

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.253 OF 2014

Dharmesh Mohansinh Desai

...Applicant
(orig. Accused No.2)

Versus

The Union of India, CBI, ACB,
Mumbai & Anr.

.... Respondents

Mr. Girish Kulkarni i/b Mr. M.G. Shukla for the Applicant.

Mr. Rajesh Desai for Respondent No.1-C.B.I.

Mr. D.R. More, APP for Respondent No.2-State.

CORAM:-M.L. TAHALIYANI, J.

DATED : 18th MARCH, 2015.

P.C.

Heard. Admit. By consent of the parties taken up
forthwith for final hearing.

2. The Applicant is one of the accused persons in Special Case No.5 of 2011 and is facing trial for the offences punishable under sections 7 and 13 (2) r/w section 13 (1) (d) of the Prevention of Corruption Act (hereinafter called 'the Act'). The Applicant has been charge-sheeted alongwith Deputy Conservator of Forest, who is accused No.1 in the said Special Case. The Applicant is cited as

accused No.2. The Applicant had made an application for discharge before the Special Judge. The same has been rejected. He has moved this Court being aggrieved by the said order of rejection of discharge application.

3. Admittedly the accused No.1 Mr. Choudhary was working as Deputy Conservator of Forest and the Applicant was working in his office as a Junior Clerk. It is also admitted position that the Applicant ceased to be a Junior Clerk before the date of filing of charge-sheet. As such sanction, if any, was not required for prosecution of the Applicant.

4. Question which arose for determination in the present application is as to whether Applicant was a public servant within the meaning of section 2 (c) (viii) of the Act. Learned counsel for the Applicant, Mr. Kulkarni has submitted that since the Applicant was on contractual basis, he cannot be said to be a public servant within the meaning of section 2 (c) (viii) of the Act. It is further submitted that the contract between the department and the Applicant came to an end on 26-4-2010. The alleged offence has taken place on 24-11-2010. As such it is contended that Applicant was not in service at all

from 26-4-2010 onwards. Learned P. P., Mr. Desai has submitted that the Applicant was on contract basis and his contract continued to be extended from time to time and that he was in service on the date of incident. It is not disputed by the Applicant that he was not removed from service immediately after expiry of the earlier contract. He continued to be in the office and continued in the Wild Life Department though his case was pending for consideration of extension. It is seen from the record that extension was given from time to time and he was paid till the date of his termination. What the Court is required to examine in the present case is not whether Applicant was regular public servant or he was working on contract basis. In this regard I may reproduce section 2 (c) (viii) of the Act as under :

2 (c) "Public servant" means -

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

5. In the present case the Applicant was admittedly holding an office of junior research fellow and by virtue of the said office he was required to perform public duty. It is in this background that the

complainant had approached the Applicant and the accused No.1 for grant of permission to erect a construction on a plot which probably was a forest land. Therefore, whether the Applicant was on contract basis or was paid on daily basis is not relevant. For the purpose of determining whether he was a public servant or not, the observation made by the Hon'ble Supreme Court in the matter of **Manish Trivedi V/s. State of Rajasthan, AIR 2014 SC 648** at para 19 are relevant and they are reproduced as under :-

“19. The present Act envisages widening of the scope of the definition of the expression 'public servant'. It was brought in force to purify public administration. The legislature has used a comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the Appellant, we have no doubt that he is a public servant within the meaning of Section [2\(c\)](#) of the Act. Sub-section (viii) of Section [2\(c\)](#) of the present Act makes any person, who holds an office by virtue of which he is authorized or required to perform any public duty, to be a public servant. The word 'office' is of indefinite connotation and, in the present context, it would mean a position or place to which certain duties are attached and has an existence which is independent of the persons who fill it. Councillors and members of the Board are positions which exist under the Rajasthan Municipalities Act. It is independent of the person who fills it. They perform various duties which are in the field of public duty. From the conspectus of what we have observed above, it is evident that Appellant is a public servant within Section

2(c)(viii) of the Prevention of Corruption Act, 1988.”

6. After having considered arguments of both the sides and after having gone through the Hon'ble Supreme Court's Judgment and considering the nature of duties the Applicant was supposed to perform, I am of the definite view that the Applicant was a public servant within the meaning of section 2 (c) (viii) of the Act. Therefore, he was liable to be prosecuted for the alleged demand and acceptance of money from the complainant. Since the Applicant ceased to be a public servant on the date of filing of the charge-sheet, sanction was not required. As such, I do not find any merit in the revision application, revision application is dismissed.

7. Observations made by this Court on the facts of the case shall not influence the Trial Court in any manner.

(JUDGE)