

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7148 OF 2022

Nitin s/o. Vasantrao Mahajan .. Petitioner
Age.42 years, Occ. Service,
R/o. Plot No.40, Near Kanchan Nagar
Police Chowki, Jalgaon, Dist. Jalgaon.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary
The Maharashtra Health
and family welfare Department,
Mantralaya, Mumbai-32.
2. Additional Commissioner
Nasik Division, Nasik.
3. The Chief Executive Officer,
Z.P. Jalgaon.
4. District Health Officer
Z.P. Jalgaon, Dist. Jalgaon.
5. The District Malaria Officer
Z.P. Jalgaon, Dist. Jalgaon.

**WITH
WRIT PETITION NO.7149 OF 2022**

Nitin s/o. Tulsiram Suryawanshi .. Petitioner
Age.43 years, Occ. Service,
R/o. Plot No.18-B, Khote Nagar,
Jalgaon, Dist. Jalgaon.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary
The Maharashtra Health
and family welfare Department,
Mantralaya, Mumbai-32.
2. Additional Commissioner
Nasik Division, Nasik.
3. The Chief Executive Officer,
Z.P. Jalgaon.
4. District Health Officer
Z.P. Jalgaon, Dist. Jalgaon.
5. The District Malaria Officer
Z.P. Jalgaon, Dist. Jalgaon.

Mr.Prakashsing B. Patil, Advocate for the petitioners.

Mr.S.B. Yawalkar, AGP for the respondent/State.

Mr.Mahesh S. Sonawane, Advocate for respondent Nos.3 to 5.

**CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.**

RESERVED ON : 21.07.2022

PRONOUNCED ON : 28.07.2022

JUDGMENT : [PER : ANIL L. PANSARE,J.] :-

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. The petitioners were appointed as Health Workers (Male) by respondent No.3 – The Chief Executive Officer, Zilla Parishad, Jalgaon. The appointment order was issued on 04.01.2008. Their services were terminated by respondent No.3 vide order dated 01.04.2008, on the ground that false information was furnished by the petitioners in respect of their experience. The petitioners challenged their termination order by filing Writ Petition Nos.3352 of 2008 and 3353 of 2008. The termination orders were quashed and set aside by the High Court vide order dated 26.08.2008, mainly on the ground of not following principles of natural justice. The High Court remanded the matter back with the directions to respondent No.3 to issue show-cause notice to the petitioners. It was further directed that the petitioners will file reply and thereafter respondent No.3 will take a decision and in the event respondent No.2 accepts the petitioners' reply, the petitioners would be deemed to be in the service from the date of termination.

03. Respondent No.3 in compliance to the aforesaid order has issued show-cause notice. An opportunity of hearing in the form of filing reply was given to the petitioners. Respondent No.3 vide order dated 06.10.2018 has

maintained the order of termination of the petitioners. The said order was challenged by the petitioners by preferring the appeal before respondent No.2. Respondent No.2 vide order dated 19.09.2019 allowed the appeal partly. The termination order dated 06.10.2008 was set aside. Respondent No.2 directed that enquiry be conducted through an independent officer by permitting the petitioners to put-up their case, so also to cross-examine the witnesses. It was further directed that the period from the date of termination of services till enquiry is completed and the revised order is passed, be treated as being under suspension.

04. Pursuant to order dated 19.09.2009, passed by respondent No.2, respondent No.3 vide order dated 01.02.2010 reinstated the petitioners in service. It is the case of the petitioners that they were not subjected to enquiry by an independent officer, as directed by respondent No.2 vide order dated 19.09.2009.

05. The pleadings would also show that an FIR came to be registered against the petitioners and other accused persons, for the offences punishable under sections 420, 406, 468, 471 read with section 34 of the Indian Penal

Code. This FIR pertains to the false information furnished by the petitioners while seeking appointments. The petitioners were appointed as Health Workers on the fact that they had earlier worked for 90 days under the District Malaria Officer. The first termination order dated 01.04.2008 was issued on the ground that the petitioner had not worked for 90 days and that they have furnished false documents that they have worked for 90 days. Regular Criminal Case No.417 of 2008 was registered against the petitioners and other persons. The Chief Judicial Magistrate, Jalgaon vide judgment dated 20.03.2019 acquitted all the accused including the petitioners. The petitioners made representation cum request to respondent Nos.3 and 4 that since they have been acquitted, the period of suspension [01.04.2008 to 31.01.2010] be treated as on duty under Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 [hereinafter referred to as “the MCSR, 1981”].

06. Respondent No.3 vide order dated 07.01.2021 held that the petitioners are not entitled for the salary and allowances and other consequential monetary benefits, during the suspension period in terms of

Rule 72 of MCSR, 1981. The said order has been impugned by the petitioners in the present petitions.

07. The learned Advocate for the petitioners has argued that since the petitioners have been acquitted and since no departmental enquiry was conducted against the petitioners, pursuant to order dated 19.09.2009, passed by respondent No.2, the petitioners would be entitled for the salary and allowances and other consequential monetary benefits for the suspension period. It is further argued that the case of the petitioners would be governed by Rule 17 of the MCSR, 1981 and not Rule 72.

08. As against, the learned AGP argued that respondent No.3 was well within his powers to pass the impugned orders. The petitioners themselves have resorted to Rule 72 of the MCSR, 1981 and that respondent No.3 has correctly relied upon the aforesaid Rule.

09. In case of Vasant Krushnaji Kamble Vs. State of Maharashtra and Another, 2003(4) Mh.L.J.606, the Full Bench of this Court was dealing with the case of a primary teacher, who was placed under suspension for issuing

forged passing certificates in favour of certain students, who had in-fact failed, but no departmental enquiry was instituted against him. A criminal case was filed against him and on his acquittal, the period of suspension was ordered to be treated “as such” i.e. the period of suspension. It was the contention of the petitioner therein that once he was acquitted by the competent criminal Court, no proceedings could have been initiated and the period during which he was under suspension would not have been treated as under suspension and he was entitled to all the benefits as if he was in active service of the respondents. The Full Bench has held in paragraph Nos.5,6 and 7 as under :-

5. So far as criminal case is concerned, it is no doubt true that petitioner was acquitted by a competent Court. But in our opinion, it was open to the authorities to pass an appropriate order keeping in mind the provisions of Maharashtra Civil Services (Joining Time, Foreign Service, and Payment during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as "the Rules"). The relevant Rule is Rule 72 which provides for reinstatement of a Government servant after suspension. A specific order of the competent authority regarding payment of allowances etc. and computation of period as spent on duty is required to be passed. Sub-rules (3) and (5) of Rule 72 are relevant and may be quoted in extenso:

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was *wholly unjustified*, the Government servant shall, subject to the provision of Sub-rule (8), *be paid the full pay and allowances to which he would have been entitled, had he not be suspended.*

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(5) In cases other than those falling under Sub-rules (2) and (3) the Government servant shall, subject to the provisions of Sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice".

(Emphasis supplied)

6. In our opinion, therefore, acquittal of the petitioner by a criminal Court, did not ipso facto entitle him to the benefits of Salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was "wholly unjustified". In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.

7. In the facts and circumstances, though a criminal case was instituted against the petitioner, and he was acquitted by the court, keeping in mind the admission in response to the show cause notice that the allegations were true, if an order was passed, it cannot be said that such an order could not have been made by the authority or suspension was "wholly unjustified".

10. In the above case, a notice was issued to the petitioner therein to show cause as to why the period of suspension of the petitioner should not be treated “as such” i.e. the period of suspension. The reply filed by the petitioner was considered and thereafter the order was passed.

11. In the present case, no such notice has been issued to the petitioners. The competent authority is also expected to pass a reasoned order, as to whether or not the petitioners is entitled for pay and allowances in terms of Rule 72 of MCSR, 1981.

12. Another important ruling is in the case of Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and Ors., (1997) 3 SCC 636, the Hon’ble Supreme Court held in para 4 as under :-

“Mr. Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72(3) of the Maharashtra civil services (Joining Time, foreign Services, and Payment during Suspension, dismissal and Removal) Rules, 1991 (for short, the 'Rules') the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention. It is true that when a Government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled

to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or fool proof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts, would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view, this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal, Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not

on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty , (and on payment of subsistence allowance etc.) Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc . The appellant is also not entitled to any other consequential benefits as enumerated in paragraphs 5 and 6 of the additional affidavit.”

13. Thus, the Hon'ble Supreme Court has held that when a Government servant is acquitted of offence, he would be entitled to reinstatement, however, the question is whether he would be entitled to all the consequential benefits including the pensionary benefits, treating the suspension period as duty period. The consideration for arriving at a definite conclusion on this point has been detailed in the aforesaid judgment. One of the considerations is whether the acquittal was recorded on positive finding that the accused did not commit offence at all or whether the acquittal is not on the benefit of doubt. We have gone through the judgment of the Trial

Court wherein the petitioners have been acquitted. We have noticed that the acquittal is not in the nature of positive finding that the petitioners have not committed offence, but the acquittal is based on benefit of doubt.

14. The Supreme Court has held that on reinstatement the authority may after following the principles of natural justice, pass appropriate order including treating the suspension period as the period not on duty. Thus, an opportunity ought to be given to the persons like the petitioners before rendering the finding, whether the petitioners will be entitled or not to all or any consequential benefits.

15. Since, we have held that before passing order under Rule 72 of the MCSR, 1981, respondent No.3 should seek response of the petitioners and should also pass a reasoned order and since the petitioners have filed review application dated 27.01.2021 before respondent No.3 to consider their claim afresh, it will be appropriate to relegate the matter back to respondent No.2 to consider the same afresh, in view of the observations made by us in the body of the order, and in view of the observations made by the Hon'ble Supreme Court and the Full Bench of this Court in the cases referred by us.

16. In the result, the writ petitions are partly allowed. The impugned orders dated 07.01.2021 in both the petitions are quashed and set aside. The cases of the petitioners are remanded back to respondent No.3 to be considered afresh. Rule is made partly absolute in the aforesaid terms.

[ANIL L. PANSARE,J.]

[RAVINDRA V. GHUGE,J.]