

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

WRIT PETITION NO. 13993 OF 2022

Shri Chandrakant D. Tikekar .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

Mr. Yashodeep Deshmukh with Ms. Sonali Pawar with Janvi Chotani i/b.
Mr. Vinod P. Sangvikar, for the Petitioner.
Mr. A. I. Patel, Addl. G. P with Mrs. Nisha Mehra, AGP for Respondent
No.1-State.

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**CORAM: S.V. GANGAPURWALA, ACJ &
S.G.CHAPALGAONKAR,J.**
DATED : 14th DECEMBER, 2022.

PC:-

Heard Mr. Deshmukh, learned Counsel for the Petitioner.

2 Mr. Deshmukh, learned Counsel for the Petitioner submits that the Tribunal failed to consider that the Petitioner was wrongly declared as a surplus. The State-authority thereafter, reviewed its own order and withdrew the same. The Petitioner in a way agitating that the Petitioner could not have been declared as a surplus, still the Petitioner was asked to join at another place. The learned Counsel submits that the Petitioner filed an application immediately on being declared as a surplus. It is not the fault of the Petitioner in not joining at the place after being declared surplus as the order declaring the surplus was on the face of it erroneous. More particularly, the same can be found from the fact that the Government itself withdrew the order of the Petitioner being surplus. The learned Counsel submits that the principle of no-work-no-pay would

be applied in the said case. The learned Counsel relies upon the decision of the Apex Court in the case of ***Ramesh Kumar v/s. Union of India reported in AIR 2015 (SC) 2904***.

3 We have heard learned AGP for the State.

4 The Petitioner was appointed as a watchman in the office of Respondent No.2 on compensate ground. On or about 31st October, 2014, GR was issued by the State, declaring large number of posts in the department as surplus and the Petitioner was sought to be absorbed in the office of the Labour Commissioner, Bandra. The Petitioner filed original application before the Maharashtra Administrative Tribunal bearing No.941 of 2014. However, during pendency of the original application, Respondent No.3, it appears has withdrawn the order on or about 29th June, 2015. The Petitioner filed Original Application (OA) bearing No. 904 of 2019, seeking monetary benefit for the period from 1st October, 2014 to 29th June, 2015. The said OA was disposed of, directing the State-authority to decide the representation of the Petitioner. The representation of the Petitioner is rejected on 13th January, 2020. The same was challenged by filing OA No.211 of 2020. The said OA is dismissed on or 21st October, 2021.

5 It is a fact that the Petitioner did not join the duty at place where the Petitioner was absorbed after being declared as surplus. The Petitioner did not even file application for leave for a period of 9 months. It is not a case that the Petitioner was prevented by the Respondents from joining the post where the Petitioner was directed to be absorbed. The Petitioner on his own volition refrained his joining at the absorbed place.

6 The judgment of the Apex Court in the case of Ramesh Kumar (supra) would not enure to the benefit of the Petitioner. In the said case, the Petitioner therein was reinstated in the service and for the period from dismissal till the reinstatement, salary was not paid to the Petitioner. Once it is concluded that the dismissal was wrongful, the Apex Court observed that the normal rule of no-work-no-pay not applied. After dismissal of service, there was no question of a Petitioner therein to join the post.

7 In the present case, the facts are otherwise. The Petitioner was absorbed in service, still the Petitioner did not join.

8 The Tribunal has considered this aspect in its perspective.

9 In the light of that, no interference is called for. Writ Petition disposed of. No costs.

(S.G.CHAPALGAONKAR,J.)

(S.V.GANGAPURWALA,ACJ.)