

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

WRIT PETITION NO. 7348 OF 2012

Devrao Naarayanrao Kale .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Shri G. G. Kadam, Advocate for the Petitioner.

Smt. S. A. Dhumal, A. G. P. for Respondent No. 1.

Shri V. R. Sonwalkar, Advocate for Respondent Nos. 2 to 4.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 03RD AUGUST, 2015.

PER COURT :

1. Mr. Kadam, the learned counsel submits that, the termination order was on account of the fact that the criminal case is pending against the petitioner. The petitioner had challenged said termination order before this Court in Writ Petition No. 4797 of 1999. The said writ petition was rejected. However, subsequently on 17.10.2011 petitioner is acquitted from that criminal case. In view of the subsequent acquittal of the petitioner in criminal case, the petitioner has fresh cause of action to challenge the termination order. The letter under

reference to the said termination order is solely on the ground that, the petitioner was prosecuted in the criminal case. According to the learned counsel, after acquittal in the criminal case this Court can certainly reconsider the termination order. The learned counsel relies on the judgment of this Court in a case of **Shri Vinayak Vidhyadayini Trust through its Secretary / Trustee and Sai Vidya Mandir through its Headmistress V/s Smt. Aruna T. Prabhu, Sanjay Vasantrao Patil, Asst. Teacher, The Education Inspector, (West Zone) and The State of Maharashtra** reported in **2011 (1) Mh. L. J. 550**. The learned counsel also relies on the judgment of Apex Court in a case of **Union of India (UOI) and Others V/s Jaipal Singh**, reported in **2001 (5) All. M. R. (SC) 156**.

2. We have heard the learned counsel for respondents.

3. The petitioner was appointed on 17.03.1997, as a Junior Clerk and was terminated vide order dated 31.03.1999. Prior to that, show cause notice was given to the petitioner on 06.01.1999, asking as to why he should not be suspended. The order of termination was challenged by the petitioner before this Court by filing writ petition bearing No. 4797 of 1999. This Court vide order dated 04.10.1999 rejected the said writ petition. This

Court while rejecting the writ petition has observed as under -

“This requires that the respondent has to consider the record of the petitioner during the probation period and thereafter confirm the services. Unless the services of the petitioner are considered and confirmed by the respondent No. 2 the petitioner cannot claim the permanency. Moreover, the certificate of the satisfactory completion of the probation period is also not produced on record.

Vide an order dated 21.3.1999, services of the petitioner have been terminated, wherein it is stated that on 21.10.1988 the petitioner was arrested by police station Ralambur. On being asked the learned counsel for the petitioner stated that earlier the petitioner was in service of the peoples co operative Bank and for the alleged embezzlement at the amount.

The complaint was lodged by the said Bank and therefore, arrest was effected.

We, therefore, find that the respondent No. 2 has rightly terminated the services of the petitioner. Infact, as per the terms and conditions of the appointment order itself. It was not obligatory on the respondent No. 2 to give cause for passing

such an order. We are therefore, not inclined to entertain the petition.”

4. The petitioner was not terminated on account of the fact that, he was arrested, but because of the fact that. he has suppressed the factum of pendency of the criminal case and his arrest. It was observed by this Court that, the petitioner was not confirmed in service. The petitioner cannot claim permanency. The certificate of satisfactory completion of the probation period is also not produced on record. The Court found that termination order to be proper.

5. In view of the earlier order rejecting writ petition filed by the petitioner challenging the termination order and this Court having observed that, the petitioner has not been confirmed in service and prior to the confirmation his service has been terminated. This Court now cannot again consider the said termination order only on the ground that, the petitioner is subsequently acquitted in the criminal case, when the same was not the cause for termination of his services. The writ petition is accordingly disposed of. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]