

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
61 WRIT PETITION NO.6401 OF 2019**

Shivaji Pandurang Mahajan,
Age-65, Occu- Retired (Pensioner)
R/o Plot No.34-A, Bijali Nagar,
Gondur Road, Deopur,
Dhule, District – Dhule.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary
Home (Transportation) Department
Mantralaya, Mumbai.

2. The Commissioner of Transport,
Maharashtra State, Mumbai
Administrative Building,
4th Floor, Government Colony,
Bandra (E) Mumbai 51.

3. The Regional Transport Officer,
Dhule Region, Dhule,
District – Dhule 424001

..RESPONDENTS

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Mr. Sanket N. Suryawanshi, Advocate for the
Petitioner.

Mrs. M. A. Deshpande, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 02nd MARCH, 2020.

ORAL JUDGMENT (Per: S. V. Gangapurwala, J):-

1. Rule. Rule made returnable forthwith.
With the consent of parties matter is taken up for
final hearing at the admission stage.

2. The petitioner was placed under suspension
on 26.11.2010 on the ground that departmental
enquiry is initiated against the petitioner and the

criminal case is also filed against the petitioner. The petitioner is reinstated on 10.05.2012. Subsequently, the petitioner is exonerated in the departmental enquiry and is also acquitted in the criminal case. On 03.04.2014, the order was issued by the Commissioner of Transport that the period of suspension shall be treated as duty period under Section 72(4) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Rules 1981'). Subsequently, on or about 28.10.2014 the benefit given to the petitioner under 72(4) was canceled and suspension period was to be considered as per Rule 72(5) of Rules 1981. The petitioner filed an Appeal. The Appeal is dismissed. The petitioner filed Original Application before the Maharashtra Administrative Tribunal. The Tribunal dismissed the Original Application. Aggrieved thereby, the present writ petition.

3. Mr. Suryawanshi, learned counsel for the petitioner contends that the petitioner was exonerated in the departmental enquiry. The order is passed in favour of the petitioner to treat the suspension period as duty period under Rule 72(4) of Rules, 1981. Subsequently, without notice to the petitioner the corrigendum is issued treating the suspension period under Rule 72(5). The same is without authority. The powers of review did not exist with the authority. It is not that on the

basis of exoneration in the criminal case the petitioner was reinstated, but the petitioner was exonerated in the departmental enquiry as well.

4. The learned A.G.P. submits that the acquittal in the criminal case is on technical ground. It is on the basis of the benefit of doubt. In such a case Disciplinary Authority has exercised its jurisdiction and has rightly corrected the mistake while passing the order dated 03.04.2014. The suspension period is considered as per Rule 72(5) of Rules, 1981 which is correct. The Appellate Authority and Tribunal rightly applied their mind and passed the orders. No error has been committed by them.

5. Perusing the order dated 03.04.2014 treating the suspension period as a duty period it is manifest that the said order is passed on the basis of closure of the departmental enquiry. The Disciplinary Authority agreed with the findings of the senior officer and closed the departmental enquiry. The said order does not remotely suggest that the petitioner is reinstated in service on the basis of acquittal in the criminal case. The reinstatement was on the basis of the closure of the departmental enquiry. In light of that, the manner of acquittal in the criminal case is immaterial and irrelevant. The suspension was not sheerly on the ground that criminal case is lodged. More over, the petitioner is reinstated and the

suspension order is revoked prior to the acquittal of the petitioner in the criminal case.

6. Considering the aforesaid conspectus, the Disciplinary Authority rightly applied his mind and passed an order treating suspension period as duty period under Section 72(4) of Rules, 1981. There was no occasion for the Disciplinary Authority to again reconsider the said order and issue corrigendum six months thereafter. The corrigendum does not give any reasons nor suggest as to how the earlier order was incorrect. The Disciplinary Authority while issuing the corrigendum acted arbitrarily.

7. In light of the above, the impugned order passed by the Tribunal, Appellate Authority and the corrigendum dated 20.10.2014 are quashed and set aside. The petitioner shall be entitled for all the benefits considering the period from 26.11.2010 to 16.05.2012 as a duty period.

8. If any recovery is made pursuant to the corrigendum issued, the same shall be refunded to the petitioner.

9. Rule accordingly made absolute in above terms. No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE