

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

WRIT PETITION NO. 4983 OF 2001

The State of Maharashtra and anr.	...Petitioners
Versus	
Manohar G. Kapsikar	...Respondent

**WITH
WRIT PETITION NO. 1871 OF 2002**

Manohar G. Kapsikar	.. Petitioner
Versus	
The State of Maharashtra and anr.	...Respondents

Mr. O.M. Kulkarni, AAGP for the Petitioner/ State in WP 4983/01 and for the Respondents in WP 1871/2002.

Mr. A.G. Damle, Sr. Advocate i/b Ms Leena Patil for the Respondent in WP 4983/2001 and for the Petitioner in WP 1871/2002.

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

DATE OF RESERVING THE JUDGMENT	: 22 nd MARCH 2018.
DATE OF PRONOUNCING THE JUDGMENT	: 03 rd APRIL 2018.

JUDGEMENT:

1] Heard learned counsel for the parties.

2] These two petitions are in the nature of cross-petitions challenging the judgment and order dated 24th December 1999 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 1069 of 1993 instituted

by Manohar G. Kapsikar, the petitioner in Writ Petition No. 1871 of 2002 and the respondent in Writ Petition No. 4983 of 2001. Accordingly, it is only appropriate that both these petitions are disposed of by common judgment and order.

3] The petitioner – Manohar Kapsikar was placed under suspension during the period 21st December 1983 and 6th December 1988 pending departmental enquiry held against him when he was working as an Executive Engineer. By order dated 26th August 1987, Manohar Kapsikar, by way of penalty was reverted from the post of Executive Engineer to the post of Dy. Engineer. He challenged the penalty imposed upon him by instituting Writ Petition No. 1575 of 1987 at Aurangabad Bench. The petition was transferred to the Principal Seat at Mumbai and numbered as Writ Petition No. 2083 of 1991. Thereafter, the petition was transferred to the Maharashtra Administrative Tribunal (MAT) and numbered as T.A. No.769 of 1991. The MAT dismissed T.A. No. 769 of 1991. Manohar G. Kapsikar, thereupon, instituted Special Leave Petition No. 3410 of 1992 before the Hon'ble Supreme Court. Notice was issued to the respondent – State only on the quantum

of penalty imposed upon Manohar G. Kapsikar.

4] The Hon'ble Supreme Court by order dated 5th May 1994 disposed of SLP No. 3410 of 1993, which was converted into Civil Appeal No. 4178 of 1994. The order dated 5th May 1994 reads as follows:

“Special leave granted.

Heard parties. We had issued notice in this matter confined only to the quantum of punishment. We feel that the punishment in the circumstances is too harsh. There is no finding recorded even by the Inquiry Officer that the appellant was guilty of any misconduct involving moral turpitude, much less of misappropriation of any amount. All that had happened was that the appellant as an Executive Engineer being an Incharge of the Project had rushed through certain things without following the proper procedure. We are, therefore, of the view that the interests of justice would be met if one increment of the appellant in the pay scale of the Executive Engineer is withheld for a period of three years without cumulative effect w.e.f. November 1986. The punishment imposed on the appellant is accordingly modified. The appeal is allowed to the above extent with no order as to costs.

5] The aforesaid order dated 5th May 1994 was further clarified by the Hon'ble Supreme Court in Contempt Petition No. 159 of 1995, which reads as follows:

“ORDER

This Court by order dated May 5, 1994 modified the punishment imposed against the appellant, demoting him from the post of Executive Engineer to

the post of Deputy Engineer and substituted another punishment mentioned in the said order.

In this petition, it has been alleged that in view of the modification of the order the appellant is entitled to the pay of Executive Engineer for the period during which he had been demoted to the post of Deputy Engineer. This stand has to be accepted because it shall be deemed that the order of punishment imposed against the appellant has been modified with effect from the date of passing of the order of demotion.

Accordingly, we direct that the difference between the scale of pay of Executive Engineer and Deputy Engineer should be paid to the appellant within four weeks from the date of communication of this order. The petition for contempt is accordingly disposed of."

6] Thus, from the aforesaid, it is clear that penalty of reduction in rank (reversion) imposed upon Manohar G. Kapsikar was set aside by the Hon'ble Supreme Court, but the same was substituted with the penalty of withholding of one increment in the pay scale of Executive Engineer for a period of three years without cumulative effect w.e.f. from November 1986. The punishment imposed upon Manohar G. Kapsikar was accordingly modified.

7] Thereafter, Manohar G. Kapsikar in compliance with the orders made by the Hon'ble Supreme Court, was reinstated to the post of Executive Engineer. On the treatment of his suspension period between 21st December

1983 and 6th December 1988, the State made an order dated 22nd June 1996 and the said period was treated as period on duty only for the purposes of pension and Manohar G. Kapsikar was awarded 90% of his pay and allowances for the said period.

8] Manohar G. Kapsikar had raised two grievances in relation to order dated 22nd June 1996. Firstly, he contended that since the Hon'ble Supreme Court had reduced the penalty imposed upon him from a major penalty to a minor penalty, the suspension imposed upon him should have been treated as null and void. Manohar G. Kapsikar also contended that since the inquiry had travelled beyond the prescribed period for completion of departmental proceedings, the suspension ought to be treated as null and void. He contended that if the suspension is treated as null and void, as it ought to be, all benefits of pay etc., must be restored during the period of such suspension.

9] The MAT in the impugned order dated 24th December 1999 has not agreed with Manohar G. Kapsikar's

contention that the suspension should be declared null and void, but, has granted Manohar G. Kapsikar limited relief, which is evident from perusal of paragraph 8 of the impugned judgment and order (operative portion) which reads as follows:

“8. Thus, I hold that the order of suspension passed by the disciplinary authority on 26-06-1996 stands modified and it is ordered that the said period of suspension running between 21-12-1983 and 6-12-1988 should be treated as on duty for all the purposes except the drawing of pay and allowances during the said period. The order of disciplinary authority to award him only 90% of the pay and allowances during the said period is confirmed but treating the period as on duty for only pensionary benefits stands modified up to the above extent. The respondents are directed to give the applicant benefits of all the consequential benefits which he will be entitled on account of treating the said of suspension running between 21-12-1983 to 6-12-1988 as a period on duty for all the purpose except the pay and allowances and should give all the consequential benefits thereof by fixing his pay and by passing a fresh necessary order in respect of the same within four months from today. Rule is made absolute in the above terms. Application stands disposed of with no orders as to costs.

10] Manohar G. Kapsikar has instituted Writ Petition No. 1871 of 2002 questioning the impugned judgment and order made by the MAT to the extent, it rejects his contention about the suspension being null and void and claims for entire benefits, on the said basis. The State has instituted Writ Petition No. 4983 of 2001 to contend that

even the limited relief granted by the MAT to Manohar G. Kapsikar ought not to have been granted in the facts and circumstances of the present case.

11] The second grievance raised by Manohar G. Kapsikar in the petition instituted by him concerns the treatment of period during which penalty of reduction in rank was imposed upon Manohar G. Kapsikar and on the date on which Manohar G. Kapsikar was directed to be reinstated as Executive Engineer, in pursuance of disposal of special leave petition filed by him before the Hon'ble Supreme Court, i.e., the period between the dates 26th August 1987 and 1st November 1996. Now it is the case of Manohar G. Kapsikar that the order dated 26th August 1987 reverting him from the post of Executive Engineer to Dy. Engineer was stayed by this court, by order dated 15th October 1987 and such stay was in operation till 6th December 1988, on which date, the suspension of Manohar G. Kapsikar was revoked and Manohar G. Kapsikar was directed to join the post of Dy. Engineer. However, since, Manohar G. Kapsikar failed to join the post of Dy. Engineer, this period was treated as leave without pay.

12] Mr. Damle, learned senior counsel for Manohar G. Kapsikar, submits that the suspension in the present case ought to have been treated as null and void because the departmental proceedings travelled way beyond the prescribed period under the service rules. He submits that since the Hon'ble Supreme Court modified the penalty from major penalty into a minor penalty, that is, yet another reason to treat the suspension as null and void and to award Manohar G. Kapsikar all benefits on the basis.

13] Mr. Damle further submits that since, ultimately, the penalty of reduction in rank was set aside and it was further clarified by the Hon'ble Supreme Court that such penalty was never deemed to have been imposed upon Manohar G. Kapsikar, there was no justification in denying Manohar G. Kapsikar the entire salary for the period between 26th August 1987 till Manohar G. Kapsikar was actually reinstated in the post of Executive Engineer. He submits that withholding any portion of salary will be violation of the orders made by the Hon'ble Supreme Court and in any case, amount to deprivation of the property save by authority of law.

14] Mr. Kulkarni, learned AAGP, submits that the second issue now raised by Manohar G. Kapsikar was not at all the subject matter in the O.A. instituted by him before the MAT. Mr. Kulkarni submits that admittedly, the stay order made by this court operated only up to 6th December 1988. Thereafter, there was no justification for Manohar G. Kapsikar to not join duties. The absence of Manohar G. Kapsikar, which was otherwise unauthorized, has in fact been condoned and since, Manohar G. Kapsikar discharged no duties, applying the principle of no work no pay, the pay for the period during which he discharged no duties has been withheld. Mr. Kulkarni submits that the challenge on this score ought not to be entertained by this court directly, in any case, there is no infirmity in the action of the State.

15] On the issue of treating the suspension order as null and void, we find that there is no infirmity in the view taken by the MAT. The suspension, in the facts and circumstances of the present case could never have been treated as null and void. The fact that the enquiry could not be concluded within six months, is no ground to declare the suspension as null and void.

16] The MAT has discussed in some details the reasons on account of which the enquiry was delayed. In any case, these were reliefs Manohar G. Kapsikar prayed for in his first petition/O.A. questioning the order of penalty imposed upon him. In any case, these were reliefs which Manohar G. Kapsikar could have prayed in the first writ petition/O.A. instituted by him. The Hon'ble Supreme Court, has not completely exonerated Manohar G. Kapsikar. Only the earlier penalty has been scaled down to a minor penalty. In such a situation, there is no scope to urge that the suspension becomes null and void.

17] Significantly, no such reliefs appears to have been applied for by Manohar G. Kapsikar before the Hon'ble Supreme Court. In any case, even the Hon'ble Supreme Court had issued notice only on the quantum of penalty. Taking into consideration all these aspects, we see no merit in the contention that the suspension ought to have been declared as null and void.

18] At the same time, we see no merit in the contention raised on behalf of the State that the MAT was not justified

in awarding the limited relief which it has awarded to Manohar G. Kapsikar in paragraph 8 of the impugned judgment and order. The MAT has again rightly granted such limited right to Manohar G. Kapsikar and there is no error of jurisdiction so as warrant interference with that part of the impugned judgment and order made by the MAT. Accordingly, Writ Petition No. 4983 of 2001 instituted by the State is liable to be dismissed and is hereby dismissed.

19] The second issue, it is true that was not subject matter in the O.A. instituted by Manohar G. Kapsikar before the MAT. However, taking into consideration the number of proceedings which Manohar G. Kapsikar had to institute and also, his age, we do not deem it appropriate to non-suit the Manohar G. Kapsikar on the ground of alternate remedy, at this belated stage.

20] The record indicates that the penalty of reduction in rank imposed upon Manohar G. Kapsikar on 26th August 1987 was in fact stayed by this court on 15th October 1987. Such interim order, continued in operation till 6th December

1988. During this period, there was no obligation on Manohar G. Kapsikar to join or to report for duties on the reduced post of Dy. Engineer. It is the case of Manohar G. Kapsikar that he made attempts to join the post of Executive Engineer, however, he was not permitted to so join.

21] Normally, we are loathe to go into such disputed questions of fact. However, the version of Manohar G. Kapsikar appears to be probable and reasonable. Manohar G. Kapsikar had no reason not to resume duties as Executive Engineer, which was the post he was already holding. In such circumstances, it is only appropriate that Manohar G. Kapsikar is paid salary and other benefits for the period between 26th August 1987 and 6th December 1988, on the basis that he had discharged his duties as Executive Engineer during the said period.

22] However, from 6th December 1988 onwards, there was no interim relief in operation in favour of Manohar G. Kapsikar. Accordingly, there was no justification for Manohar G. Kapsikar not to join for duties as Dy. Engineer.

No doubt, the Hon'ble Supreme Court, has ultimately set aside the penalty of reduction in rank and imposed penalty of withholding of increment upon Manohar G. Kapsikar. In pursuance of the same, Manohar G. Kapsikar was reinstated to the post of Executive Engineer. However, there was no justification for Manohar G. Kapsikar not to join the post of Dy. Engineer when admittedly, there was no interim relief protecting Manohar G. Kapsikar from 6th December 1988 onwards. For this period, therefore, we cannot fault the action of the State Government in treating such period as leave without pay. If, Manohar G. Kapsikar had joined and discharged duties as Dy. Engineer, then, there would have been no difficulty in directing the State to pay to Manohar G. Kapsikar salary as payable to Executive Engineer. However, in this case, despite there being no interim protection, Manohar G. Kapsikar neither discharged duties as Dy. Engineer nor as Executive Engineer. The principle of '*no work - no pay*' is rightly invoked by the State for this period.

23] Though we are directing payment of salary to Manohar G. Kapsikar for the period between 26th August

1987 and 6th December 1988, we are satisfied that this is not a fit case to award any interest upon such payment. This is because, admittedly, Manohar G. Kapsikar has not actually worked during this period. The direction for payment of salary is because there was an interim order in operation during this period.

24] For all the aforesaid reasons, these two petitions are disposed with the following order:

a] Writ Petition No. 4983 of 2001 instituted by the State of Maharashtra is hereby dismissed;

b] Writ Petition No. 1871 of 2002 instituted by Manohar G. Kapsikar is partly allowed and the respondent - State is directed to pay the petitioner - Manohar G. Kapsikar salary in the scale of Executive Engineer for the period between 26th August 1987 and 6th December 1988 within a period of three months from today. There is no question of payment of any interest on this amount;

c] Rule is discharged in Writ Petition No. 4983 of 2001 and disposed of in Writ Petition No. 1871 of 2002 in the aforesaid terms;

d] In the facts and circumstances of the present case, there shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)