

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

WRIT PETITION NO. 11690 OF 2021

Nivrutti s/o Sitaram Pawar,
Age : 56 years, Occu. Service,
R/o. Plot No. 19, New Vishal Nagar,
In front of Gajanan Maharaj Mandir,
Garkheda, Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of Water Supply and Sanitation,
Mantralaya, Mumbai.
2. Maharashtra Jivan Pradhikaran,
4th Floor, Express Tower, Nariman Point,
Mumbai, through its Member Secretary
3. The Chief Engineer,
Maharashtra Jivan Pradhikaran,
Aurangabad, in front of Milind College,
Chawani, Aurangabad.

...Respondents

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Mr. Santosh S. Jadhavar – Advocate for the petitioner
Mr. A. S. Shinde – AGP for respondent no.1 / State
Mr. Sachin S. Randive – Advocate for respondent no. 2
Respondent no. 3 served.

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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
AND
ARUN R. PEDNEKER, J.**

DATED : 13TH OCTOBER, 2023

PER COURT : -

1. Heard learned counsel for the petitioner -

Mr. Santosh S. Jadhavar, learned counsel for respondent no. 2
- Mr. Sachin S. Randive and the Additional Government
Pleader for respondent no. 1 – State.

2. By way of this writ petition filed under Article 226 of the Constitution of India, prayer has been made by the petitioner to issue a direction to respondent no. 2 to consider the period between 20.10.2011 to 15.07.2014 for regularization, when he was under suspension, to grant him all the consequential benefits including the arrears of salary and benefit of time bound promotion as well.

3. The submission of the learned counsel for the petitioner is that the petitioner while working as a Sectional Engineer with respondent no. 2 he was placed under suspension on 20.10.2011, on institution of some disciplinary proceedings. He has further submitted that by means of the order dated 15.07.2014, a minor penalty was imposed upon him and simultaneously the suspension was revoked and accordingly he was reinstated. It has been argued that even after reinstatement on revocation of suspension, the petitioner has not been paid any amount of salary other than the subsistence allowance during the period he remained under

suspension. It has thus been argued that the competent authority of respondent no. 2 should be directed to take a decision on the claim of the petitioner for the period of suspension, such as; payment of arrears of salary which might have accrued to him and also for regularizing the said period and for considering him for grant of benefit of time bound promotion.

4. On the other hand, learned counsel for respondent no. 2 has opposed the prayers made in the writ petition and submitted by filing affidavit-in-reply that in view of provisions contained in Rule 43 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "Pension Rules, 1982), the petitioner is not entitled to any such benefits which is claimed by him for the reason that the competent authority has not passed any orders declaring that the period of suspension shall count as qualifying service for the benefit of payment of pension.

5. We are afraid, we cannot agree with the submissions made by the learned counsel for respondent no. 2 for the simple reason that Rule 43 of the Pension Rules, 1982, provides that the period of suspension, pending departmental

proceedings, shall not count for the purpose of computation of pension in case such an employee has been fully exonerated or suspension is held to be unjustified unless the competent authority passes an order under the rules declaring expressly that such period shall count to such extent as the competent authority may declare. The provisions contained in Rule 43 of the Pension Rules, 1982 do not have application to the facts of this case as the prayer made in the writ petition is that the period of suspension spent by him should be regularized and he should be held eligible for grant of consequential benefits including the arrears of salary and benefit of time bound promotion. Even for application of Rule 43 of Pension Rules, 1982, the competent authority is under obligation to take a decision.

6. The departmental inquiry against the petitioner was concluded on 15.07.2014 and his suspension was also revoked on the said day itself, however, till date no decision has been taken as to the period of suspension of the petitioner regarding regularization of such period and grant of consequential benefits including arrears of salary and benefit of time bound promotion.

7. In the aforesaid view of the matter, we direct that the competent authority of respondent no. 2 shall take an appropriate decision into the prayers made by the petitioner regarding regularization of period of suspension, payment of consequential benefits including arrears of salary and benefit of time bound promotion, which may be legally available to the petitioner.

8. The decision in respect of the aforesaid prayers of the petitioners shall be taken by the competent authority within three (03) months from the date of production of certified copy of this order. The decision so taken shall be communicated to the petitioner.

9. Writ Petition is allowed in the aforesaid terms.

[ARUN R. PEDNEKER, J.]

[CHIEF JUSTICE]