



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 4445/2021**

Pandurang S/o Karuji Titarmare, aged about 65 years,  
Occupation Retired, R/o 12, Siddeshwar Wadi, Kharbi  
Main Road, Nagpur.

**PETITIONER**

**.....VERSUS.....**

1. Government of Maharashtra, Through its Secretary,  
Agriculture Department, Mantralaya, Mumbai-400032.
2. The Commissioner of Agriculture Department, Government  
of Maharashtra, Central Building, Pune – 411001.
3. The Joint Director of Agriculture, Administrative Building  
No.2, 7<sup>th</sup> Floor, Civil Lines, Nagpur – 440 001.
4. The District Superintending Agriculture Officer,  
Karla Chowk, Wardha – 442 001.
5. The Sub-divisional Officer, Agriculture Department, At Post  
Hinganghat, Tahsil Hinganghat, District Wardha-442301.
6. Taluka Agriculture Officer, Agriculture Department, At Post  
Hinganghat, Tahsil Hinganghat District Wardha-442301.

**RESPONDENTS**

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Shri Salim I. Khan, counsel for the petitioner.  
Ms N.P. Mehta, Assistant Government Pleader for the respondents.

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**CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.**

**DATE ON WHICH ARGUMENTS WERE HEARD : SEPTEMBER 20, 2023**

**DATE ON WHICH JUDGMENT IS PRONOUNCED : NOVEMBER 10, 2023**

**JUDGMENT (PER : A.S. CHANDURKAR, J.)**

**RULE.** Rule made returnable forthwith and heard the learned  
counsel for the parties.

2. The challenge raised in this writ petition is to that part of the  
order passed by the Maharashtra Administrative Tribunal, Nagpur holding  
the petitioner not entitled to pay and allowances for the period for which he  
was out of service.

3. The facts relevant for considering the aforesaid challenge are that the petitioner came to be appointed as an Agriculture Assistant with the Ministry of Agriculture, Government of Maharashtra. During the course of service, he was issued a show cause notice on 03.06.2004 alleging misappropriation while discharging the duties. He was placed under suspension on 22.11.2004. The charge-sheet dated 13.04.2005 was served on him under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1981 (for short, 'the Rules of 1981'). At the conclusion of the enquiry he was held guilty of the charges framed. On 07.12.2006, punishment of dismissal from service alongwith recovery of an amount of Rs.2,28,240/- came to be passed. The departmental appeal preferred by the petitioner was dismissed. The order of dismissal was subjected to challenge by the petitioner by preferring Original Application No. 639 of 2009. By its judgment dated 28.04.2016 the Tribunal held that in the departmental enquiry the charges of misappropriation were not proved. On that count the order of punishment was set aside. The respondents were directed to reinstate the petitioner from the date of his termination and also refund of recovery made from him. He was held entitled to continuity in service so as to receive the pensionary benefits. The petitioner was however deprived of the pay and allowances for the period he was out of service.

4. The State Government challenged the order passed by the Tribunal in **Writ Petition No. 6646 of 2016** [*The Secretary to the*

*Government of Maharashtra, Agricultural Department, Mumbai & Others Versus Pandurang Karuji Titarmare*]. The Division Bench on 07.02.2017 held that there was no case made out to interfere with the order passed by the Tribunal. The writ petition was accordingly dismissed. As a result, the order of the Tribunal setting aside the dismissal from service alongwith grant of benefit of continuity has attained finality. It is in this backdrop that the petitioner has sought to challenge the order of the Tribunal to the extent it denies him pay and allowances for the period after termination of his service.

5. Shri Salim Khan, learned counsel or the petitioner submitted that the Tribunal was not justified in depriving the petitioner of the benefit of pay and allowances for the period the petitioner was out of service. Referring to the provisions of Rule 71 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, it was submitted that since the order of dismissal had been set aside on merits there was no reason whatsoever to deprive the petitioner of the benefit of pay and allowances for the relevant period. The Tribunal failed to consider this mandatory provision and also did not indicate the reason for depriving the petitioner of such benefit. The learned counsel placed reliance on the decision in *Ashokkumar Hiralal Lohiya Versus High Court of Judicature at Bombay & Another* [2007(1) **Mh.L.J.** 53] to urge that the petitioner was entitled to receive the pay and allowances for the period from 07.12.2006 till the date of his superannuation on 30.11.2013.

6. Ms Nivedita Mehta, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions. According to her the entitlement to pay and allowances for the relevant period was not automatic. Since the petitioner did not discharge duties for all this period he would not be entitled to pay and allowances on the principle of 'no work no pay'. She invited attention to the observations in paragraph 29 of the order passed by the Tribunal to contend that the Tribunal intended to remand the proceedings for conducting a *de-novo* enquiry but refrained from doing so on the ground that the petitioner had superannuated. It was also submitted that there was delay on the part of the petitioner in filing the present proceedings inasmuch as the order of the Tribunal was dated 28.04.2016 and the present proceedings were filed only on 21.09.2021. The learned Assistant Government Pleader placed reliance on the decision in *Dnyaneshwar Vithuji Ghude Versus State of Maharashtra & Another* [2015(1) Mh.L.J. 761] to urge that there was a discretion in the matter of grant of back wages and as the Tribunal had exercised discretion and had denied back wages there was no reason to interfere with the impugned order. Thus it was submitted that the writ petition warranted rejection.

7. We have heard the learned counsel for the parties and we have perused the documents on record. Undisputedly the order passed by the Tribunal on 28.04.2016 directing reinstatement of the petitioner with continuity in service has attained finality since the challenge raised by the

State Government to the said decision was unsuccessful with the dismissal of the writ petition preferred by it. It would therefore not be permissible to go into the question as to whether the Tribunal was justified in setting aside the order of dismissal and directing reinstatement of the petitioner.

8. Rule 71 of the Rules of 1981 refers to the contingency in the matter of regularization of pay and allowances of the period of absence from duty when the order of dismissal, removal or compulsory retirement is set aside by a Court of law and the Government servant is reinstated. For the present purpose the provisions of Rule 71(3) of the Rules of 1981 are material and the same are reproduced hereunder :-

*“71(3). If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of re-instatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.”*

It would be clear from the plain reading of the aforesaid Rule that if the order of dismissal is set aside by the Court on merits of the case then the period intervening between the date of dismissal including the period of suspension preceding such dismissal and the date of reinstatement shall be

treated as duty for all purposes and the Government servant would be entitled to be paid the full pay and allowances for the period for which he would have been entitled had he not dismissed from service. To consider whether the order of dismissal has been set aside by the Court on merits of the case, reference can be made to what has been held in paragraphs 28 and 29 of the order dated 28.04.2016 passed by the Tribunal in the Original Application preferred by the petitioner. The same reads as under :-

*“28. .... We are therefore of the view that the Enquiry Officer having failed to get the above documents examined as mentioned above, the D.E. suffers from insufficient evidence and on this ground we hold that it has not been conducted in conformity with the proceedings of Rule 8 of the Discipline and Appeal Rules.*

*29. We therefore conclude that in the D.E. the charges of misappropriation levelled against the applicant could not be proved. We further hold that the respondents have seriously erred in considering that the charges against the applicant have been proved in the D.E. and hence the impugned order of punishment as well as rejection of the appeal against the order is required to be quashed and set aside. ....”*

9. As stated above, this order was subjected to challenge by the State Government in Writ Petition No. 6646 of 2016. After examining the entire material this Court held that there was no case made out to warrant interference in writ jurisdiction. The order of dismissal dated 07.12.2006 has been set aside on merits. A categorical finding has been recorded that the charges levelled against the petitioner in the departmental enquiry were not proved. It is thus clear that this

situation where the order of dismissal is set aside on merits is governed by the provisions of Rule 71(3) of the Rules of 1981. The said Rule has been couched in a mandatory form and the same requires the employer to pay full pay and allowances for the relevant period. There is no discretion whatsoever that has been conferred on the State Government so as to disentitle the Government servant from receiving such pay and allowances once the order of dismissal is set aside on merits. We find that the Tribunal without indicating any reason whatsoever has held the petitioner not entitled to pay and allowances for the period from 07.12.2006 to 30.11.2013.

10. The ratio of the decision in *Dnyaneshwar Vithuji Ghude* (supra) relief upon by the learned Assistant Government Pleader does not apply to the present case inasmuch as the employee therein was dismissed on the ground that it was not in public interest to retain the said employee in service. The dismissal was consequent to an order of conviction suffered by the said employee. Considering the facts of the said case the Court set aside the order of dismissal and notionally reinstated the said employee in service without back wages. The provisions of Rule 71 of the Rules of 1981 did not fall for consideration in the said decision. The facts of the present case are distinct and the provisions of Rule 71(3) of the Rules of 1981 are clearly attracted.

11. Coming to the aspect of delay in approaching this Court, we find that the aspect of delay cannot be considered in isolation and the totality of the facts of the case are required to be taken into consideration. It is true that the Tribunal refused the relief of pay and allowances for the relevant period while ordering reinstatement on 28.04.2016. The said order attained finality on 07.02.2017. It has been pleaded by the petitioner in paragraph 21 that on account of various health issues the petitioner could not immediately take appropriate steps. He has placed on record various medical certificates to indicate the state of his health. We find that firstly the order depriving the petitioner of the benefit to which he was entitled under Rule 71(3) of the Rules of 1981 was unjustified and unsustainable. This benefit ought to have been given to him immediately after the order of dismissal was set aside after holding the charges to be not proved. Considering the fact that the petitioner had superannuated almost ten years ago on 30.11.2013 coupled with the explanation furnished by him in paragraph 21 of the writ petition which appears to be acceptable, we are not inclined to deprive the petitioner of his entitlement to pay and allowances that is statutorily recognized.

12. For aforesaid reasons, the following order is passed :-

- (I) The order dated 28.04.2016 passed in Original Application No.639 of 2009 to the extent it holds the petitioner not entitled to pay and allowances for the period from 07.12.2006 to 30.11.2013 is set aside.

(II) It is directed that under Rule 71(3) of the Rules of 1981 the petitioner is entitled for pay and allowances for the aforesaid period.

(III) Within a period of eight weeks from today, the respondents shall pay the petitioner his pay and allowances for the period from 07.12.2006 to 30.11.2013.

13. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

APTE