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3506 OF 2015

Appasaheb Rudrappa Hatti	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. N. V. Bandiwadekar with Mr. Vinayak Kumbhar i/b. Mr. Sagar A. Mane for Petitioner.

Ms Shruti Vyas - 'B' Panel Counsel for State - Respondent No. 1.

Mr. Ramesh Rane for Respondent No. 2.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 13 JUNE 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 9th December 2013 made by the Maharashtra Administrative Tribunal (MAT) dismissing petitioner's

Original Application No. 270 of 2013. The petitioner by instituting Original Application No. 270 of 2013 had prayed for the following reliefs :

“a) By a suitable order / direction this Hon'ble Tribunal may be pleased to quash and set aside the order dated 30.5.2012 passed by the Respondent No. 1 (EXHIBIT -A) under which he informed the Respondent No. 2 to not to grant to the Petitioner the pay and allowances admissible to him as per the order dated 9.12.2011 passed by the Respondent No. 1 in favour of the Petitioner thereby regularizing the suspension period of the Petitioner between 30.5.1992 to 30.4.1999 as duty period for all purposes and granting to the Petitioner the monetary benefits to the extent of 90% of the pay and allowances and accordingly the petitioner be granted all the consequential service benefits including leave encashment benefits as per the order dated 9.12.2011, as if the impugned order had not been passed.”

4] The petitioner was appointed as a Junior Engineer in Government service in 1963 and promoted as Deputy Engineer. On 30th May 1992 the petitioner was placed under suspension because a criminal prosecution was launched against the petitioner for having allegedly demanded and accepted illegal gratification of Rs.20,000/-. On 9th April 1999, the petitioner was acquitted by the Additional Sessions and Special Judge, Satara. On 30th April 1999, the petitioner, retired on attaining the age of superannuation

even before his suspension could be formally revoked by the respondents.

5] For quite some time, no orders were made as regards the treatment of the period of suspension on the ground that appeal against the petitioner's acquittal was pending before this Court. On 23rd August 2010, the appeal against acquittal was dismissed by this Court.

6] On 9th December 2011, the respondent no. 1 made an order directing that the period of suspension from 30th May 1992 till 30th April 1999, be treated as period spent on duty for the purpose of pension only and that the petitioner will be granted monetary benefits to the extent of 90% pay and allowances for the suspension period. This means that the petitioner, was denied payment of 10% pay and allowances for the suspension period.

7] The petitioner, aggrieved by denial of 10% and allowances for the suspension period instituted Original Application No. 255 of 2012 before the MAT. By order dated 3rd August 2012 this Original Application was allowed

and the MAT directed release of the balance 10% pay and allowances for the suspension period. The respondents instituted writ petition no. 2780 of 2013 questioning the MAT's order dated 3rd August 2012. However, by order dated 25th July 2013, this Court, dismissed writ petition no. 2780 of 2013. As a consequence, it is the case of the petitioner that the petitioner became entitled to receive 100% pay and allowances for the period of suspension between 30th May 1992 and 30th April 1999.

8] The respondents contend that the respondents issued a cheque towards 100% pay and allowances during the suspension period to the petitioner. The petitioner initially refused to accept the cheque but later on accepted the cheque without prejudice and by stating that the benefit of pay revisions also was required to be extended to him. This was because in the meantime, the respondents had issued order dated 30th May 2012, which is the order, the petitioner ultimately challenged by instituting Original Application No. 270 of 2013, in which the impugned judgment and order was made by the MAT.

9] The translated order dated 30th May 2012, read as follows :

"GOVERNMENT OF MAHARASHTRA

Immediate

**NO. MISCL-2012/455[99/2012]
VIGILANCE 1**

**WATER RESOURCES DEPARTMENT,
MADAM CAMA MARG,
MANTRALAYA, MUMBAI 400032
DT. 30.5.2012**

**To,
Chief Executive Officer,
Zilla Parishad, Sangli**

Ref: Payment of salary and allowances and increments payable to Shri Appasaheb Rudrappa Hatti, Deputy Engineer (Retired) during suspension period.

**Ref:- 1] YOUR No. ZPS/MID/CB3/WS/594/12 DATED 9.4.2012.
2] YOUR No. ZPS/MID/CB3/WS/594/12 DATED 11.4.2012.
3] YOUR No. ZPS/MID/CB3/PENSION/WS-613/12 DATED 16.4.2012.**

Sir,

With reference to above subject, by your above referred letters, the request was made to give guidance regarding payment of salary and allowances, increments and retirement pension to Shri Appasaheb Rudrappa Hatti, Deputy Engineer (Retired) during the period of suspension from 30.5.1992 to 30.4.1994. In this respect you are informed that as per Government Circular, Finance Department No. PR-1200/CR16/SERVICES-10 dated 6.6.00, the employees who were under suspension from 1 January 1996 and

who retired or were retired while under suspension, then such employees are not entitled to benefits under the Maharashtra Civil Services [Revised Pay) Rules, 1998. However, by Government order No.DLI-2389/444[3891]/VIGILANCE 1 dated 9.12.2011, the period of suspension of Shri Hatti has been regularized as duty period for retirement benefits, his pay fixation during the period of suspension as per the 5th Pay Commission should be made on notional basis. In order to grant him the retirement pension, he can be sanctioned notional increments during the period of suspension. However, he will not be entitled to regular increments for the purpose of payment of salary and allowances. Similarly he will not be entitled to any arrears pursuant to the notional pay fixation.

*Yours,
SD/-
(G.S. SONAWANE)
UNDER SECRETARY TO GOVERNMENT"*

10] Mr. Bandiwadekar, the learned counsel for the petitioner submits that the respondents had themselves ordered that the petitioner be paid 90% of salary and allowances during the period of suspension. The petitioner, aggrieved by the denial of balance 10% had instituted Original Application No. 255 of 2012 before the MAT which was allowed. This means that there are orders which have attained finality for payment of 100% pay and allowances to the petitioner during the suspension period. Mr. Bandiwadekar submits that the order dated 30th May 2012

virtually varies the previous orders for payment of 100% pay and allowances even though, such orders have attained finality. Mr. Bandiwadekar submits that it is clearly impermissible and on this ground itself the order dated 30th May 2012 is liable to be set aside.

11] Mr. Bandiwadekar submits that the order for payment of 100% pay and allowances during the suspension period naturally means and implies payment by granting benefits under the Maharashtra Civil Services (Revised Pay) Rules or the benefit of revised pay-scales made applicable in the meanwhile. He submits that the respondents as well as the MAT, have erred in relying upon the circular dated 6th June 2000, which circular was not at all applicable to the case of the petitioner, since, the orders for payment of 100% pay and allowances had attained finality.

12] Mr. Bandiwadekar, without prejudice submits that the order dated 30th May 2012, to the extent it states that the petitioner will not be entitled to regular increments for the purposes of salary and allowances is *ex facie* in breach of the respondents own order dated 9th December 2011 as

modified by the MAT in its judgment and order dated 3rd August 2012. Mr. Bandiwadekar submits that there is no justification whatsoever on the part of the respondents to deny the cash benefit of increments at least in the unrevised scale on actual basis rather than notional basis. For all these reasons, Mr. Bandiwadekar submits that the impugned judgment and order made by the MAT warrants interference.

13] Ms Vyas, 'B' Panel Counsel for the respondent no. 1 at the outset concedes that there is no justification in denying the petitioner the actual benefit of regular increments in the unrevised scale during the period of his suspension. However, she submits that there is absolutely no other error in the order dated 30th May 2012 declining to extend the benefit of revised pay-scale to the petitioner. She submits that the order dated 30th May 2012 is entirely consistent with the circular dated 6th June 2000, which has not even been challenged by the petitioner at any stage. She submits that this circular makes it clear that the employees who were under suspension prior to 1st January 1996 and who retired after 1st January 1996 while under

suspension, shall not be entitled to the benefits of the revised pay-scale.

13] Mr. Rane, the learned counsel for the respondent no.2 adverts to the affidavit filed on behalf of the respondent no. 2 and states that the respondent no. 2 has complied with the orders for payment of 100% pay and allowances to the petitioner during his suspension period and therefore, there is no cause of action to maintain the present petition against the respondent no. 2. Mr. Rane submits that this petition is liable to be dismissed.

14] Rival contentions now fall for our determination.

15] There is no serious dispute that the orders dated 9th December 2011 issued by the respondents and 3rd August 2012 issued by the MAT have attained finality and the petitioner, is required to be paid in terms of such orders for the period between 30th May 1992 to 30th April 1999 i.e. the period during which the petitioner had been placed under suspension. In fact, it is the case of the respondent no. 2 that payments have been made to the petitioner in

accordance with these orders.

16] The effect of the orders dated 9th December 2011 as modified by judgment and order of the MAT dated 3rd August 2012 is that the petitioner, has to be paid 100% pay and allowances for the period of suspension i.e. 30th May 1992 to 30th April 1999. The question which however arises in the present petition is whether the petitioner, on the basis of these orders, is entitled to the benefit of revised pay-scales in terms of the Maharashtra Civil Services (Revised Pay) Rules, 1998 particularly, in the context of the provisions of the Maharashtra Civil Services (Pension) Rules 1982. This is because the order dated 30th May 2012 which was impugned by the petitioner by instituting Original Application No. 270 of 2013 has directed that the petitioner shall not be granted the benefit of revised pay-scales. This order, has in fact, proceeded further to deny the petitioner the benefit of actual regular increments even in the unrevised pay-scale. This later portion of the order is obviously unsustainable and the learned 'B' Panel Counsel has fairly conceded on this aspect.

17] The State has issued a circular dated 6th June 2000 clarifying the position in such matters. The circular dated 6th June 2000 reads as follows :

"CIRCULAR

By Government Notification, Finance Department No. PR 1298/CR13/SERVICES-10, DATED 10.12.1998, the Maharashtra Civil Services [Revised Pay] Rules, 1998 have been made applicable to the Government employees and other from 1 January 1996. A query was raised whether the employees who were on extra ordinary leave or suspension prior to 1 January 1996 and who retired or expired or who retired from service while under suspension or were made to retire while under extra ordinary leave after 1 January 1996, should be given benefit of the said rules.

2. The Government has considered the said fact and the Government now clarifies that considering the provisions of the Maharashtra Civil Services [Pension] Rules, 1982, the employees who were on extra ordinary leave or under suspension prior to 1 January 1996 and who retired or expired after 1 January 1996 while on extra ordinary leave, or who retired or were made to retire while under suspension, such employees shall not be entitled to the benefits of the Maharashtra Civil Services [Revised Pay] Rules, 1998.

By order and in the name of the Governor of Maharashtra.

Sd/-

[S. V. LAGWANKAR]

JOINT SECRETARY TO GOVERNMENT"

18] Admittedly, the petitioner has not challenged this circular dated 6th June 2000 either before the MAT or before

this Court in the revision petition. Accordingly, we have to only examine whether the order dated 30th May 2012 made by the respondents is consistent with the clarification in the circular dated 6th June 2000 and further whether the circular dated 6th June 2000 is not applicable to the case of the petitioner because of the finality attached to the orders dated 9th December 2011 and 3rd August 2012.

19] From the perusal of the order dated 30th May 2012, we are satisfied that most of the said order except perhaps the portion which denies the petitioner the benefit of actual regular increments during the period of his suspension is quite inconsonance with what is set out in the circular dated 6th June 2000. The circular merely provides that employees who were under suspension prior to 1st January 1996 and who retired after 1st January 1996 while under suspension, such employees, shall not be entitled to the benefits of the Maharashtra Civil Services (Revised Pay) Rules, 1998. Therefore, there is nothing wrong in the order dated 30th May 2012 to the extent, it denies to the petitioner the benefit of revised pay-scale when it comes to computing 100% of pay and allowances for the suspension period.

20] Mr. Bandiwadekar's contention as regards inapplicability of the circular dated 6th June 2000 cannot be accepted. The order dated 9th December 2011 made by the respondents or the order dated 3rd August 2012 made by the MAT nowhere directs the extension of the benefits of revised pay-scale to the petitioner. In fact, it was also the case of Mr. Bandiwadekar that the issue of extension of revised pay scale was not at all the subject matter of Original Application No. 255 of 2012 which was disposed of by the MAT by its judgment and order dated 3rd August 2012.

21] The two orders only provide that the petitioner must be paid 100% pay and allowances during the period of his suspension. However, when it comes to computation of this 100%, the respondents, are quite justified in relying upon the circular dated 6th June 2000 and on such basis clarifying that the petitioner will not be entitled to the benefit of revised pay scale.

22] There is no dispute that the petitioner was placed

under suspension on 30th May 1992 i.e. prior to 1st January 1996. There is also no dispute that such suspension continued beyond 1st January 1996 and ultimately, the petitioner retired on 30th April 1999 whilst under suspension. In these circumstances, the predicates of the circular dated 6th June 2000 were clearly attracted and to the extent the order dated 30th May 2012 is inconsonance with the circular dated 6th June 2000, there is really no warrant for any interference with the impugned judgment and order made by the MAT.

23] The order dated 30th May 2012 to the extent it directs that the petitioner will not be entitled to regular increments for the purposes of payment of salary and allowances is however illegal and is liable to be struck down. Accordingly, we direct deletion of the following portion from the order dated 30th May 2012 :-

“However, he will not be entitled to regular increments for the purpose of payment of salary and allowances.”

24] Consequent upon deletion as aforesaid, we direct that the petitioner be paid cash benefits by granting him regular increments in accordance with his service conditions in the

unrevised pay-scale for the period of his suspension from 30th May 1992 to 30th April 1999. This shall be done within a period of six weeks from today failing which, the amount will carry interest at the rate of 7% per annum.

25] Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA