

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

WRIT PETITION NO. 1656 OF 2014

Saiyyed Turaboddin Jilani .. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri M. D. Godhamgaonkar, Advocate for the Petitioner.
Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

DATE : 11TH FEBRUARY, 2015.

PER COURT :

. Mr. Godhamgaonkar, the learned counsel submits that, the petitioner was honorably acquitted in the criminal case. No Departmental Enquiry at any point of time was initiated against the petitioner, still vide the impugned order the authority has failed to consider the period of suspension as duty period. According to the learned counsel Rule 72(3)(5)(7) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules 1991 have not been followed. Even the acquittal is not on the basis of benefit of doubt. According to the learned counsel, the judgment of the criminal Court has not been properly appreciated by the authorities. The learned counsel submits

that, the action is punitive one and could not have been taken without conducting Departmental Enquiry. As no Departmental Enquiry has been conducted, the order is per-se illegal. The learned counsel relies on the judgment of the Apex Court in a case of **Greater Hyderabad Municipal Corporation Vs. M. Prabhakar Rao** reported in **AIR 2011 SC 3173**.

2. Mr. Shinde, the learned Assistant Government Pleader submits that, acquittal is based on benefit of doubt and is not a case of clear acquittal. In such circumstances, the authority has after issuing show cause notice to the petitioner taken action. Principles of natural justice are followed. The same does not suffer from any illegality. The learned A. G. P. relies on the judgment of the Apex Court in a case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra** reported in **(1997) 3 SCC 636**. The learned A. G. P. submits that, the Tribunal has rightly considered the said aspect. Even authorities have rightly passed the orders.

3. We have gone through the orders passed by the authority, appellate authority and the Tribunal. Only on the ground that the acquittal in a criminal case is not clear acquittal the orders are passed. The authority who has passed the first order has noticed that he is not satisfied by the explanation given and as such has passed the order not treating the suspension period as duty period. The Appellate Authority has only endorsed the

order of the original authority. It does not appear that authorities have applied their mind to the judgment passed by the Court. No reasons are also forth coming in the order passed by the Superintendent of Police, Nanded while passing the first order. In fact, reasons are the life line of any administrative or quasi judicial order. It depict application of mind of the authority passing the said order. It is a fact that, no Departmental Enquiry was initiated at any point of time. The petitioner is reinstated pursuant to acquittal in criminal case. In such a case, the first authority was required to consider the judgment delivered by the Court in criminal case and all attending circumstances and should have given the reasons while passing the order. In absence of the same, the Court would be handicapped to consider as to the grounds on which the authority has negated the claim of the petitioner.

4. In the light of the above, the order of the Tribunal, the appellate authority and the Superintendent of Police, Nanded are quashed and set aside. The Superintendent of Police, Nanded shall consider the claim of the petitioner for treating suspension period as duty period afresh on its own merits and by giving reasons, shall decide the same. The writ petition accordingly is disposed of, however, with no order as to costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]