

SOME IMPORTANT DECISION OF THE HON'BLE SUPPREME COURT OF INDIA, HON'BLE HIGH COURT, MUMBAI OR HON'BLE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI ON SERVICE, ADMINISTRATIVE LAW.

Sr. No.	Subject and details of case.	Ratio laid down	Remarks, if any, citation etc.
<u>01 A</u>	<u>Appointment</u>	It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of ' no work, no pay ' is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied.	2007-(SC2)-GJX -0806 -SC Sukhdeo Pandey, Petitioner V. Union Of India & Anr., Respondent
<u>01 B</u>		Nobody has a fundamental right to be appointed to or retained in service under the Govt. It is open to the State Govt. to frame the necessary rules prescribing the requisite qualifications and it is open to the authorities to lay down such pre-requisites conditions for appointment as would be conducive to the maintenance of proper discipline amongst Govt. Servant.	Banarsi Das V/s State of U.P., AIR 1955 SC 520.
<u>2.</u>	Annulment of Recruitment. 2002-(SC2)-GJX -0109 -SC Union Of India And Others, Appellants V. O. Chakradhar, Respondent. [Referred] 1990-(SC2)-GJX -0674 -SC Mohinder Sain Garg, Appellant V. State Of Punjab And Others, Respondents. (Civil Appeal No.... 1994-(SC2)-GJX -0498 -SC Krishan Yadav And Another, Appellants V. State Of Haryana And Others, Respondents.	We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some.	2002-(001)-CLR -0975 -SC 2002-(003)-SCC -0146 -SC 2002-(089)-AIR -1119 -SC

	<p>FORWARD REFERENCE :</p> <p>2005-(SC4)-GJX -0736 -SC Union Of India Through The Secretary, Ministry Of Home Affairs And Others, Appellants V. J....</p>		
<p>3.</p>	<p>Intentionally not mentioning or hiding registration of offence in ‘ATTESTATION FORM’.</p> <p>2003-(SC3)-GJX -0383 -SC Kendriya Vidyalaya Sangathan & Ors. V. Ram Ratan Yadav.</p> <p>[Referred]</p> <p>1999-(SC2)-GJX -0048 -SC Regional Manager, Bank Of Baroda, Appellant V. Presiding Officer, Central Govt. Industrial....</p> <p>FORWARD REFERENCE :</p> <p>2004-(SC1)-GJX -0036 -SC B. R. Chowdhury, Appellant V. Indian Oil Corporation Ltd. And Ors., Respondents.</p> <p>2005-(SC1)-GJX -0087 -SC Secy. Deptt. Of Home Secy. A. P. & Ors., Petitioner V. B. Chinnam Naidu, Respondent.</p>	<p>Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling column nos. 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment.</p>	<p>EQUIVALENT CITATION(S) :</p> <p>2003-(002)-LLJ -0523 -SC 2003-(003)-SCC -0437 -SC 2003-(090)-AIR -1709 -SC</p>

<p>4.</p>	<p><u>Suspension.</u> Writ Petition No.6313 of 2005 filed by State of Maharashtra and anr. V/s Shri Raghunath Eknath Munde. Coram F.I.Refello and Dr. D.Y.Chandrachud,JJ. Date of judgement:- 30.09.2005.</p>	<p>In the normal course, it is the disciplinary authority who is the best Judge as to whether the person should continue in suspension or not. If the delinquent is suspended, it is open to the disciplinary authority to review the order of suspension. In that context, the court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend is arbitrary and ort is a mala fide exercise of power and or colorable exercise of power and or the State or the authorities are not able to explain the reasons for suspension when it is for a unduly long period and adequate reasons re not forthcoming for the order of suspension. These must be the parameters on which every authority including M.A.T. must consider whilst dealing with an order of suspension more so in the case of delinquent employee who hold the sensitive posts under Police services and such other services. It is not for the courts including the tribunal to interfere with exercise of discretion by the disciplinary authority otherwise than in circumstances set out.</p>	
	<p><u>Suspension in the cases involving the moral turptude, involved in criminal cases of corruption.</u> 1) Writ Petition No.233 of 2005 filed by the State of Maharashtra V/s Shri K.B.Kulakarnik, 2) The State of Maharashtra V/s Shri U.N.Pardeshi, 3) The State of Maharashtra V/s Shri B.N.Salukhe and 4) The State of Maharashtra V/s Shri D.K.More. Decided on 17.10.2005. Coram: V.G.Palshikar and D.B.Bhosale,J.J.</p>	<p>1. In our opinion, it would be indeed inconceivable that the petitioners should allow the respondent to resume on duty when they are facing serious charges of corruption. Allowing such employee to remain in seat would result in giving him further opportunity to indulge in the acts for which he is being prosecuted. Merely because the respondents are under suspension for over 18-24 months cannot be a ground to pass the order of reinstatement.</p> <p>2. We draw support from the aforesaid observations of the Apex Court to hold that a public servant who is charged of corruption should be kept away from the office until he is judicially absolved. Merely because a trial of such public servant is being delayed, that by itself should not be a ground for passing an order of reinstatement. If such public servant is reinstated and allowed to continue to do official acts until he is judicially absolve from the charge of corruption by reason of reinstatement order it is public interest which suffers and sometimes even irreparably. When such public servant is allowed to hold public office, it would impair the morale of other persons</p>	

	<p>manning such office and consequently that would erode already shrunk confidence of the people in such public institution besides demoralizing the other honest public servants who would either be his colleagues or subordinates. If honest public servants are compelled to take orders from officer, facing charges of corruption on account of setting aside the suspension the fallout would be one of shaking the system itself.</p>	
<p><u>SUSPENSION.</u> <u>(1) Putting restriction on the movements of police personnel (of and below the rank of Police Inspectors), i.e. asking to attend the daily roll call etc.</u></p> <p><u>(2) Although the posts of Police Inspectors have upgraded as Class “A” from Feb.2005, yet their services are governed under the Bombay Police Act, 1951 and The Bombay Police (Punishments and Appeals) Rules, 1956.</u> <u>* Judgement given by the Hon’ble M.A.T., Mumbai in the O.A.No.293 of 2005 filed by P.I. Shri A.V.Waghmare V/s State and Ors. Date of judgement is 24.11.2005.</u> <u>* The judgement of the Hon’ble High Court, Mumbai inWrit Petition</u></p>	<p>1. In paragraph 10of the said order the Hon’ble M.A.T., Mumbai has held that <i>“the Supreme Court had not frowned upon any such restriction being imposed on the Police personnel if the rules permitted such restrictions. Section 15 and section 23 (h) of the Bombay Police Act, 1951 empowers control of authorities on Police Officers even when they are under suspension. It would be correct say that no orders have been issued under section 23 (h) of the Bombay Police Act in this regard, because the Circular dtd.25thJanuary, 1955 clearly states that in exercise of the powers under Section 15 of the Bombay Police Act, 1951 Officers empowered to suspend can pass orders imposing restriction on the employment of the delinquent under suspension. In the light of these provisions and the various judgments cited, I hold that the condition imposed in the impugned order regarding attendance of roll call every day by the delinquent is valid. “</i></p> <p>2. In paragraph no.3 of the said judgement the Hon’bleTribunal has accepted the position that <i>hough the post of Police Inspectors has no doubt been upgraded, but yet the police personnel upto the rank of Police Inspector are governed by the Bombay Police (Punishments and Appeals) Rules, 1956. Rule 3 (1) of the M.C.S.(Discipline and Appeal)Rules, 1979 states that the said Rules are not applicable to those who are governed by the Bombay Police Act, 1951 as defined under Section 2 (16) of the of the said Act. As per section 24 (2) (a) of the Bombay Police Act, 1951, The Director General of Police, M.S., Mumbai, including Additional Director Genral, Special Inspector Genral, Commissioner (including Joint Commissioner, Additional Commissioner) and</i></p>	

	<p>No. 3801 of 2006 filed by Shri A.V.Waghmare V/s State and Ors.</p>	<p><i>DeputyInspector General shall have authority to puish an Inspector or anymember of the subordinate rank under Section (1) or (1A).</i></p> <p>3. The Hon'ble High Court, vide its order dtd. July 19, 2006 has upheld the aforesaid orders of the Hon'ble M.A.T., Mumbai by observing that “ <i>the order of the Tribunal has taken note of the entire law on the point as was placed before it and we do not see any jurisdictional legal error committed by the Tribunal in rejecting the original application</i>”.</p>	
<p><u>5.</u></p>	<p>Regarding holding of departmental enquiry by the police officers against the police personnel. Writ Petition No.4622 of 2003 filed by State of Maharashtra and Ors. V/s Shri Dilip Anant Surve. Date of Judgment:- 09.03.2005. Coram: F.I.Rebello & S.P.Kukday, JJ.</p>	<p><u>1.</u> We cannot agree that G.Rs. or guide-lines are rules made under Article 309 of the Constitution.</p> <p>2. We therefore, find that there is no infirmity in the ultimate conclusions arrived at by the Full Bench judgment of M.A.T., Mumbai. The said Full Bench held that “<i>there is the Bombay Police Act, 1951 which had received the assent of the President on 1.6.1951. Rules came to be made under the said Act, known as the Bombay Police (Punishments and Apples)Rules, 1956 which hereinafter shall be referred to as the Rules. By virtue of Rule 1 (2) all police officers including Railway Police Officers, below the rank of Inspector in the State of Bombay are governed by the said Rules. The G.R.s and the Circulars are not applicable to police officers who are governed by Bombay Police (Punishments and Appeals)Rules, and that they are applicable only those case of the Govt. servant who are not governed the said Rules. That G.R. dated 29.12.1988 and the subsequent Circulars issued dd.11.1.990 and 6.1.2001 cannot override the statutory rules framed under the Bombay Police Act, 1951. The nature of power to be exercised under Rule 16A of the B.P.(Punishment and Appeals)Rules, 1956.</i></p>	
<p><u>6.</u></p>	<p><u>Transfers.</u> Hon'ble M.A.T., Mumbai has laid down the following ratio in connection with the Maharashtra Government Servants Regulation of Transfers and</p>	<p>(1) Fixed tenure of a government servant at a particular post is 3 years for all groups. (2) Employee working in non secretariat service may be transferred to a post within particular office or department on completion of 3 years in that office and out of that office or department on completion of two tenures i.e. 6</p>	<p>Note:- The above is only reproduction of the ratio laid down by the Hon'ble M.A.T., Mumbai in case of any doubt, please get the certified copy from the Registrar to the Hon'ble M.A.T., Mumbai by</p>

<p>Prevention of Delay in Discharge of Official Duties Act, 2005 in the matter of Original Application nos. 376 and 377 of 2007 filed by Shri/s Murlidhar Changdeo Patil and Ravindranath Kashinath Patil, both from the office Taluka Agriculture Officer, Sinnar, Dist. Nashik.</p>	<p>years.</p> <p>(3) Preparation of list of government servants every year due for transfer in month of January is condition precedent to effect transfers in April/May, which in common parlance, are called as general transfers.</p> <p>(4) General transfers will be in respect of the list of those government servants figuring in the list and none else.</p> <p>(5) No modifications or alterations in the list so prepared are permitted thereafter.</p> <p>(6) Validity of list so prepared, will be till the orders of transfers are issued in pursuant to that list.</p> <p>(7) There are no provisions contained in the Act to receive or entertain any representation or request for transfer once the list is finalized. The competent authority may direct the head of office to apprise government servant due for transfer. Govt. servant whose name is included in the list, if makes an application [it shall be addressed to the competent authority and shall be made through proper channel only] against proposed transfer the same may be considered according to exigency or need of administration but in no case such request will be binding on the administration.</p> <p>(8) Any representation or request to the competent authority with any recommendations from an outsider, political, big wigs, Hon'ble Minister not in charge of such department, shall be summarily rejected and the Govt. servant indulging in such activities shall be firmly dealt with in accordance with conduct rules.</p> <p>(9) Any application sent directly to any of the Mantralaya Department or Hon'ble Minister not concerned with the department shall not be entertained at any level.</p> <p>(10) On receipt of such application by the competent authority, having regard to provisions of Section 4 (4), 1st and 2nd proviso r/w Section 4 (5) of the Act shall consider that application and find out prima facie whether the reason or cause for transfer or non transfer from one post to another or retain at that place is genuine and just, then having regard to administrative exigencies, needs, availability of post etc. on the back drop of statutory provision, contained in section 4 of the Act, that too after</p>	<p>making application in prescribed format and take any action according to the certificate copy of the order.</p>
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