

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

WRIT PETITION NO. 9330 OF 2015

Ashok Zinga Patil,
Age : 42 years, Occ : Nil,
R/o Plot No.5, Mohan Nagar,
Mahabal Parisar, Jalgaon,
District Jalgaon.

...PETITIONER

-VERSUS-

North Maharashtra University, Jalgaon.
Umavi Nagar, Bambhori,
Jalgaon, District Jalgaon.
Through it's Registrar.

...RESPONDENT

...
Advocate for Petitioner : Shri Suryawanshi Nitin B.

Advocate for Respondents : Shri Girase Amarjitsing B. a/w Shri Yogesh
Bolkar.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st December, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 Shri Suryawanshi, learned Advocate for the Petitioner,

submits that he was appointed as a Peon with the Respondent University on 03.10.1992. He has been subsequently promoted to the post of a Junior Assistant in 1997.

3 By order dated 30.04.2003, he was placed under suspension and a charge sheet was issued to him in the light of the criminal complaint lodged against him. No doubt, the charge levelled upon the Petitioner was of a serious nature.

4 Shri Suryawanshi submits that the Petitioner underwent the trial in Regular Criminal Case No.118/2006 as he was charged with having committed offences punishable under Sections 471 and 465 r/w 34 of the Indian Penal Code. By the judgment and order dated 14.08.2008 he was convicted of these offences and was sentenced to undergo rigorous imprisonment for 18 months with fine of Rs.500/- under Section 465 and rigorous imprisonment for one year with fine of Rs.500/- under Section 471. The sentence was to run concurrently.

5 Shri Suryawanshi submits that pursuant to the Enquiry Officer's findings dated 06.11.2009, the Petitioner was issued with the order of termination dated 18.12.2009. He straightaway points out paragraph 34 of the Enquiry Officer's report wherein, the Enquiry Officer

has categorically concluded that taking into account the evidence on record, none of the charges levelled upon the Petitioner have been proved by the Respondent Management.

6 He then points out the last paragraph of the report which is titled as “conclusion” and draws my attention to the specific observations of the Enquiry Officer that though all the charges levelled upon the Petitioner have not been proved in the enquiry, since he has been convicted by the court of criminal jurisdiction as noted above, his offence is proved.

7 He then draws my attention to the fact that in Criminal Appeal No.94/2010, the learned Sessions Court at Jalgaon by its judgment dated 19.05.2015 has acquitted the Petitioner of the offences said to have been committed by him and consequentially, conviction and sentence have been set aside.

8 He then submits that pursuant to his termination on 18.12.2009 he preferred an appeal before the University Tribunal bearing No.NMU-10/2010 wherein, the termination was challenged. In the meanwhile, this Court, vide order dated 01.04.2011 in Criminal Application No.2621/2010, had granted stay to the conviction of the

Petitioner. This fact was brought to the notice of the University Tribunal, yet the Tribunal by the impugned judgment dated 21.09.2011 was pleased to dismiss the appeal since the Petitioner was convicted.

9 Shri Suryawanshi, therefore, submits that once the conviction has been set aside and the Petitioner has been acquitted, the Employer is under an obligation to withdraw its termination and reinstate the Petitioner. He, therefore, prays that the impugned judgment of the University Tribunal and the termination order be set aside and the Respondent be directed to reinstate the Petitioner in employment.

10 Shri Girase, learned Advocate for the Respondent, submits that the contention put forth by the Petitioner is unsustainable. He strenuously defends the termination order as well as the impugned judgment of the University Tribunal.

11 He submits that though the Petitioner was subjected to the criminal trial and has been acquitted in appeal, that ipso-facto shall not result in exoneration of the Petitioner in a departmental enquiry, as is trite law. He submits that the Employer has an independent right to conduct disciplinary proceedings and arrive at an independent finding. The Respondent has, accordingly, conducted the enquiry and has come to the

conclusion that the Petitioner does not deserve to be retained in service. This independent action of the Respondent cannot be interfered with by this Court in its writ or supervisory jurisdiction.

12 He has taken me through the impugned judgment of the University Tribunal threadbare. He submits that the University Tribunal considered the charges levelled upon the Petitioner and considered that the misconduct was proved. Hence, by independently going through the findings of the Enquiry Officer, the University Tribunal has concluded that the appeal deserves to be dismissed since the Petitioner is guilty of a serious misconduct. He, therefore, prays for the dismissal of this petition.

13 He further adds that the post of Junior Assistant occupied by the Petitioner is presently not available with the Respondent. Even if this Court concludes that he deserves to be reinstated, the Respondent may find itself unable to do so.

14 I have considered the submissions of the learned Advocates as have been recorded herein above.

15 It needs to be put in right perspective that the Enquiry Officer has in fact come to the conclusion that none of the charges levelled upon

the Petitioner have been proved in the enquiry.

16 It is an altogether different situation in law and particularly in the light of the catena of judgments of the Apex Court that though a criminal proceeding is underway, the Employer cannot be precluded from initiating a departmental proceeding. It is trite law that though the Employee may be acquitted of the criminal offence, that would not ipso facto lead to his exoneration in the departmental proceedings. Even in the face of an acquittal, the Employer can independently arrive at a conclusion as regards the punishment to be awarded to the Employee, if the charges set out in the charge sheet are proved by leading oral and documentary evidence in enquiry.

17 It is also held in the case of *G.M.Tank v/s State of Gujarat*, **AIR 2006 SC 2129** that if evidence before the Criminal Court and the evidence in the departmental enquiry is identical and if the charge-sheeted Employee is acquitted by the Criminal Court, then, in such a peculiar situation, the Employee can be exonerated in the departmental enquiry.

18 In my view, the Petitioner stands on a better footing. In paragraph 34, the Enquiry Officer has categorically concluded that after considering the entire evidence on record, none of the charges levelled

upon the Petitioner are proved by the Management. In the last concluding paragraph, the Enquiry Officer has concluded that though he has arrived at a conclusion that none of the charges are proved against the Petitioner, he is holding the Petitioner guilty only because he has been convicted by the Trial Court as noted above.

19 It is, therefore, apparent that the Enquiry Officer, though convinced that none of the charges are proved against the Petitioner, has considered the judgment of the Criminal Court by which the Petitioner was convicted. Since conviction by the court of criminal jurisdiction was before the Enquiry Officer, he has clearly stated that he is holding the Petitioner guilty only because of the conviction handed down by the Court of criminal jurisdiction.

20 In the light of the above, once the conviction is set aside and the Petitioner is acquitted of the offences with which he was charged, the Enquiry Officer's report would then have to be considered only from the point of the view of the Enquiry Officer as set out in paragraph 34 of the report. As the conviction has been set aside, the conclusion of the Enquiry Officer that no charges are proved against the Petitioner, will have to be accepted.

21 In the light of the above, the impugned judgment of the University Tribunal as well as the termination need to be set aside. However, the effect of reinstatement would be only from the date of acquittal of the Petitioner by the Appellate Court which is 19.05.2015.

22 As such, this Writ Petition is allowed. The impugned order of termination dated 18.12.2009 and the judgment of the University Tribunal dated 21.09.2011 are quashed and set aside. The Petitioner shall stand reinstated in service with effect from 20.05.2015 with all incidental and consequential benefits, inclusive of monetary benefits and back-wages.

23 Rule is, therefore, made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)