

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

31 WRIT PETITION NO. 890 OF 2004

UNION OF INDIA & ANR
VERSUS
L R KOLHE

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Advocate for Petitioner : Mrs. Dipali S. Jape (Ansingkar)

Advocate for Respondent : Mrs. Chaitali Kutti

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**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 21.08.2017

P.C. :-

1. The present respondent had filed original application before the Central Administrative Tribunal with a prayer to pay the salary for the period of suspension.

2. Mrs. Ansingkar, the learned counsel for the petitioners submits that the criminal prosecution was launched against the present respondent under Section 411 of the Indian Penal Code for the theft of 93 gas cylinders from Hingoli gas agency, Crime No. 9/1993 was registered. He was detained in police / magisterial custody for more than 48 hours. The respondent was suspended. Initially the respondent was convicted by the J.M.F.C. Hingoli and in Appeal he was acquitted. The learned counsel submits that show cause notice was issued to the

respondent calling upon the respondent as to why the suspension period should not be treated as period not spent on duty as it is only after the acquittal by the Appellate Court, the respondent was reinstated and the suspension was revoked. After considering the reply given by the respondent, the disciplinary authority ordered that the suspension period from 12.03.1993 to 18.05.1999 be treated as period not spent on duty and respondent be allowed only such pay and allowance as has been paid during the period of suspension.

3. The learned counsel submits that the Tribunal wrongly allowed the original application holding that respondent is entitled to pay and salary for the period of suspension. According to the learned counsel, Rule 23 of the Central Civil Services (Pension Rules 1972) so also Rule 10 of the Central Civil Services (class, control and appeal), Rules 1965 read conjointly does not permit to treat the suspension period as duty period *ipse facto* on acquittal of the delinquent. According to the learned counsel, the disciplinary authority after considering that the suspension was not wholly unjustified and that the acquittal of the present respondent no.1 was on technical grounds and giving benefit of doubt has rightly held the suspension period as not on duty period. The learned counsel relies on the judgment of the Apex Court in a case of

Krishnakant Raghunath v/s. State of Maharashtra & Ors. dated 28.02.1997 and another judgment of the Apex Court in a case of **State of Punjab v/s. Jaswant Singh Kanwar** dated 17.07.2013.

4. The learned counsel for the respondent supports the order.

5. The Tribunal has considered the case put forth by the parties. It is not disputed that the prosecution was launched against the present respondent for theft of 93 gas cylinders, initially the respondent was convicted but in appeal the Appellate Court acquitted the respondent.

6. It also has to be considered that at no point of time any Departmental Inquiry was initiated against the present respondent. It was observed by the Tribunal that the delinquent was not involved in connection with any official act. The Tribunal relied on the judgment of the Apex Court in a case of **Brahma Chandra Gupta v/s. Union of India** reported in **AIR 1984 SC 380**. The relevant passage is also reproduced, which reads thus:

“6. Mr. R.K. Garg, learned counsel for the appellant wanted us to examine the scope and ambit of Article 193 and Mr. Gujral, learned counsel for the Union of India was equally keen on the other side to do the same thing. We steer clear of both. The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of socio-economic

justice. Keeping in view the fact of the cause that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because $\frac{3}{4}$ th of the salary is ordered to be paid, we are of the opinion that the approach of the Trial Court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate Court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9% interest p.a from the date of suit till realisation with costs throughout."

7. In the present case also no Departmental Inquiry was ever initiated. The respondent was acquitted in the criminal case. Rule 23 further states that if the delinquent on conclusion of inquiry is fully exonerated or the suspension is held to be wholly unjustified, then, the suspension period shall count as qualifying service.

8. In the present case, as observed that no Departmental Inquiry was ever initiated against the present respondent. The respondent was also acquitted of the criminal charges leveled against him. In view of that the judgment of the Apex Court in a case of **Brahma Chandra Gupta** (supra) would apply. The Tribunal has rightly

relied on the said judgment. In light of the above, the writ petition is dismissed. Rule discharged. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]