IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12740 OF 2016

Mr. Balasaheb G. Palghadmal ...Petitioner
Versus
The State of Maharashtra and anr. ...Respondents

Mr. Nitin P. Dalvi for the Petitioner.
Mr. O.M. Kulkarni, AAGP for the State - Respondent Nos.1 and 2.

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

DATE : 5th MARCH 2018.

P.C.

1] Heard learned counsel for the parties.

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

3] The petitioner, the applicant in Original Application No.883 of 2015 before the Maharashtra Administrative Tribunal, Mumbai (MAT) questions the judgment and order dated 19th January 2016 to the extent it denies the petitioner the relief for setting aside the penalty of censure as well as salary for his absence from 10th June 2005 to 3rd May 2006.

4] Mr. Nitin Dalvi, learned counsel for the petitioner, submits that since the petitioner had furnished adequate explanation for his absence from 10th June 2005 to 3rd May 2006, the respondents were not at all justified in imposing any penalty upon the petitioner. In any case, Mr. Dalvi submits that the MAT, in the impugned judgment and order, having held that the respondents were not justified in treating the absence for the said period as '*dies non*' , there was no justification to deny salary to the petitioner for the period of such absence. Mr. Davli submits that once the leave period is commuted as extraordinary leave, the respondents, have no right or authority to refuse payment of salary for the said period. Mr. Dalvi submits that the impugned judgment and order to the extent it denies these reliefs to the petitioner, is required to be set aside.

5] Mr. Kulkarni, learned counsel for the respondents, submits that the long absence of the petitioner was in fact unauthorized. However, the respondents have treated the petitioner's case leniently and imposed only a minor penalty of censure. He submits that the material on record suggest that the petitioner was absent because he did not want to comply with the order of transfer. He submits that there is no dis-proportionality in the penalty imposed, which is in fact, quite lenient in the facts and circumstances of the present case.

6] Mr. Kulkarni submits that the MAT has interfered with the order treating the period of absence as *dies non,* only so that there is no break-in service of the petitioner. Mr.Kulkarni submits that admittedly, the petitioner, has not worked for 359 days and even by applying the principle of no work no pay, the petitioner, is not entitled to salary for this period. For these reasons, Mr. Kulkarni submits that this petition may be dismissed with costs.

7] The rival contentions now fall for our determination.

8] The petitioner has made out no case so as to warrant interference with the minor penalty of censure imposed upon him on account of his unauthorised absence of almost 359 days. As contended by Mr. Kulkarni, there is indeed some material on record which suggest that absence was not entirely on medical grounds but the absence was to avoid reporting to the transferred posting. There is absolutely no dis-proportionality involved in the penalty of censure which has been imposed upon the petitioner. Accordingly, there is no case made out to interfere with the impugned order to the extent it does not set aside the penalty of censure imposed upon the petitioner.

9] The MAT, has noted that since the penalty of censure has already been imposed upon the petitioner, a direction to treat the period of absence from 10th June 2005 to 3rd May 2006 as *dies non* may operate quite harshly upon the petitioner. Such a direction will constitute break-in service, which will ultimately affect the petitioner's pension. Accordingly, the MAT, has set aside the direction to treat this period of absence as *dies non,* so that there will be no break-in service. In this context, the MAT has issued directions to treat the period of absence from 10th June 2005 to 3rd May 2006 as extraordinary leave in terms of

Rule 63 (6) of the Leave Rules.

10] The petitioner, having benefited from such indulgence from the MAT, cannot now insist upon payment of salary for the period of his absence from 10th June 2005 to 3rd May 2006. From the impugned order, it is quite clear that the direction to treat the period of absence as extraordinary leave was issued by the MAT in substitution of the direction to treat this period of absence as *dies non.* This was because the MAT was of the opinion that the *dies non* order would constitute a break-in petitioner's service, which would ultimately affect the petitioner's pension. The direction to treat the period as extraordinary leave, was obviously not intended to direct the petitioner be paid salary for the period of his long absence. Extraordinary leave can always be granted even without pay, only so that there is no break-in service.

11] The principle of no work no pay will also apply to a case of this nature, particularly, where the direction to treat the period of absence as *dies non* has been set aside by way of indulgence. As noted earlier, even the penalty imposed upon the petitioner is that of only censure, which is one of the most minor penalties prescribed under the Service Rules.

12] Therefore, taking into consideration all the aforesaid circumstances, there is no case made out to interfere with the impugned judgment and order made by the MAT. Rule is therefore, discharged. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**