

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

WRIT PETITION (STAMP) NO. 8227 OF 2018

The Secretary, Medical Education & Drug Department, Mumbai & Ors.	...Petitioners
Versus	
Sudhir Bhaskarrao Dube	...Respondent

Mr. C. P. Yadav – AGP for Petitioners – State.
Mr. Dinesh Khaire for Respondent.

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

DATE : 06 JULY 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.

- 2] Rule. With consent 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 12th September 2017 made by the Maharashtra Administrative Tribunal (MAT) allowing Original Application No. 257 of 2016 instituted by the respondent questioning communication dated 4th June 2016, by which the

respondent's absence from 12th June 2012 to 9th April 2014 (667 days) was ordered to be treated as the period spent on extra ordinary leave without pay.

4] The MAT, by the impugned judgment and order, has directed the following :

“13. The upshot is that the impugned action cannot be sustained and is liable to be interfered with. The communication dated 4.6.2016 (Exh. 'D', page 40-A of the PB) stands hereby quashed and set aside. The Respondents are directed to treat the period from 12.6.2012 to 9.4.2014 (667 days) as a 'period spent on duty' by the Applicant and treat it as such even for the purposes of pensionary and other post retiral benefits. Compliance within two months from today. The Original Application is allowed in these terms with no order as to costs.”

5] Mr. Yadav, the learned AGP submits that the respondent, after completion of his normal tenure at Pune by order dated 5th June 2012, was transferred to Dhule. The respondent, made representations but despite the fact that the transfer order was not revoked and further, there was no interim relief from the MAT, or any other court, failed to report to Dhule and discharge duties at the transferred post. Mr. Yadav submits that after OA No. 339 of 2014 instituted by the respondent was allowed and the transfer order was

set aside, the petitioners, reposted the respondent to Pune. Mr. Yadav submits that there was no justification whatsoever for the respondent to stay absent for 667 days and the impugned judgment and order which seeks to regularize absence and also, grant the respondent full salary and other benefits for this period is in patent excess of jurisdiction. He relies upon the ruling of the Hon'ble Supreme Court in ***Sukhdeo Pandey vs. Union of India (2007) 7 SCC 455***, to submit that in such a situation the principle of 'no work no pay' will squarely apply. For these reasons, Mr. Yadav submits that the impugned judgment and order is liable to be set aside.

6] Mr. Khaire, the learned counsel for the respondent submits that the transfer order dated 5th June 2012 by which the respondent was transferred from Pune to Dhule was ex facie illegal and in fact constituted nullity. He points out that in the representation made by the respondent and immediately i.e. on 7th June 2012, the respondent had made reference to rulings of the MAT as well as this Court, where transfers in similar circumstances, had been interfered with. Mr. Khaire submits that therefore, the petitioners were duty

bound to consider the respondent's representation favourably and expeditiously. Instead, the petitioners, delayed and the respondent was forced to institute OA No. 1127 of 2013. This was disposed of by the MAT directing the petitioners to consider the respondent's representative within a period of one month.

7] Mr. Khaire submits that the petitioners in breach of their own transfer policies and in breach of the rulings of the MAT and this Court, rejected the respondent's representation on 25th March 2014. The respondent, thereafter, reported to Dhule on 10th April 2014 but instituted OA No. 339 of 2014 and had questioned the illegal transfer order dated 5th June 2012. Mr. Khaire submits that the stand of the respondent was vindicated by the MAT's judgment and order dated 8th August 2014 in OA No. 339 of 2014, by which, the transfer order dated 5th June 2012 was set aside and the respondent was directed to be reposted at Pune within one month. After some delay, this direction was complied with and the respondent was posted at Pune on 13th October 2014.

8] Mr. Khaire refers to the reasoning in the impugned judgment and order to submit that since the initial transfer order dated 5th June 2012 was *ex facie* illegal and the conduct of the petitioners was quite callous, the MAT, was quite justified, in not applying the principles of '*no work no pay*'. Mr. Khaire submits that there is absolutely no error in the view taken by the MAT and this Court ought to therefore dismiss this petition.

9] Rival contentions now fall for our determination.

10] There is no dispute whatsoever that between the period 12th June 2012 and 9th April 2014 (667 days), the respondent has neither worked at Pune nor at Dhule where he was transferred in pursuance of transfer order dated 5th June 2012. There is also no dispute that during this entire period for almost two years, there was neither any administrative order suspending the transfer order dated 5th June 2012 nor any judicial order restraining implementation of the transfer order dated 5th June 2012. In the absence of either circumstances, the respondent, was certainly not justified in disobeying the transfer order dated 5th June

2012.

11] The fact that later on, the MAT, by its judgment and order dated 8th August 2014, quashed and set aside the transfer order dated 5th June 2012, does not mean that the respondent, had a right to disobey the said transfer order whilst it was operational. Nothing prevented the respondent from seeking interim reliefs no sooner the transfer order dated 5th June 2012 was served upon him, particularly because it is now the case of the respondent that such transfer order was in violation of the transfer policy as also the decisions of the MAT and this Court.

12] Mr. Khaire admitted that in OA No. 1127 of 2013 instituted by the respondent, there was a prayer for interim relief. However, such relief, was apparently, not granted and the only direction issued was to decide the respondent's representation within a period of one month. This means that despite the prayer for interim relief being rejected, the respondent, chose, not to report at Dhule and work at Dhule. The MAT's judgment and order dated 8th August 2014 in OA No. 339 of 2014, by which, the transfer order dated 5th

June 2012, came to be set aside vindicates the respondent's contention that the transfer order dated 5th June 2012 was not legal or proper. However, the said judgment and order dated 8th August 2014 nowhere vindicates the conduct of the respondent in not reporting for duties at Dhule or remaining absent for 667 days despite the fact that there was no interim order in his favour. The respondent, was a doctor holding a very senior position and therefore, it is reasonable to presume that difficulties were faced at Dhule on account of the non-availability of the respondent.

13] In the aforesaid circumstances, the principle of '*no work and no pay*' clearly applies. The MAT was not justified in attempting to distinguish the decision of the Hon'ble Supreme Court in *Sukhdeo Pandey* (supra) by observing that in the said case, there was an element of '*deliberate negligence on his part*'. In the present case also the respondent, was not at all justified, in not reporting at Dhule and remaining absent for 667 days, in the absence of any interim order staying operation of the transfer order dated 5th June 2012. Therefore, the decision of the Hon'ble Supreme Court in *Sukhdeo Pandey* (supra) could not have

been sought to be distinguished in such a manner.

14] In paragraph 17 of *Sukhdeo Pandey* (supra), this is what the Hon'ble Supreme Court has observed :

*“17. Before parting with the matter, however, we may make one thing clear. From the record, it appears that after the appellant was reverted from the cadre of Postman to his substantive post of EDBPM, he has not joined duty and has not worked. **No interim relief was granted by any court including this Court in his favour. In the circumstances, it was obligatory on him to report for duty as EDBPM. He, however, failed to do so. We, therefore, hold that if the appellant has not worked, he will not be paid salary for the period for which he has not worked. It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of “no work, no pay” is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied.** In the present case, though the appellant ought to have joined as EDBPM, he did not do so. He, therefore, in our considered opinion, cannot claim salary for that period. But he will now be allowed to work as Postman. He will also be paid salary as Postman but we also hold that since the action of the respondent authorities in reverting him to his substantive post of EDBPM was strictly in consonance with law, the appellant would be entitled to pensionary and other benefits not as Postman but as EDBPM which post he was holding substantively.”*

[Emphasis supplied]

15] From the aforesaid, it is clear that the said Sukhdeo had been reverted from the cadre of postman to the post of EDBPM, which reversion was challenged by him in the courts. However, despite the fact that there was no interim relief granted in his favour by any court and it was obligatory upon him to report for duty as EDBPM, he failed to do so. In these circumstances, even though, the Hon'ble Supreme Court, ultimately allowed Sukhdeo to work as a postman, in clear terms it was held that if Sukhdeo has not worked, then he should not be paid salary for the period for which he has not worked. The Hon'ble Supreme Court has emphasized that the doctrine of '*no work, no pay*', is based on justice, equity and good conscience and in the absence of valid reasons to the contrary, it should be applied.

16] In ***Union Territory, Chandigarh vs. Brijmohan Kaur (2007) 11 SCC 488***, the Hon'ble Supreme court has held that the direction to pay arrears for the period between 19th September 1990 to 27th February 1996 (during which period the government servant had not worked), is against the old canons of law directed by this Court. It is settled

law that when an incumbent does not discharge any duty, the principle of '*no work no pay*' would be applicable. This consistent view has been taken by this Court keeping in view the public interest that any government servant who does not discharge his duty should not be allowed to draw pay and allowance at the cost of the public exchequer.

17] For all the aforesaid reasons, we set aside the direction in the impugned judgment and order of payment of salary or other monetary benefits to the respondent for the period between 12th June 2012 to 9th April 2014 (667 days), because, there is no dispute that the respondent has not actually worked during this period. However, such period, need not be construed as some break in service and therefore, such period, in the peculiar facts and circumstances of the present case, is directed to be counted for the period of continuity as well as pensionary and other post retiral benefits. This means that though actual salary need not be paid for the period of 667 days, notional computation can always be carried out for the purposes of pensionary and post retiral benefits. The impugned judgment and order is modified to this extent.

18] Rule is therefore made partly absolute in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA