
(2002) 10 BOM CK 0127

In the Bombay High Court

Case No : Writ Petition No. 4118 of 1999

Manohar Vaman Raikar

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 105 BOMLR 365

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Judgement

B.H. Marlapalle, J.—The petitioner joined the employment, of respondent No. 2 Corporation i.e. the State Warehousing Corporation. Pune, in 1966. While he was working as Assistant Storage Superintendent (Class II) he was placed under suspension by order dated 8.2.1990. He was served with the charge-sheet on 19.6.1990 levelling in all 5 charges against him. He submitted his reply which was not found satisfactory and therefore, alongwith three other officers namely ; S/Shri S.A. Wakchaure (Store-keeper). N.M. Bhalerao (Store-keeper) and B.R. Sonwane (Store-keeper), he was proceeded against and a departmental inquiry was ordered into the charges levelled against him. He alongwith other delinquent employees participated in the said inquiry and finally the Enquiry Officer submitted his report on 11.9.1992. He was issued a show-cause notice on 6.4.1993 and alongwith the same, a copy of the report of Enquiry Officer was also forwarded to the petitioner. He replied to the second show-cause notice on 15.5.1993 and finally the order of dismissal was passed by respondent No. 2 on 20.8.1994.

2. He approached this Court in Writ Petition No. 3026 of 1994 and challenged the inquiry proceedings as well as the order of dismissal dated 20.8.1994. The said petition was rejected by order dated 24.6.1998 with liberty to the petitioner to file an appeal under Rule 99 of the Maharashtra State Warehousing Corporation (Staff Services) Regulations (for short. Service Regulations). The petitioner

submitted such an appeal to the Board of respondent No. 2 Corporation and he was also heard by the said Appellate Authority. By resolution dated 31.8.1998 the Board allowed the appeal of the petitioner and the petitioner was directed to be reinstated in service but without, backwages. The period of suspension from 8.2.1990 till 20.8.1994 was directed to be treated as suspension period. This resolution was communicated to the petitioner by respondent No. 2 on 19.10.1998. Accordingly, the petitioner was reinstated in service but without the benefit of backwages. On reaching the age of superannuation, the petitioner has retired from service on 31.8.2000. The decision of the Appellate Authority in its resolution dated 31.8.1998 and as communicated to him vide order dated 9.10.1998 has been assailed in this petition. The substantial reliefs prayed for in this petition are as under :

(A) By Writ of Mandamus or any other appropriate writ or direction in the like nature, the impugned order dt. 24.9.98 passed by respondent No. 2 may kindly be quashed and set-aside.

(B) By a Writ of Mandamus or any other appropriate writ or direction in the like nature, the respondent No. 2 may kindly be directed to convert the period of absence from duty into leave of any kind due and admissible.

(C) By a Writ of Mandamus or any other appropriate writ or direction in the like nature, the respondent No. 2 may kindly be directed to pay the arrears w.e.f. 19.6.90 till this date with interest of 18%.

3. Before we proceed to examine the reliefs on their merits, it must be noted that there is no period of leave or absence mentioned in this petition which is sought to be converted as leave of any kind due and admissible to the petitioner.

4. The impugned order in this petition is the appellate order as communicated to the petitioner by respondent No. 2 on 9.10.1998. The operative part of the said appellate order reads thus :

(1) The punishment of removal imposed upon Shri Manohar Waman Raikar, Ex. Asst. Storage Supdt. Shriram under M- O. Order No. MSW/A/ EST/MVA:24345 dated 20.8.1994 is hereby revoked, Shri M.V. Raikar is censured for committing the irregularities.

(2) Shri Manohar Waman Raikar is reinstated as Asst. Storage Supdt. from the date of joining on duties at Jalna (Complex).

(3) Suspension period from 8.2.1990 to 26.8.1994 of Shri Manohar Waman Raikar shall be treated as suspension period.

(4) On reinstatement, he will be paid the salary on the basic pay of Rs. 2,200/- p.m. which he was drawing at the time of his removal from the services.

(5) No wages will be paid for the period from 27.8.1994 till the date of joining at Jalna (C) Warehouses.

(6) The amount of loss caused to the Corporation and others if any will be recovered from him.

5. Miss Mahajan, learned Advocate for the petitioner, referred to the provisions of Rule 83 of the service regulations and submitted that the petitioner was entitled for full salary as soon as the suspension period of three months was over and the period from 8.2.1990 to 26.8.1994 could not have been treated as period of suspension when the order of removal was set aside by the Appellate Authority and it was substituted by minor penalty of censure. She contended that when the petitioner was exonerated of a major charge of misconduct and he was let off on a minor penalty by recovering the monetary losses caused to the employer he must be held entitled for full salary for the period of suspension and the said period cannot be treated as such. We have also noted that the petitioner has made a general prayer for arrears of salary with effect from 19.6.1990 till the date of petition with interest at 18%.

6. The petitioner has also raised a grievance regarding non-payment of statutory dues and contended that though a demand draft dated 11.8.1994 for an amount of Rs. 1,27,993.30 ps. drawn on the State Bank of India and in favour of the petitioner was received, it was not encashed by him and it was returned to respondent No. 2 under registered post acknowledgment due and the same was received by respondent No. 2 on or about 11.9.1994. The petitioner, therefore, prays for directions to pay the entire amount of legal dues with interest.

7. The inquiry report submitted on 11.9.1992 held the petitioner guilty of all the charges levelled against him. A second show cause notice was issued which was replied to by the petitioner on 15.5.1993 and alongwith the same the petitioner was supplied a copy of findings of the Enquiry Officer recorded against him. The dismissal order is dated 28.9.1994 and it was the subject matter of challenge in Writ Petition No. 3026 of 1994 which was rejected by this Court vide an order dated 24.6.1998 with liberty to the petitioner to submit an appeal under Rule 99 of the service regulations. The petitioner had submitted such an appeal to the Board of respondent No. 2 Corporation. From the documents placed before us by respondent No. 2 Corporation it appears that the petitioner was heard on the same appeal. The Chairman and the Managing Director of respondent No. 1 Corporation had also submitted a note to the Board in respect of the petitioner's appeal. The Board noted that the co-accused employees were exonerated and therefore, there was no justification to single out the petitioner and to award him the capital punishment of removed from service. The Board, therefore, resolved to set aside the order of punishment dated 28.9.1994 and reinstated the petitioner in service. It was also made clear that the petitioner would not be entitled either for arrears by way of backwages and the period of suspension would be treated as such.

8. Rule 83 of the Service Regulations provides for payment during suspension. It states that subsistence allowance of an amount equal to the leave salary which the employee would have drawn if he had been on leave on half-pay in addition

to dearness allowance based on such leave salary would be payable for a period of three months of suspension and thereafter same would be increased or decreased. The affidavit filed by respondent No. 2 clearly states that the payment of subsistence allowance was reviewed after three months and the petitioner was paid 75% of the salary and allowances as subsistence allowance till the order of dismissal was passed on 20.8.1994. There is no provision in the service regulations which states that on setting aside the order of dismissal or removal and substituting the same by a minor penalty an employee would be entitled for full salary for the period of suspension. When such a provision is not available under the service regulations, the petitioner cannot invoke our jurisdiction Article 226 of the Constitution of India and pray for a writ to that effect.

9. The learned Advocate for the petitioner submitted that there has been inordinate delay in conducting the inquiry which ultimately resulted into the order of removal dated 20.8.1994 and therefore, the petitioner was entitled for full salary after three months of his suspension period. We have noted that in Writ Petition No. 3026 of 1994 the petitioner did not pray for any such relief. We are, therefore, not inclined to consider the same even in this petition as well.

10. The appeal was submitted under Rule 99 of the Service Regulations and the procedure for its disposal has been provided under Rule 105 of the Rules which reads as under :

(1) The Appellate Authority may after consideration of the case :

(i) confirm, modify or reverse the order appealed against: or

(ii) set aside, reduce, or enhance the penalty imposed; or

(iii) remit the case to the authority which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case :

Provided that the Appellate Authority shall not impose any enhanced penalty which neither the Appellate Authority nor the authority which made the order appealed against it competent to impose :

Provided further that, no order imposing an enhanced penalty shall be passed unless the appellant is given a reasonable opportunity of making any representation which he may wish to make against such enhanced penalty.

(2) The decision of the Appellate Authority shall be final. A copy of the appellate order shall be supplied to the appellant, and to the disciplinary authority for such further action as might be necessary.

11. In the instant case, the Appellate Authority admittedly set aside the order of removal and it did not impose any lower major penalty or enhanced the same. There is no provision in the service regulations to deny the payment of salary from the date of order of removal was set aside. The justification given by the

Appellate Authority in denying the payment of salary is not reflected in the resolution passed on 31.8.1998. When the order of removal is set aside, the right of the employee for salary from the date of such an order would automatically flow unless the service regulations provide for specific powers vested with the Appellate Authority to deny such a benefit.

12. It was contended before us that the petitioner gave up" his claim for salary from the date of his removal i.e. 20.8.1994. No such written consent has been submitted before us. On the contrary, in the note submitted to the Board it is stated that this Court on 10.6.1998 passed a verbal order "to reinstate the petitioner without backwages, he would serve for two years or will go on voluntary retirement and this is only for the purpose of giving him the retirement benefits." We are shocked to read this note. When Writ Petition No. 3026 of 1994 was rejected by this Court with liberty to file an appeal it. is obvious that the respondent No. 2 is trying to fabricate some grounds to deny the payment of salary to the petitioner from 20.8.1994 till he was reinstated in service.

13. In the result, we partly allow the petition and hold that the petitioner shall be entitled for arrears of salary from 20.8.1994 as if he was on duty till he was reinstated in service, This payment, shall be released to the petitioner within a period of eight weeks from today. The amount of other legal dues as payable to the petitioner shall also be released within a period of four weeks from today by respondent. No. 2 Corporation on his submitting a declaration before respondent No. 2 that he has not encashed the demand draft which was sent to him and which he claims to have returned, within a period of one week from today to respondent No. 2.

14. Rule is made absolute in terms of the above directions. No order as to costs.

16. C.A. No. 5236 of 2002 so far it relates to the payment of interest at the rate of 18% is hereby rejected.