



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10174 OF 2024

BALAJI TULSHIRAM KEDARE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS ADDL CHIEF
SECRETARY AND OTHERS

....

Mr. A. S. Deshmukh, Advocate for the Petitioner
Mr. S. P. Wakale, AGP for the Respondent – State

....

CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 19.09.2024

PER COURT :-

1. The Petitioner is before this Court as against a limited grievance. The Petitioner had preferred Original Application No.584 of 2022, pertaining to his minor punishment, before the learned Maharashtra Administrative Tribunal at Aurangabad. By a detailed judgment running into 36 pages dated 06.05.2024, the learned Tribunal issued the following directions:-

“ORDER

The Original Application is partly allowed in the following terms:-

- (A) *The impugned order dated 04.12.2018 is hereby quashed and set aside to the extent of failure on the part of the respondent authorities to determine and grant the pay and allowances to the applicant which would have been entitled, had he not been suspended in terms of provisions of sub-rule (5) of Rule, 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.*
- (B) *The respondent authorities shall pay the pay and allowances to the applicant which would have been entitled, had he not been suspended in terms of provisions of sub-rule (5) of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.*
- (C) *The respondent authorities shall also grant the subsistence allowances to the applicant in accordance with the provisions of Rule 68 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.*
- (D) *The respondent authorities shall pay aforesaid amounts as per clause (B) and (C) as expeditiously as possible preferably within the period of three months from the date of this order.*
- (E) *The rest of the impugned order dated 04.12.2018 stands confirmed.*
- (F) *In the circumstances, there shall be no order as to costs.*
- (G) *The Original Application is accordingly disposed of.”*

2. The learned Tribunal, after Summer vacation, noticed an error in it's order and suo-moto took up the matter for review. After hearing all the litigating parties, the learned Tribunal deleted direction (C) and modified the direction (D), as under:-

“ORDER

- (i) The Suo Moto Review Application is hereby allowed.*
- (ii) Clause (C) of the operative part of the order dated 06.05.2024 in O.A. No.584/2022 stands deleted.*
- (iii) In Clause (D) of the operative part of the order reference to clause (C) stands deleted.*
- (iv) So far as clause (D) of the operative part of the order is concerned, the respondent authorities shall pay aforesaid amounts as per clause (B) as expeditiously as possible preferably within the period of three months from the date of its order.*
- (v) The Suo Moto Review Application is accordingly disposed of. No order as to costs.”*

3. The explanation tendered by the learned Tribunal for such suo-moto modification is visible in paragraph Nos. 4, 5, 6 and 7 of it's order dated 19.06.2024, which read as under:-

“4. In terms of clause (B) of the operative part of the order, the respondent authorities have been directed to pay “the pay and allowances” to the applicant, which would have been entitled, had he not been suspended in terms of provisions of sub-rule (5) of Rule 72 of Maharashtra Civil Services (Joining

Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. However, inadvertently, since the subsistence allowance was not granted to the applicant, in terms of clause (C) of the operative part of the order, the respondent authorities have also been directed to grant the subsistence allowances to the applicant in accordance with the provisions of Rule 68 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

5. *In fact, in terms of Rule 74 of the Rules of 1981, adjustment of subsistence allowance against final payment is required to be made. Rule 74 of the Rules of 1981 reads as under:-*

“74. Adjustment of subsistence allowance against final payment. - The amount of subsistence allowance, if any, already drawn is to be deducted from the pay and allowances or proportion of them which may be granted under Rule 70, 71 or 72 as the case may be.”

6. *In the instant case, by clause (B) of the operative part of the order since the respondent authorities have been directed to pay “the pay and allowances” to the applicant in terms of sub-rule (5) of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, there need no directions to grant subsistence allowance separately to the applicant in accordance with the provisions of Rule 68 of the Rules of 1981. It has been discussed in detail in para No.30 of the body of the judgment about the applicant’s entitlement for subsistence allowance during the suspension in terms of the provisions of Rule 68 of the Rules of 1981. However, the same shall not be required in terms of the observations made hereinabove.*

7. *In view of above discussions and in terms of the provisions of Rule 74 of the Rules of 1981 as reproduced*

hereinabove, clause (C) of the operative part of the order dated 06.05.2024 is required to be deleted. So also in clause (D), there is a reference about clause (C) directing the respondent authorities to pay the amounts as per clause (B) and (C) in time bound manner; the same shall now be restricted to the extent of clause (B) alone by deleting the Clause (C) also.”

4. Having considered the extensive submissions of Shri Deshmukh, we find that the Tribunal has rightly noticed the error that had inadvertently crept in, into the judgment delivered. Having noticed Rule 72 (5) and Rule 74 of the 1981 Rules, it has carried out the modification keeping in view Rule 68.

5. We are exercising our supervisory jurisdiction. The original jurisdiction lies with the Tribunal. Merely because a different view is possible, would not mean that this Court should brand a judgment of the Tribunal, as been perverse or erroneous, in the light of the law laid down by the Hon'ble Supreme Court in ***Syed Yakoob Vs. K. S. Radhakrishnan, AIR 1964 SC 477*** and ***Surya Dev Rai Vs. Ram Chander Rai, AIR 2003 SC 3044 : 2003(6) SCC 682.***

6. In view of the above, we do not find any merit on the said issue in this Writ Petition.

7. Insofar as the suspension of the Petitioner and the subsequent order of punishment is concerned, it is settled law that if a person is completely exonerated of the charges levelled upon him, the suspension may be converted into 'on duty'. Once the charges are proved against a delinquent and an order of punishment is passed, the issue as to whether the suspension should be treated as 'on duty' and whether full salary should be paid, is within the domain of the employer. The decision of the employer dated 04.12.2018 and the subsequent orders dated 08.03.2019 and 10.03.2022, have been dealt with by the learned Tribunal in details in the impugned judgment.

8. For the reasons recorded above , we do not find that there is any reason to further scrutinise the decision of the employer who has inflicted minor punishment on the Petitioner.

9. For the above reasons, **the Writ Petition stands dismissed.**

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS