

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2033/2016

Shri Vijaykumar s/o Vitthalrao Wakse

...Versus...

Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur through its
Registrar, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.M. Sudame, Advocate for petitioner
Shri V.P. Gangane, AGP for respondent nos.2 to 6

CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 15.06.2016

By this writ petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, Nagpur, dated 7.1.2016 partly dismissing the Original Application filed by the petitioner and holding that though the petitioner would be entitled to continuity of service for the period from 12.4.2008 to 13.3.2013 and the said period would be counted as qualifying service for the purpose of pension and other retiral benefits, the petitioner would not be entitled to back wages and the other monetary benefits.

The petitioner was posted as a Sub Inspector at Police Station, Wadi. The petitioner was charged for the offences punishable under the Prevention of Corruption Act and since a

criminal prosecution was launched against the petitioner, he was placed under suspension on 7.4.2008. The trial Court acquitted the petitioner by the judgment, dated 13.8.2014. Consequently, by an order dated 13.3.2013, the petitioner was reinstated in service and a notice was served on the petitioner as to why the period of suspension should not be treated as suspension period. The petitioner replied to the notice and sought that the period of suspension should be treated as period spent on duty. The respondent no.4, however, by the order, that was impugned in the Tribunal, treated the suspension period from 12.4.2008 to 13.3.2013 as period of suspension. It was not stated in the said order whether the said period could be counted as qualifying service. The petitioner, therefore, filed the Original Application challenging the order, dated 4.9.2014. The Original Application was partly allowed and it was held that the petitioner was entitled to continuity of service for the period during which he was suspended and the period should be counted as qualifying service for the purpose of pension and other retiral benefits. The claim of the petitioner for grant of monetary benefits including back wages for the suspension period was, however, rejected by the Tribunal. The petitioner has challenged the part of the order of the Tribunal that rejected the prayer made by the petitioner for grant of back wages and the other monetary benefits.

On hearing the learned Counsel for the parties and on a perusal of the impugned order, it appears that there is no scope for interference with the impugned order, in exercise of the writ jurisdiction. The facts of the case were considered by the Tribunal in detail. The petitioner was arrested for allegedly accepting a

bribe. The trap was led and the petitioner was caught. The petitioner was prosecuted for the offences punishable under the Prevention of Corruption Act and though the petitioner was acquitted by the judgment dated 13.8.2014, the respondent no.4 held that the suspension period of the petitioner could not be treated as period on duty, as it was observed in the judgment of the trial Court that there were discrepancies in the evidence of the witnesses and the investigation was not properly conducted. It was held that in view of the observations and the findings in the judgment of acquittal, as passed by the trial Court, the period of suspension could not have been treated as period on duty. The Tribunal rightly considered this aspect of the matter and also the law laid down by the Hon'ble Supreme Court in the judgment, reported in **2003 (4) Mh.L.J. 606** that an acquittal of an employee by a Criminal Court would not *ipso facto* entitle him to the benefits of salary under Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service, and Payment During Suspension, Dismissal and Removal) Rules, 1981 and it would be for the competent authority to decide whether the suspension was wholly justified. In the instant case, it cannot be said that the suspension was not wholly justified and the petitioner was caught in the trap and was prosecuted for the offences punishable under the Prevention of Corruption Act. In view of the arrest of the petitioner and the criminal prosecution launched against him, it cannot be said that the suspension was wholly justified, more so, when the trial Court has observed in the judgment acquitting the petitioner that the investigation was not properly conducted and there were discrepancies in the evidence of witnesses examined

on behalf of the prosecution. In the instant case, the Tribunal has rightly held that the petitioner would not be entitled to the back wages and other monetary benefits, though the period of suspension could be counted as qualifying service for the purpose of pension. The Tribunal, while granting continuity of service to the petitioner and while holding that the suspension period shall be counted as qualifying service for the purpose of pension, has rightly denied the back wages or monetary benefits to the petitioner, in the circumstances of the case.

Since the order of the Tribunal is just and proper, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar