

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2467 OF 2014

Santram Gangaram Sadaphule,
Age 57 yeas, Occ. service,
R/o Jawala (Ni), Tq. Paranda,
District Osmanabad.

..Petitioner

Versus

1. The State of Maharashtra
2. The Chief Executive Officer,
Zilla Parishad, Osmanabad.
3. The Divisional Additional
Commissioner, Aurangabad
Division, Aurangabad.

..Respondents

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Advocate for Petitioner : Smt. Kasturkar M.G. h/f Smt. Kulkarni M.A.
AGP for Respondents 1 & 3 : Smt. Shinde V.A.
Advocate for Respondent 2 : Shri Dama Prashant P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 10, 2015

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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. Smt. Kasturkar, learned Advocate strenuously submits as under:-
- (a) The petitioner was suspended pending disciplinary proceedings by order dated 6.6.1994.
 - (b) A departmental enquiry was conducted.
 - (c) By order dated 22.2.1996, the petitioner was punished with stoppage of increment and a recovery of Rs. 27663.50 was directed in 18 monthly installment of Rs.1500/- each and the 19th installment was to be for an amount of Rs.663.50. The period of suspension was to be considered as such.
 - (d) The petitioner claims to have been acquitted by the Chief Judicial Magistrate, Osmanabad, in RCC No. 469 of 1996 by judgment dated 18.4.2007. The offence alleged to have been committed under Section 409 amounting to criminal breach of trust read with Section 34 of Indian Penal Code for acts committed with several persons with common intention, was not proved.
 - (e) An application on 4.8.2010 was moved by the petitioner with the respondent employer seeking setting aside of the order of punishment, dated 22.2.1996.

(f) Since respondent No.2 had no authority to entertain the said application, by order dated 29.2.2012, the petitioner was informed that he could resort to available remedies.

(g) The petitioner preferred Appeal No.137 of 2012 before the third respondent, who dismissed the appeal by order dated 24.1.2013 on the ground of 16 years' delay.

5. Smt. Kasturkar submits that after the petitioner was acquitted, he had moved the respondents. They should have considered the acquittal of the petitioner and should have withdrawn the punishment imposed upon the petitioner. Once the petitioner was acquitted by the criminal court, the punishment imposed by the respondent in departmental proceedings did not survive and was unsustainable. He, therefore, prays for setting aside of the order of punishment placing reliance upon the judgment of the Apex Court in the case of G.M.Tank Vs. State of Gujarath [(2006) 5 SCC 446].

6. The learned AGP and the learned Advocate for respondent No.2 have opposed the petition on the ground that the disciplinary proceedings cannot be interfered into merely because the petitioner has been acquitted by the criminal court. Issue was of mis-appropriation and hence the employer had lost confidence. After

following the due procedure of law and by conducting a departmental enquiry an order of punishment was passed. No interference is, therefore, called for.

7. I find that the petitioner has not raised a grievance immediately after his acquittal. The judgment of the learned Chief Judicial Magistrate is dated 18.4.2007. An application was entered by the petitioner on 4.8.2010. An appeal was preferred on 18.2.2012. Even if the first application is considered, the petitioner has questioned his suspension after 16 years and has questioned the order of punishment after about 14 years.

8. Notwithstanding the above, unless the petitioner can indicate that the evidence recorded in the enquiry was identical to the evidence recorded before the criminal court, the reliance placed by the petitioner on G.M.Tank's case (supra), is mis-conceived.

9. It is trite law that merely because an employee has been acquitted from criminal trial, would not automatically result in the exoneration of the petitioner in disciplinary proceedings. The criminal proceedings and the departmental enquiry are conceptually distinct and different.

10. The Apex Court in the case of Avinash Sadashiv Bhosale Vs. Union

of India and others [2013 (1) Bom.C.R.55], has considered the law on this issue and has concluded that the departmental proceedings and the criminal case, if are not grounded upon the same set of facts and the evidence, there could be no conflict in between the two. The Apex Court has observed in paragraph No.44 of the said judgment as under:-

"44. This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in the case of Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao (supra). In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:-

(a) There is no legal bar for both proceedings to go on simultaneously.

(b) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(c) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(d) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are

based on the same set of facts and the evidence in both the proceedings is common. In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr. Jain."

11. The Apex Court in the case of Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. [AIR 1999 SC 1416], has held in paragraph Nos.34 and 36 as under:-

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the

findings recorded at the ex-parte departmental proceedings, to stand.

"36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, in so far as it purports to allow the Writ Petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental inquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs.15,000/-."

12. In the light of the above, this petition is devoid of merits. The impugned judgment is not erroneous or perverse.

13. This petition is dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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