

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

933 WRIT PETITION NO.7483 OF 2019

**MARUTI PUNJAJI TAGADPALLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Petitioner : Mr. Panpatte V. S.
A.G.P. for Respondent No. 1 : Mr. K.N. Lokhande
Advocate for Respondent No. 2 : Mr. S.B. Pulkundwar

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 05.08.2022.

ORAL ORDER : (PER : SANDEEP V. MARNE, J.)

We have heard both the sides.

2. By way of present petition the petitioner seeks treatment of period from 14.06.1995 to 22.03.2007 as spent on duty and further seeks all consequential benefits thereon. The petitioner was placed under suspension by order dated 23.06.1995. The petitioner was subjected to criminal prosecution as well as departmental proceedings. In the departmental proceedings, the enquiry officer had submitted report in the year 1997 holding that the charge against the petitioner was proved. The said finding was recorded on account of admission of the charge by the petitioner. Even though the charge was held to be proved, some how the Zilla Parishad failed to pass any order in the disciplinary proceedings taking it to its logical conclusion on the ground of pendency of criminal prosecution. In the criminal case, the petitioner came to be acquitted by the judgment and order dated 15.02.2002. The acquittal of the petitioner was challenged by the State in Criminal Appeal No. 295/2002 and the appeal came to be dismissed by this Court by the judgment and order dated 30.04.2015. In the

meantime, the petitioner retired from service on attaining the age of superannuation on 28.02.2007. He was sanctioned provisional pension.

3. On the request made the petitioner for the treatment of the period of suspension as duty, decision was taken by the Zilla Parishad on 05.05.2010 directing that since the petitioner did not perform duties during 14.06.1995 and 22.03.2007 the said period is treated as admissible leave. The petitioner thereafter went on pursuing his case and the State Government by a communication dated 15.05.2018 addressed to the Zilla Parishad observed that the intervening period can be treated as admissible leave only in the event of a request being made by the concerned employee. The State Government further instructed the Zilla Parishad to examine the judgment of the Court and take a decision depending on whether the petitioner is honourably acquitted or not.

4. Mr. Pulkundwar learned advocate appearing for the Zilla Parishad relies upon sub Rule 7 Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment During Suspension, Dismissal and Removal) Rules, 1981 and justifies the action of Zilla Parishad of treating the intervening period as admissible leave.

5. However, proviso to Sub Rule 7 of Rule 72 of the Act clearly provides that the intervening period of suspension can be treated as admissible leave only if the government servant so desires.

6. Mr. Panpatte learned advocate appearing for the petitioner submits that the petitioner never requested for treatment of the period of suspension as admissible leave. Even the State Government, in its communication dated 15.05.2018, has already made an observation that the period of suspension cannot be treated as admissible leave unless the employee had requested for the same. Therefore, the decision of the Zilla Parishad to treat the period of suspension as admissible leave is clearly erroneous.

7. In the circumstances, we set aside the order dated 05.05.2010 passed by the Zilla Parishad and remand back the matter to enable Zilla Parishad to take a fresh decision with regard to the treatment of period of suspension of the petitioner. Such decision to be taken within a period of four weeks from today. Depending on the decision taken, further benefits, if admissible, be paid to the petitioner.

8. The writ petition is accordingly disposed of.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-