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

WRIT PETITION NO. 6097 OF 2018

Sadashiv Narayan Purnekar

... Petitioner

V/s.

State of Maharashtra through its
Secretary and Ors.

... Respondents

Mr. Pradyumna M. Mokashi for the Petitioner

Mr. P.P. Kakade for Respondent No.1

Mr. Ameya A. Pitale i/b. Mr. Ajit R. Pitale for Respondent No.2

***CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.***

DATE : 23 JANUARY 2020.

P.C. :-

Heard learned Counsel for the parties.

2. The Petitioner has challenged the order dated 9 December 2011 in respect of period of suspension of the Petitioner from 8 January 1996 till 18 September 2001. The Respondent – Municipal Corporation has not treated this period for which the Petitioner was under suspension as period spent on duty. The

Standing Committee of the Municipal Corporation by order dated 31 December 2011 set aside this decision and held that this period should be counted as a period on duty. The Respondent – Corporation moved the Government for rescinding this decision. The State Government, by order dated 19 July 2017 rescinded the resolution on the ground that such a resolution was beyond the powers of the Standing Committee.

3. The learned Counsel for the Petitioner submitted that apart from the correctness of the decision of the State Government setting aside the resolution of the Standing Committee, the decision of the Municipal Corporation dated 9 December 2011 itself is incorrect. It is submitted that the same is contrary to the provisions of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981.

4. While passing the order on 9 December 2011 in respect of the enquiry held against the Petitioner, there is a reference to the above mentioned period. The Commissioner held that this period cannot be considered as period on duty. No reason is stated in the order as to why this conclusion is reached. Whether to treat the period as on duty or otherwise would require application of mind to the facts of the case. We do not find any such application of mind. A reasoned decision will have to be taken as how to treat this period,

which is missing. We are therefore inclined to set aside Clause 2 of the order dated 9 December 2011 to be considered afresh by the Municipal Commissioner in the light of Rule 72.

5. The learned Counsel for the Petitioner submits that as far as minor penalty is concerned, a decision is taken by this Court that the period should be considered as on duty. Since we are directing the Commissioner to take a fresh decision, it is open to the Petitioner to urge such points as may be available in law and facts. The Commissioner will take a decision as per law. With these observations, the Writ Petition is disposed of.

M.S. KARNIK, J.

NITIN JAMDAR, J.

**Jyoti P.
Pawar**

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by Jyoti P.
Pawar
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