
(2003) 06 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 2854 of 2003

Shri Vasant Krushnaji Kamble

APPELLANT

Vs

The State of Maharashtra and Zilla Parishad

RESPONDENT

Date of Decision : 09-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Civil Services (Joining Time, Foreign Service and Payment during
Suspension, Dismissal and Removal) Rules, 1981 — Rule 72, 72(3), 72(5), 72(8),
72(9)

Citation : (2004) 1 BomCR 396 : (2003) 4 MhLj 606

Hon'ble Judges : C.K. Thakker, C.J.; V.K. Tahilramani, J

Bench : Division Bench

Advocate : Ranjana Todankar, for S.S. Pakale, for the Appellant; R.D. Rane,
Assistant Government Pleader for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—In this petition, the petitioner has challenged the validity of the order passed by the Chief Executive Officer, Zilla Parishad, Kolhapur, respondent No. 2 herein, dated 2nd November, 2000 by which the period between September 12, 1986 and July 1, 1996 for which the petitioner was under suspension, was ordered to be treated "as such". The grievance of the petitioner is that he ought to have been treated "on duty" and ought to have been held entitled to salary and all other consequential benefits.

2. The case of the petitioner was that he was appointed as a primary teacher in 1960. He was served with a show cause notice on August, 19, 1986 inter alia alleging therein that he had issued forged passing certificates in favour of certain students who had in fact failed and received certain amounts from them. The petitioner was, therefore, called upon to give reply. The petition admitted the charge levelled against him. He was also placed under suspension. No departmental inquiry, however, was instituted against the petitioner. A criminal case was filed against him being Criminal Case No. 19 of 1988. He was, however,

allowed to resume duty in 1996 subject to the result in criminal case. In 1996, the petitioner was acquitted by a criminal Court.

3. On march 8, 2000, again, a notice was issued to the petitioner to show cause why the period of suspension of the petitioner, should not be treated "as such" i.e. period of suspension. In reply to the said notice, the petitioner clarified that though he had admitted the allegations levelled against him and receipt of the amount from students, it was under duress and coercion and the admission was not voluntary. By the impugned order, the period of suspension of the petitioner had been ordered to be treated as such. It was stated that since the show cause notice was issued and the petitioner had admitted the allegation, the period of suspension between 1986 and 1996 must be treated "as such". It was also observed that the petitioner was acquitted as there was no sufficient evidence to connect him with the crime.

4. The learned counsel for the petitioner contended that once the petitioner was acquitted by a competent criminal Court, no proceedings could have been initiated and the period during which he was under suspension, could not have been treated as under suspension and he is entitled to all the benefits as if he was in active service of the respondents. It is also the case of the petitioner that the statement/admission which was taken in 1986 admitting allegations was taken under duress and that fact ought to have been taken into account by the authorities.

5. So far as criminal case is concerned, it is not doubt true that petitioner was acquitted by a competent Court. But in our opinion, it was open to the authorities to pass an appropriate order keeping in mind the provisions of Maharashtra Civil Services (Joining Time, Foreign Service, and Payment during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as "the Rules"). The relevant Rule is Rule 72 which provides for reinstatement of a Government servant after suspension. A specific order of the competent authority regarding payment of allowances etc. and computation of period as spent on duty is required to be passed. Sub-rules (3) and (5) of Rule 72 are relevant and may be quoted in extenso:

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provision of Sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not be suspended.

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay

only such amount (not being the whole) of such pay and allowances as it may determine.

(5) In cases other than those falling under Sub-rules (2) and (3) the Government servant shall, subject to the provisions of Sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice".

(Emphasis supplied)

6. In our opinion, therefore, acquittal of the petitioner by a criminal Court, did not ipso facto entitle him to the benefits of Salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was "wholly unjustified". In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.

7. In the facts and circumstances, though a criminal case as instituted against the petitioner, and he was acquitted by the court, keeping in mind the admission in response to the show cause notice that the allegations were true, if an order was passed, it cannot be said that such an order could not have been made by the authority or suspension was "wholly unjustified".

8. Regarding admission of the petitioner, it is his contention that so called admission was not voluntary but was made under pressure of Block Education Officer, Kolhapur ,In our opinion, such a plea cannot be allowed to be agitated in this Court under Article 226 of the Constitution and that too after about fifteen years.

9. In the circumstances, in our opinion, decision of respondent No. 2 cannot be held illegal, unreasonable or unlawful. The petition, therefore, deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.

Parties be given copies of this order duly authenticated by Sheristedar of this Court.