

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3479 OF 2004

Raosaheb s/o Tukaram Somwanshi,
age : 47 years, Occu.: Service,
A.S.I. Police Station, Paithan,
Tal. Paithan, District Aurangabad

PETITIONER

VERSUS

1. The District Superintendent of
Police, (Rural) Kailas Shilp,
Near T.V. Centre HUDCO,
Aurangabad
2. The State of Maharashtra,
Through Secretary, Home Department,
Mantalaya, Mumbai

RESPONDENTS

Mr. A.S. Bajaj, Advocate for the Petitioner
Mrs.P.V. Diggikar, A.G.P. for respondents/State

CORAM : T.V.NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : 14th JUNE, 2017

JUDGMENT : (PER : SANGITRAO S. PATIL, J) :

By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 11.06.2003 passed in Original Application No.6326 of 2002 by the Maharashtra Administrative Tribunal at Bombay, Bench at Aurangabad ("Tribunal", for

short). The Tribunal dismissed the application and confirmed the order dated 14.05.2002 passed by the Superintendent of Police, Aurangabad (Rural), under which the suspension of the petitioner with effect from 21.07.1993 to 05.08.1998 was treated as suspension only which resulted into denial of all the consequential benefits, on his reinstatement, consequent upon his acquittal in a criminal case.

2. The facts, in short, are that the petitioner was serving as a Police Head Constable in police station, Paithan in the year 1993. It was alleged that he arrested the Sarpanch and other six villagers of village Taru Pimpalgaon on 26.06.1993, in connection with the offence punishable under Section 12(a) of the Bombay Prevention of Gambling Act and took them to Police Station, M.I.D.C. Paithan. On 26.06.1993 the Deputy Sarpanch of village Taru Pimpalgaon met the petitioner in the police station and requested to

him to release the arrested villagers on bail. The petitioner demanded Rs.500/- each, for releasing the said villagers. The Deputy Sarpanch assured the petitioner that he would collect the money from all the accused persons and would pay the amount demanded to him. Thereafter, the petitioner released those seven persons including Sarpanch.

3. It was alleged that the petitioner gave message to the Sarpanch namely Shaikh Usman through the Deputy Sarpanch on 02.06.1993 and demanded money. On the same day, the Sarpanch/Complainant met the petitioner and paid him Rs.250/-. The petitioner asked him to pay the remaining amount as early as possible on the threat of rearrest. The Sarpanch/Complainant was not inclined to pay the money to the petitioner. Therefore, he approached to the office of the Anti Corruption Bureau (ACB) on 28.06.1993 and lodged complaint against the petitioner. A trap was laid on the same day. The petitioner was caught red

handed while accepting the remaining amount of Rs.250/- from the Sarpanch/Complainant. The petitioner came to be arrested and Crime No.II-9 of 1993 came to be registered against him in Police Station, Paithan for the offences punishable under Sections 7 and 13(2) read with Sections 13 (1)(d) of the Prevention of Corruption Act.

4. The accused came to be suspended with effect from 21.07.1993. He was under suspension till 05.08.1998, on which day he came to be reinstated.

5. Special Case No.2 of 1994 was registered against the petitioner. He faced the trial which ended in his acquittal on 30.06.2000.

6. The petitioner moved an application before respondent No.1 – Superintendent of Police (Rural), Aurangabad, informing about the acquittal

of the above mentioned offences under the Prevention of Corruption Act and claimed that the period of his suspension from 21.07.1993 to 05.08.1998 may be treated as a period on duty and he may be given all the consequential benefits including full back wages. Respondent No.1 issued notice on 18.04.2002 to the petitioner to show cause and after considering the explanation given by the petitioner, rejected his claim for treating his suspension period as a period on duty and denied the consequential benefits including full back wages, as per the order passed on 14.05.2002. The petitioner challenged that order by filing Original Application No.362 of 2002 which came to be dismissed on 11.06.2003.

7. The learned counsel for the petitioner submits that once the petitioner got acquitted in Special Case No.2 of 1994 of the offences punishable under the Prevention of Corruption Act, the petitioner was entitled to get full back wages

and the period of his suspension was liable to be treated as the period of on duty, in view of the provisions of Rules 72 (1), (3) (5) and (7) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During the Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as "the Rules of 1981"). He submits that respondent No.1 has wrongly rejected the claim of the petitioner on the ground that the petitioner has not got a clear acquittal and that he has been acquitted for want of sufficient evidence. He submits that in view of the judgment in the case of ***Dattatraya Vasudeo Kulkarni Versus Director of Agriculture, Maharashtra and others, 1984 BCI (0) 35***, it was necessary for respondent No.1 to consider whether the petitioner has been acquitted of blame and the question whether there had been full exoneration was thoroughly irrelevant. In the said judgment while considering the second part of Rule 156 (a) of the Bombay Civil Services Rules ("BCR", for short), it was

observed that even when the Government Servant is acquitted on the basis of benefit of doubt, he must be held to have been acquitted of the blame. It is further observed that the concept of "honourable acquittal" or "full exoneration" are irrelevant and immaterial.

8. The learned A.G.P. supports the impugned orders and claims dismissal of the Writ Petition.

9. Here, it would be worthwhile to reproduce Rule 156 (a), which reads as under :

"A servant of Government against whom proceedings have been taken either for his arrest for debt, or on a criminal charge, or who is detained under any law providing for preventive detention should be considered as under suspension for any periods, during which he is detained in custody, or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in

accordance with the principles laid down in Rule 151) for such periods, until the termination of the proceedings taken against him, or until he is released from detention and allowed to rejoin duty as the case may be. An adjustment of his allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt) of its being proved that the liability arose from circumstances beyond his control, or the detention being held by competent authority to be unjustified."

10. It may be noted that the corresponding Rules in BCR came to be repealed vide Rule 77 of the Rules of 1981. Therefore, the present case would be governed by Rule 72 (1), (3), (5) and (7) of the Payments During the Suspension Rules, which read thus:-

"72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty.

(1) When a Government servant who has been suspended is reinstated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provision of sub-rule (8), be paid the full pay and allowances to which he would

have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the

competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

11. It would be clear from the above referred provisions of Rule 72 that the earlier provision contained in the second part of Rule 156 (a) of the BCR, that a Government Servant was entitled to

get full amount of pay in the event of his being acquitted of blame, has been removed. The provisions of Rule 72 make it clear that the discretion has been given to the Competent Authority, after hearing the Government Servant, to decide whether the period of suspension of the Government Servant, who is acquitted of a criminal charge, shall or shall not be treated as a period spent on duty. Unless the Competent Authority specially directs, it shall not be treated as a period spent on duty. In view of the provisions of Rule 72, which are applicable to the facts of the present case, the judgment cited by the learned counsel for the petitioner in the case of **Dattatraya Vasudeo Kulkarni** (supra) based on the provisions of BCR would be of no assistance to the petitioner.

12. The learned counsel for the petitioner cited a judgment in the case of **Brahma Chandra Gupta Versus Union of India, AIR 1984 SC 380,**

wherein the petitioner, who was serving as a Upper Division Clerk in the Defence Accounts Department, was prosecuted for the offence punishable under Section 19(F) of the Indian Arms Act and under Section 5 of the Indian Explosive Substances Act. Pending the investigation, he was suspended on 14.05.1962. He was convicted by the trial Court, but acquitted by the Appellate Court on 31.10.1964. He came to be reinstated with effect from 03.09.1965. While ordering reinstatement in service the Authority concerned was required to consider the provisions contained in Article 193 of the Civil Service Regulation, as to how the period of suspension should be treated. The Authority concerned divided the period of suspension of the appellant into two parts, the first part being from 14.05.1962 to 31.10.1964 (the date of acquittal) and the second part being from 31.10.1964 to 03.09.1965 (the date of reinstatement). He directed payment of $\frac{3}{4}$ th salary for the suspension period of the first part and

directed payment of full salary for the period of suspension of the second part. As such he was denied $\frac{1}{4}^{\text{th}}$ of his salary in respect of the first part on the ground that the petitioner was not fully exonerated. The petitioner filed suit for recovery of Rs.3595.07 Ps. towards his $\frac{1}{4}^{\text{th}}$ salary that was withheld, which was decreed by the trial Court. The said decree was set aside by the District Court on the ground that the petitioner could not be said to have been fully exonerated. The High Court confirmed the judgment and decree of the District Court; however, the Hon'ble the Supreme Court restored the decree passed by the Trial Court. It was observed that the petitioner was never hauled up for departmental enquiry, that he was prosecuted and ultimately acquitted and on being acquitted he was reinstated and was paid full salary for the period of commencing from his acquittal and even for the period of suspension prior to his acquittal, the Authority concerned did not hold that the suspension was wholly

justified because $\frac{3}{4}$ th of the salary was ordered to be paid to the petitioner.

13. It is evident from the facts of the above cited case that it was governed under Article 193 of the Civil Service Regulation, which cannot be said to be *pari materia* to Rule 72 of the Rules of 1981 and furthermore, in view of the distinguishable fact that the Authority concerned had not held that the suspension of the petitioner therein was fully justified while ordering payment of $\frac{3}{4}$ salary of the first part of the suspension. Consequently, the said judgment also would not be helpful to the petitioner.

14. The third judgment cited by the learned counsel for the petitioner in the case of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limited, AIR 1979 SC 75***, has no bearing on the issues involved in this case, since it refers to the payment of back

wages and other consequential benefits to the labourer retrenched unlawfully.

15. Here, reference may be made to the judgment in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, (1997) 3 SCC 636**, to which the attention of the learned counsel for the petitioner was drawn at the time of hearing. It is squarely applicable to the facts of the present case. In that case, pending criminal trial, the appellant was placed under the suspension and was paid subsistence allowance. After his acquittal he was reinstated but consequential benefits were not given to him. It was held that Rule 72 vests discretion with the Disciplinary Authority to regulate the appellant during the suspension period. Therefore, the claim of the appellant to treat suspension period as his period spent on duty with full back wages, was held to have been rightly rejected with the following observations:-

"Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and shows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts, would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant

prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principles of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.) Rules 72(3), 72 (5) and 72 (7) of

the Rules give a discretion to the disciplinary authority.

16. In the present case, the petitioner was prosecuted for the offence of demanding and accepting bribe. In para 34 of the judgment of acquittal delivered by the learned Special Judge it is specifically mentioned that the prosecution has failed to prove the offence against the accused beyond reasonable doubt. The learned Special Judge, thus, found the case of the prosecution doubtful. In the circumstances, respondent No.1 followed the principles of natural justice by giving show cause notice to the petitioner and after considering the explanation given by the petitioner, which was not found to be satisfactory, rejected the claim of the petitioner for treating the period of his suspension as the period spent on duty with back wages. Respondent No.1 has rightly exercised his discretion considering the allegations made against the

petitioner. The Tribunal has rightly upheld the order passed by respondent No.1, in view of the observations made in the above-referred case. We are not inclined to interfere in the orders under challenge. The writ petition is devoid of any substance. It is liable to be dismissed. Hence, we pass the following order :-

O R D E R

- (i) The Writ Petition is dismissed.
- (ii) Rule is discharged accordingly.
- (iii) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**T.V. NALAWADE**]
JUDGE