

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**35 WRIT PETITION NO.8478 OF 2014**

RAFIQ SUBHAN BEG  
VERSUS  
THE COMMISSIONER, DHULE MUNICIPAL CORPORATION

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Mr. Kazi Sabahat T., Advocate for the Petitioner.  
Mr. Desale Nilesh N., Advocate for the Respondent No.1.

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**CORAM : SHARMILA U. DESHMUKH, J.**  
**DATED : FEBRUARY 03, 2023.**

**PER COURT :**

1. By this Petition, the Petitioner challenges the judgment and order dated 07.09.2013 passed by the Industrial Court partly to the extent of denying the Petitioner the consequential monetary benefits like difference of pay and allowances in spite of the direction that the period of service of suspension of the Petitioner be treated as he was in service.

2. The facts of the case are that the Petitioner was working in the Respondent-Corporation on a permanent sanctioned post of Sweeper since the year 1992. In 2004, the Petitioner came to be implicated in Crime No.176 of 2004 for the offence punishable under Section 302 read with section 34 of the Indian Penal Code, consequent to which he was arrested on 02.10.2004

and was in jail till 29.09.2005. On 25.10.2004, the Respondent–Corporation issued a suspension order to the Petitioner. On 01.12.2005, the Petitioner was acquitted by the Sessions Court and on 06.01.2005, a representation was made to the Respondent by the Petitioner for reinstatement which request was again reiterated on 06.03.2006, 18.03.2006 and 26.07.2006. This request was not responded by the Municipal Corporation on the ground that stating that it had preferred an appeal against the acquittal. On 07.03.2008, this Court acquitted the Petitioner in Criminal Appeal No. 131 of 2006, and again on 07.04.2008, the Petitioner filed a representation with the Corporation for reinstatement. Instead of reinstating the Petitioner, the Corporation initiated departmental enquiry against the Petitioner, in which the charges were not proved and on 13.10.2008, the Corporation reinstated the Petitioner but imposed punishment of stoppage of three increments and treated the period of suspension as period of absence.

3. Aggrieved by the orders of the Corporation, the Petitioner instituted complaint ULP No.69 of 2011 before the Industrial Court, under the provisions of Item (9) of Schedule-VI of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Laws Practices Act, 1971 (for short, “MRTU and PULP Act”). The Industrial Court on consideration of the evidence, passed the following order:

“[1] Complaint (ULP) No. 69/2011 is partly allowed.

- [2] It is hereby declared that, the Respondent-Corporation was indulged in an Unfair Labour Practice under Item (9) of Schedule-IV of the MRTU &PULP Act, 1971 and Respondent is directed to desist and cease from such unfair labour practice.
- [3] Respondent-Corporation is directed to treat the period of suspension of the Complainant as period of service but without any salary.
- [4] The penalty of stoppage of three increments of the Complainant permanently is set aside.
- [5] The Complainant is entitled for the relief of the said three increments but without consequential monetary benefits like; difference of pay and allowance.
- [6] The above order shall be complied within the period of 3 months from the date of this order.
- [7] No order as to costs.”

4. Heard learned counsel for the parties.

5. Learned counsel for the Petitioner has taken this Court through the records as far as acquittal of the Petitioner of the criminal charges is concerned and also pointed out that in spite of the repeated representations, after the acquittal by the Sessions Court, the Corporation did not reinstate the Petitioner and continued him under suspension. She would further submit that after having held that the Respondent-Corporation has indulged in unfair practice and the penalty imposed by the Corporation has been set aside, the petitioner was entitled to all the benefits by treating the period of suspension as period of service.

6. Per contra, learned counsel for the Respondent submits that the Industrial Court has observed that the Petitioner was not on work from 02.10.2004 to 13.10.2008 and as such, as held that he was not entitled for salary for the period of suspension.

7. Considered the rival submissions of the parties. The admitted position is that the Petitioner was acquitted of the criminal charges and even in the departmental enquiry, the charges were not proved against the Petitioner. That being the case the Respondent-Corporation ought to have reinstated him with full back-wages and consequential benefits, which not being done, the Petitioner was constrained to approach the Industrial Court. The Industrial Court has come to a finding that the stoppage of three increments and treating the period of suspension as not being on service amounts to unfair labour practice and declaration to that effect is given. The Industrial Court has directed the Respondent-Corporation to treat the period of suspension of the Petitioner as a period of service and has also set aside the penalty of stoppage of three increments.

8. After holding in favour of the Petitioner that the Respondent-Corporation has indulged in unfair labour practice and direction was given to treat the period of suspension of Petitioner as period of service, there is no justification to deny him the salary for this period and consequential monetary benefits like difference of pay and allowances. The findings of the Industrial Court to the

extent that the Petitioner is entitled for relief of continuance service and his period of service shall be treated as he was in service has to be necessarily followed by awarding him all the consequential benefits to which he would be entitled his service. In my opinion, there is infirmity in the finding of the Industrial Court that he was not on work from 02.10.2004 to 13.10.2008 and is entitled to any salary. The Industrial Court has failed to notice that after being acquitted in the sessions case, representations were made to the Corporation for reinstating the Petitioner which was not adhered to by the Respondent-Corporation.

9. After the acquittal of the Petitioner by this Court in Criminal Appeal No. 131 of 2016 on 07.03.2008, the departmental enquiry was instituted on 13.10.2008, in which also the charges were not proved. In my opinion, it was solely by reason of the Corporation refusing to reinstate the Petitioner that the Petitioner was not on work during the said period. It is the Corporation who kept the Petitioner under suspension and once it is held that the Petitioner is entitled to the relief of continuity of service, consequential monetary benefits have to necessary follow.

10. Considering the above, the order of the Industrial Court directing the non payment of salary to the Petitioner during the period of suspension and non-payment of consequential monetary benefits like difference of pay and allowance cannot be sustained. The Petitioner is entitled to all the benefits to which he would be

entitled as if he had been continued in the service during the period of suspension i.e. the period from 02.10.2004 to 13.10.2008.

11. For the reasons above, the petition succeeds. The order dated 07.09.2013 of the Industrial Court, as regards the non-payment of salary and the consequential benefits during the period of suspension is hereby quashed and set aside.

12. Writ Petition stands allowed.

( SHARMILA U. DESHMUKH, J. )