

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

WRIT PETITION NO.9841 OF 2017

Pandurang Wasudeo Patil

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr.Ram S. Apte, Senior Advocate i/by Mr.Ketan A. Dhavle for the petitioner.

Mr.A.A. Alaspurkar, AGP for the respondent nos.1, 3 & 4-State.

Mr.Narendra V. Bandiwadekar a/w Mr.Vinayak Kumbhar h/f Mrs.Ashwini Navjyot Bandiwadekar and Ms.Neha Narendra Bandiwadekar for the respondent nos.2 & 6.

Mr.R.A. Rodrigues for the respondent no.5-University.

**CORAM : R.D. DHANUKA
R.I. CHAGLA, JJ.**

DATE : 30th AUGUST 2021

P.C.:-

1. Rule. Learned AGP waives service for the respondent nos.1, 3 & 4. Mr.Bandiwadekar, learned counsel waives service for the respondent nos.2 & 6 and Mr.Rodrigues, learned counsel waives service for the respondent no.5. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of mandamus against the respondent nos.2 & 3 for fixing pay of the petitioner for his employment

in the respondent no.2 college from 1981 to 2007, giving him all the consequential benefits of continuity of service including revision of pay scale from time to time and for various other reliefs.

3. The petitioner was placed under suspension on 26th February 1981. The petitioner had filed two writ petitions prior to the date of filing of this writ petition. Both the writ petitions were disposed off in view of alleged serious charges levelled against the petitioner in the criminal proceedings. The order of suspension was not stayed by this Court.

4. It is the case of the petitioner that the petitioner has been acquitted of the charges levelled against him by the criminal Court in the criminal proceedings on 26th September 2008. The said order of acquittal has not been challenged by any aggrieved party. The petitioner has retired on superannuation on 28th February 2007.

5. It is not in dispute that no departmental inquiry came to be initiated against the petitioner till date. The petitioner, however, has been paid subsistence allowance by the college till the date of his superannuation.

6. The question therefore, arises for consideration of this Court is whether the petitioner is entitled to full wages from the date of suspension till the date of superannuation and also the pensionary benefits after deducting the payment of subsistence allowance.

7. We have perused the affidavit-in-reply filed by the college affirmed on 3rd July 2019. A perusal of the said affidavit indicates that the respondent no.2 has relied upon Rule 109 of the Standard Code Rules, 1984 in support of the submission that unless the Director of Higher Education passes an order expressly on the issue as to whether period of suspension undergone by the petitioner shall count as qualifying service or not, the petitioner would not be entitled to any payment. The respondent no.2 has not disputed the fact that the petitioner has been acquitted of all the criminal charges levelled against him and the petitioner is entitled to receive full salary and allowances from the entire period of superannuation. The respondent no.2 had paid subsistence allowance to the petitioner. The petitioner has also not been paid balance dues from the date of suspension till retirement.

8. Mr.Apte, learned senior counsel for the petitioner submits that since there was no inquiry at all in this case initiated against the

petitioner by the respondent no.2, Rule 109 of the Standard Code Rules, 1984 would not apply.

9. We have perused Rule 109 of the Standard Code Rules, 1984 which reads thus :-

“109- Counting of period of Suspension : -

Period passed by a non-teaching employees under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or suspension is held to be wholly unjustified; in other cases, period of suspension shall not count unless the Director of Higher Education, Maharashtra State, Pune pass orders and expressly that it shall count to such extent as he may declare.

Explanation : *In the absence of specific indication to the contrary in the service record, the period of suspension shall not be counted as qualifying service.”*

10. A perusal of the said Rule clearly indicates that the said Rule is in two parts i.e. (i) Period passed by a non-teaching employees under suspension pending inquiry into conduct shall count as qualifying service whereas on such inquiry, he has been fully exonerated or suspension is held to be wholly unjustified and (ii) in other cases, period

of suspension shall not count unless the Director of Higher Education pass orders and expressly that it shall count to such extent as he may declare.

11. Admittedly the petitioner did not fall under first part of Rule 109. In our view, since there was no inquiry initiated against the petitioner at all by the respondent no.2, the case of the petitioner would fall under second part of Rule 109 i.e. residuary part would be thus necessary for the Director of Higher Education to pass an order on the issue as to whether any part of suspension of the petitioner's services and more particularly during the period from 26th February 1981 to 28th February 2007 shall be counted as qualifying service or not. Admittedly no such order is passed in this matter till date by the Director of Higher Education. The petitioner has already retired on superannuation.

12. We accordingly direct the Director of Higher Education, Maharashtra State, Pune to exercise powers under Rule 109 of the Standard Code Rules, 1984 and after hearing the petitioner and the respondent no.2 shall pass an order whether any part of the said suspension, period shall be counted as qualifying service or not and

accordingly grant consequential directions for payment depending upon the outcome of the order. It is made clear that the Director of Higher Education, Pune shall pass a reasoned order in accordance with law and without being influenced by the stand taken by the Joint Director of Higher Education in the letter dated 3rd/4th October 2016 addressed to the Desk Officer, office of Lokayukta. The order shall be passed within six weeks from the date of rendering hearing to the petitioner as well as the respondent no.2. The petitioner as well as the respondent no.2 to appear before the Director of Higher Education, Pune on 20th September 2021 at 11.00 a.m. The order that would be passed by the Director of Higher Education shall be conveyed to the parties within one week from the date of passing of order. If the said order is adverse against the petitioner or the respondent no.2, the aggrieved party would be at liberty to file appropriate proceedings. If the Joint Director of Higher Education holds that the petitioner would be entitled to full salary as well as pensionary benefits, subsistence allowance which is already paid to the petitioner by the respondent no.2 shall be deducted out of the said amount. The subsistence allowance already paid by the respondent no.2 to the petitioner shall be reimbursed by the Government to the respondent no.2.

13. Writ petition is disposed of in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

R. I. CHAGLA J.

R.D. DHANUKA, J.