

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 254 OF 2008

Shri Francisco Colaco
c/o Shri Nativide Pires, 45 years
of age, resident of House no. 528,
near Clive Farm, Dialgona, Navelim,
Saclete, Margao, Goa.

... Petitioner

V e r s u s

Mormugao Port Trust,
Port Trust registered under the
Major Ports Act 1963 with its
office at Head Lands
Sada Mormugao Taluka, Goa.

... Respondent

Mr. Sudesh Usgaonkar and Ms. Anagh Matondkar, Advocates for the Petitioner.

Mr. Y. V. Nadkarni, Advocate for the Respondent.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **8th January, 2015**

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Shri Sudesh Usgaonkar, learned Counsel appearing for the
Petitioner and Shri Y. V. Nadkarni, learned Counsel appearing for the Respondent.

2. The above Petition, inter alia, prays for a writ of Certiorari to quash
and set aside the Order dated 03.01.2008 and direct the Respondents to reinstate
the Petitioner in service.

3. Briefly, the facts of the case as stated by the Petitioner are that the
Petitioner joined the services of the Respondents as a Clerk (Outdoor) in the Traffic
Department ATM(S) Section. On 07.03.2000, the Petitioner was prosecuted for an

offence punishable under Sections 342, 504 and 302 of the Indian Penal Code on the ground that he had wrongfully confined his wife Smt. Merciana Colaco in his residential flat and assaulted her as a consequence of which she suffered injuries and died on account of such injuries. It is further the contention of the Petitioner that the Respondents through its Disciplinary Authorities, place the Petitioner on suspension from 07.03.2000 in terms of the Regulation 3 of MPE (Conduct) Regulation 1964 and Regulation 8.1(b) and MPE (Classification, Control and Appeal) Regulation 1964. The learned Sessions Judge by Judgment dated 28.07.2004 found the Petitioner guilty and convicted him under Section 304 (II) and 342 of the Indian Penal Code and, as such, he was sentenced to suffer rigorous imprisonment for seven years and rigorous imprisonment for six months with fine of Rs.5000/- in respect of the offences committed under Section 304 (II) and 342 of the Indian Penal Code respectively. The State carried the Judgment of conviction and sentence passed by the learned Sessions Judge before this Court in Criminal Appeal no. 57 of 2004 seeking enhancement of the conviction from Section 304(II) to Section 302 of the Indian Penal Code and the sentence from seven years rigorous imprisonment to life imprisonment. By Judgment and Order dated 18.09.2006, this Court dismissed the said Appeal. The Respondents through Deputy Conservator and Traffic Manager/ Disciplinary Authority, issued a show cause notice dated 16.02.2005 which was served on the Petitioner on 17.02.2005 at Aguada Jail for making a representation on the penalty proposed by the Respondent. The penalty proposed according to the Petitioner by the Respondents was of dismissal from service which shall ordinarily been a disqualification from future employment. It was also stated in the show cause notice that the Respondents had come to a provisional conclusion that the Petitioner is not a fit

person to be retained in the service and, therefore, in terms of the Regulations Act, 1964, it was proposed to impose the above penalty. A reply was sent by the Petitioner to the show cause notice, inter alia, explaining the circumstances in which the tragic death of his wife occurred and stated that as it was a matrimonial issue, it is not proper on the part of the Respondent to impose such a severe penalty. The Deputy Conservator and the Disciplinary Authority of the Respondents confirmed the penalty of dismissal from service of the Petitioner with immediate effect. In exercise of powers under Regulation 9 sub-Regulation (vii) (Classification, Control and Appeal) Regulations 1964. Subsequently, on 24.08.2006, the Petitioner was released from jail. Thereafter, on 30.01.2007, the petitioner preferred an Appeal against the said Order dated 04.04.2005 to the Appellate Authority i.e. Deputy Chairman of the Respondent under the Mormugao Port Employees (Classification, Control, Appeal) Regulations. There were also contentions raised by the Petitioner with regard to the infirmities in the Orders of termination issued by the Respondents. The Appellate Authority by an Order dated 03.01.2008 rejected the Appeal of the Petitioners confirming the Order of termination passed by the Disciplinary Authority hold that the penalty imposed was proportionate with the gravity of the charges. But, however, the Disciplinary Authority modified the Order of Termination to the extent that the dismissal from service was made without its disqualification from future employment.

4. Being aggrieved by the Order, the Petitioner has preferred the present Writ Petition seeking for the reliefs as referred to herein above.

5. Shri Sudesh Usgaonkar, learned Counsel appearing for the Petitioner,

has pointed out that merely because the Petitioner was convicted for offences punishable under the Indian Penal Code for committing an assault on his wife, by itself would not be a ground to impose a major penalty of termination on the Petitioner. The learned Counsel further pointed out that even though the Petitioner was convicted, there is no application of mind by the Disciplinary Authority as to whether there was any ground for imposing such severe penalty. Learned Counsel has thereafter taken us through the findings of this Court whilst dismissing the Appeal preferred by the State challenging the conviction by the learned Sessions Judge to point out the circumstances in which the offence was committed by the Petitioner. Learned Counsel further pointed out that these circumstances would itself suggest that there was no reason for the Respondents to impose the penalty of termination of the service of the Petitioner. Learned Counsel further pointed out that the fact that the Petitioner could have been reformed after serving the sentence has also not been examined by the Respondents whilst imposing such penalty. Learned Counsel further pointed out that the disciplinary proceedings were completed when the Petitioner was serving the sentence in jail and, as such, he was not given an adequate opportunity to defend himself. The learned Counsel further points out that the termination itself is in violation and in breach of the Regulations of the Respondent. The learned Counsel has thereafter taken us through the memo of Appeal before the Authority to support his arguments that there is no application of mind by the Appellate Authority on the ground stated therein. Learned Counsel further points out that the dismissal Order dated 04.04.2005 does not even make any reference to any specific sub-Regulation 3. Learned Counsel further pointed out that sub-Regulation 7 makes it clear that the conviction and arrest by itself will not render the employee for disciplinary action.

Learned Counsel further pointed out that the procedure as provided in Regulation 11 of the Mormugao Port Employees (Classification, Control, Appeal) 1964, have not been followed by the authorities which provides for a mandatory inquiry. Learned Counsel further points out that as such the impugned Order deserves to be quashed and set aside. Learned Counsel, in support of his submissions, has relied upon a Judgment of the Apex Court reported in **(2001) 9 S.C.C. 161** in the case of **Karamjit Singh vs. State (Delhi Admn.)** and **AIR 2008 S.C. 1300** in the case of **State of M.P. & Ors. v. Hazarilal**.

6. On the other hand, Shri Y. V. Nadkarni, learned Counsel appearing for the Respondent, has supported the Order of termination. Learned Counsel has pointed out that the Petitioner is trying to take advantage of a typographical error in the copy of the Regulations which is not at all justifiable. Learned Counsel has brought to our attention the original Notification of the year 1964 to point out such error in the subsequent publications after the amendments. Learned Counsel further pointed out that Regulation 3 of the Mormugao Port Employees (Conduct) Regulations 1964, inter alia, provides that every employee is expected to maintain a reasonable and decent standard of conduct in his private life and not bring discredit to his employer by his misdemeanor for example conducting himself in a manner in becoming of a servant of the Board for instance by neglect of his wife. The learned Counsel has thereafter taken us through the Regulations 8.1(b) of the Mormugao Port Employees (Classification, Control, Appeal) 1964, to support his contention that an employer can be put in suspicion when a criminal offence is under investigation. Learned Counsel as such pointed out that as the Petitioner was an accused for having committed an offence

punishable, inter alia, under Section 302 of the Indian Penal Code, the action of the Respondents was justified. The learned Counsel has thereafter taken us through the Order dated 04.04.2005 issued by the Disciplinary Authority in exercise of powers conferred under sub-Regulations (8) of Regulation 9 of Mormugao Port Employees (Classification, Control, Appeal) 1964, confirming the penalty of dismissal from service of the Board of the Petitioner and pointed out that the Petitioner was given an adequate opportunity in the inquiry and, as such, taking note of the fact that the Petitioner was convicted for an offence of assaulting and committing the murder of his wife, there is no reason for interference in the impugned Order passed by the Appellate Authority. Learned Counsel further pointed out that the Petitioner who has been convicted for committing a crime of assaulting the wife, is not entitled for reappointment in the services of the Respondents as his conduct does not justify any such reliefs. Learned Counsel further pointed out that the interference by this Court in the penalty imposed by the Respondents is not justified when the Authorities have complied with the statutory requirements. Learned Counsel has further pointed out that the appropriate Authorities in exercise of powers under Rule 19 of the CCS Rules, have ordered the dismissal of services of the Petitioner which does not call for any interference by this Court. In support of his submissions, the learned Counsel has relied upon the Judgments of the Apex Court reported in **(2001) 3 S.C.C. 414** in the case of **Union of India & Ors. vs. Sunil Kumar Sarkar** and **(2003) 10 S.C.C. 196** in the case of **Union of India & Ors. vs. P. Chandra Mouli & Ors.** Learned Counsel, as such submits that the Petition be rejected.

7. We have carefully considered the submissions of the learned Counsel

and we have also gone through the records. The undisputed facts of the case are that the Petitioner was charged for an offence punishable under Sections 342, 504 and 302 of the Indian Penal Code and convicted for assault and imposed a sentence of seven years rigorous imprisonment. The offence was, inter alia, for assaulting his wife. The fact that the requisite notices were issued to the Petitioner prior to issuing such Order of dismissal of service is not disputed. The Petitioner had also made a representation after receipt of such notice which was duly considered by the concerned Disciplinary Authority. Apart from that, a hearing was also given by the Appellate Authority in the Appeal preferred by the Petitioner which contentions were duly examined by such authority whilst passing the Order under challenge in the above Writ Petition.

8. The Apex Court in the Judgment in the case of ***Union of India & Ors. vs. P. Chandra Mouli & Ors.*** (supra) has, inter alia, observed at Para 3 thus :

3. Mr P. P. Malhotra, learned Senior Counsel appearing for the appellants contends that the findings of the learned Single Judge that proviso to Rule 19 was not complied with, is an error of record. It is apparent from the facts that notice was duly served in terms of proviso to Rule 19 by a letter dated 21-7-1987 and the judgment of the Gauhati High Court itself indicates that the respondents had submitted a representation to the same on 13-8-1987. The conclusion of the learned Single Judge therefore is fully vitiated on account of the aforesaid erroneous facts. The question that arises for consideration therefore is that whether the employer would be justified in taking recourse to the proviso to Rule 19,

even when against some others who were also involved in the agitation no such action has been taken. The power to inflict punishment has been conferred on the employer and there is no embargo on that power which has been exercised under Rule 19. The procedure indicated therein has been complied with. In the case in hand we have said earlier that an appropriate notice was issued in terms of proviso to Rule 19. The fact that the respondents were convicted and sentenced on a criminal charge being not disputed the power being exercised under Rule 19(i) cannot be faulted with. In this view of the matter, the High Court was wholly unjustified in interfering with the order of compulsory retirement and directing that it would be open for the Union Government to give a lesser punishment. It is well settled that once the charge against a delinquent is established, the quantum of punishment is for the employer to decide and the court ordinarily would not interfere with the order on the quantum of punishment once the court comes to a conclusion that there has been no infirmity with the procedure. In this view of the matter, the impugned judgment of the learned Single Judge and the Division Bench cannot be sustained. We therefore set aside both the judgment and the writ petitions stand dismissed. The appeals are allowed accordingly.”

9. Taking note of the said observations, once the charge against the Petitioner herein has been established, the quantum of punishment is for the employer to decide and the Court ordinarily would not interfere with the Orders of

the quantum of punishment when there is no infirmity with the procedure followed by the Respondents. The judgment of the Apex court relied upon by Shri Usgaonkar, learned Counsel appearing for the Appellant, in the case of ***Karamjit Singh vs. State (Delhi Admn.)*** (supra) was in the context to examine that a punishment in a criminal case is both punitive and reformatory. The said principles would not be applicable in the present case considering that under the Regulations, the Respondents were entitled to pass the impugned Order. The Judgment of the Apex Court in the case of ***State of M.P. & Ors. v. Hazarilal*** (supra) relied upon by Shri Usgaonkar, learned Counsel appearing for the Appellant is to consider the doctrine of proportionality. Both the said Judgments are not at all applicable to the facts of the present case. As pointed out herein above, as the Petitioner has been admittedly convicted for offences referred to herein above and taking note of the fact that the Petitioner was given an adequate opportunity to defend himself in the proceedings before the Disciplinary Authority, we find that the Petitioner was liable for the penalty in terms of Rule 9 of the Mormugao Port Employees (Classification, Control, Appeal) 1964.

10. On perusal of the Regulation 8.1(b) of the Mormugao Port Employees (Classification, Control, Appeal) 1964, it clearly provides that an employee can be put in suspension when a criminal offence is under investigation. The records also reveal that the Petitioner was given an adequate opportunity to put up his case before the concerned authorities. Regulation 9 provides the nature of penalties to be imposed on an employee. Item VII, inter alia, states that an employee can be imposed a penalty of dismissal from service which shall ordinarily be a disqualification for future employment. Item nos. IV to VII of Regulation 9 provides that penalty cannot be imposed except after an inquiry held as far as may be in the

manner provided. However, in terms of Rule 19 of the Central Civil Services (Classification, Control, Appeal) Rules, 1965, which are also applicable in the present case, it clearly specifies that where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the Disciplinary Authority may consider the circumstances of the case and make such Order thereof as it deems fit. This clearly shows that as the act committed by the Petitioner had led to his conviction, on a criminal charge, the authority has powers to dismiss such employee. In the present case, the fact that the Petitioner was given an opportunity to present his representation and was even heard by the Appellate Authority has not been disputed. Reading the said provisions referred to herein above, we find that there is no case made out for any interference in the Orders passed by the authorities. The contention of Shri Usgaonkar, learned Counsel, that Regulation 11 of the Mormugao Port Employees (Classification, Control, Appeal) 1964, have not been followed by the authorities as such cannot be accepted. The Appellate Authority has rightly found that the penalty imposed was proportionate to the gravity of the charge and modified the Order of termination to the extent that the dismissal from service was made without its disqualification from future employment.

11. As such, the impugned Order cannot be said to be unreasonable and, as such, the question of invoking the jurisdiction of this Court under Article 226 of the Constitution of India, would not arise at all. Hence, the Petition stands rejected.

12. Rule stands discharged.

K. L. WADANE, J.

F. M. REIS, J.

arp/*