



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

**WRIT PETITION NO.9763 OF 2016**

Gaurishankar Mahadev Yeware  
Age 75 years, Occ. Pensioner,  
R/o Laxmi Road, Washi, Tq. Washi,  
Dist. Osmanabad

... PETITIONER

**VERSUS**

1. The State of Maharashtra  
Through Secretary, Rural  
Development Department,  
Mantralaya, Mumbai  
(Copy to be served on Govt. Pleader,  
High Court of Bombay,  
Bench at Aurangabad)

2. The Chief Executive Officer,  
Zilla Parishad, Osmanabad.

... RESPONDENTS

.....  
Mr. V.V. Bhavthankar, Advocate for Petitioner  
Mrs. P.V. Diggikar, A.G.P. for Respondent No.1.  
Mr. Ajinkya Reddy, Advocate for Respondent No.2.  
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**CORAM: ALOK ARADHE, CJ. &  
RAVINDRA V. GHUGE, J.**

**DATE: 19th MARCH, 2025.**

**ORAL JUDGMENT (PER : CHIEF JUSTICE) :**

1. Rule. Rule is made returnable forthwith. By consent of the learned Counsel for the parties, the Writ Petition is heard finally.

2. In this Writ Petition, the Petitioner has assailed the validity of the order dated 20/4/2016, by which the Chief Executive Officer, Zilla Parishad, Osmanabad has treated the period of suspension of the Petitioner, as leave period. The Petitioner also seeks a direction to the Respondents to make the payment of pension to him.

3. The facts giving rise to the filing of this Petition, briefly stated, are that, on 11/6/1965, the Petitioner was appointed as a Gram Sevak. Some time in the year 1993, there was an allegation against the Petitioner that he misappropriated the funds of Jawahar Yojana. The Petitioner, therefore, by an order dated 2/6/1994, was placed under suspension. The Enquiry Officer, however, by a communication dated 30/3/1996, informed the Chief Executive Officer, Zilla Parishad, Osmanabad that no fresh punishment be imposed as punishment of stoppage of one increment has already been imposed upon the Petitioner on 13/8/1993. A criminal case was instituted against the Petitioner on account of misappropriation of funds. In the said criminal case, the Petitioner was acquitted. Therefore,

by an order dated 4/8/1997, the Petitioner was reinstated in service.

4. The Petitioner, on 31/3/2000, attained the age of superannuation. The Petitioner submitted a representation, seeking service benefits such as leave encashment, medical leave, annual increments and pension. However, the Chief Executive Officer, Zilla Parishad, Osmanabad, by a communication dated 20/4/2016, rejected the representation submitted by the Petitioner. Hence this Writ Petition.

5. The learned Counsel for the Petitioner submitted that, the Petitioner has been acquitted in the criminal case which was instituted against him. It is further submitted that, the Respondent did not initiate any disciplinary action against the Petitioner and, therefore, the action of treating the period of suspension as on leave, is wholly arbitrary and illegal. It is further submitted that, the Petitioner is entitled to pension. However, only a provisional pension is paid to him.

6. On the other hand, learned Counsel for the Respondents submitted that, in case a public servant is

suspended pending criminal trial, on subsequent acquittal he is not entitled to all the reliefs as a matter of course. In support of his submission, the learned Counsel relied on the decision of the Supreme Court in case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & Ors.** reported in **AIR 1997 SC 1434.**

7. We have considered the rival submissions made by both the sides and have perused the record. It is pertinent to note that, a criminal case was instituted on the allegations of misappropriation of funds. Admittedly, the Petitioner has been acquitted in the aforesaid criminal case. No disciplinary proceeding has been initiated against the Petitioner. The Education Officer, by a communication dated 30/3/1996, informed the Chief Executive Officer, Zilla Parishad, Osmanabad that the Petitioner has already been punished as stoppage of one annual increment was imposed upon him and no fresh punishment be imposed on him. Thus, in the absence of any criminal case and only imposition of a minor penalty on the Petitioner, the action of the Respondents in treating the period of suspension as 'on leave' is contrary to well settled norms of service jurisprudence. The Petitioner is

also entitled to pension. It is trite law that the pension is not a bounty, but, a right which a Government servant owns on rendering his service.

8. Insofar as the reliance placed by the Respondents on the decision of the Supreme Court in the case of Krishnakant (supra), the same is of no assistance to them in the fact situation of the case. It is an authority that despite a criminal case, the disciplinary authority may enquire into the misconduct alleged and take appropriate action and, therefore, the acquittal in a criminal case ipso facto does not result in all consequential benefits to the delinquent employee.

9. For the aforementioned reasons, the impugned order dated 20/4/2016 cannot be sustained in law. It is accordingly quashed and set aside. The Respondents are directed to treat the period of suspension of the Petitioner as 'on duty' and to grant the Petitioner all the consequential benefits for the period of suspension. Needless to state that, the Respondents shall follow the Rules while fixation of pension of the Petitioner. Let the aforesaid exercise be

carried out within a period of two months. Needless to state that, the amount recovered from the Petitioner shall also be refunded to him. Rule is made absolute in the above terms.

**(RAVINDRA V. GHUGE, J.)**

**(CHIEF JUSTICE)**

FMPathan/-