

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

WRIT PETITION NO.4194 OF 2018

Sanjay Kashirao Gawande ... Petitioner

Vs

The Commissioner of
Thane Municipal Corporation ... Respondents

...

Mr. Shrishailya Sadashiv Deshmukh for the Petitioner.

Mr. Shekhar Jagtap I/by J. Shekhar & Co. for the Respondent
Nos.1 and 2.

Mr. Y.S.Khochare, AGP for Respondent No.3.

CORAM : A.S.OKA &

SANDEEP K. SHINDE JJ.

RESERVED ON : 12 DECEMBER, 2018

PRONOUNCED ON : 18 DECEMBER, 2018

JUDGMENT : [Per Sandeep K. Shinde, J.]

Heard. With the consent of the parties taken up for
the final hearing at the admission stage.

2 This Petition under Articles 226 and 227 of the
Constitution of India is preferred by the employee of the
Municipal Corporation against the order dated 10th October,

2016 passed by the Additional Commissioner of Thane Municipal Corporation whereby he refused to treat the period of suspension as a period spent on duty.

3 Enquiry was initiated against the Petitioner by issuing charge-sheet on 16th January, 2014. Pending enquiry, he was suspended from 7th May, 2013 to 20th August, 2015. Thus, period of suspension was 2 years and 3 months. Enquiry officer submitted his report on 28th April, 2015 whereby he held none of the charges were proved. In view of this finding, he was reinstated in the service on 21st August, 2015. He opted for voluntary retirement and was relieved by the Respondents on 30th September, 2017 .

4 The Petitioner requested the Respondents to treat his period of suspension as period spent on duty. The Respondents refused to accede to his request, but held that only for calculating the pensionary benefits, period of suspension

shall be treated as period spent on duty.

5 We have perused the impugned order and the enquiry report which are at Exhibits 'A' and 'B' respectively. The second Respondent refused to treat the period of suspension as a period spent on duty. In other words, though the Petitioner was exonerated of all the charges, he has been punished by not treating the period of suspension as period spent on duty.

6 The provisions of Section 56 of the Maharashtra Municipal Corporation Act, 1949 ('Act' for short) empowers Competent Authority to impose penalties on Municipal officers and servants if such authority is satisfied that such officer or servant is guilty of breach of departmental rules or other misconduct. The second proviso contemplates that suspension of an officer or servant pending enquiry into the allegations shall not be deemed to be a penalty. The Respondents could

not point out any material from record on the basis of which the second Respondent refused to treat the period of suspension as a period spent on duty. In fact, it amounts to awarding punishment though the Petitioner was exonerated of all the charges. Thus, the impugned order is not sustainable.

7 Hence, the following order:

(i) That the period of suspension from 7th May, 2013 to 20th August, 2015 be treated as period spent on duty by the Petitioner for the purposes of service benefits including pensionary benefits but shall not be entitled to claim salary during the period of suspension.

(ii) The Petition is partly allowed in the aforesaid terms and disposed of.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)