

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

WRIT PETITION NO.3664 OF 2005

Ganpat S/o Manohar Rathod,
Age:41 years, Occu.Nil,
R/o Kavaldera, Post:Bavi,
Taluka & Dist: Osmanabad.

...Petitioner.

Versus

1] State of Maharashtra,
through the Secretary to the
Govt.Law & Judiciary Department,
Mantralaya, Bombay,

2] The High Court of Judicature of
Bombay, at Mumbai through its
Registrar General in the District &
Sessions Judge, Osmanabad
Being the Disciplinary Authority.

3] District & Sessions Judge,
Osmanabad

...Respondents.

Mr. Kshitij Surve h/for Mr. Hemant Surve, Advocate for
the petitioner,
Mrs. Vaishali H.Patil, AGP for the State.
Mr. R. J. Godbole, Advocate for respondents 2 and 3.

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 17th January, 2017

ORAL JUDGMENT (Per S. V. Gangapurwala, J.):

1. The petitioner herein was employed as a Class IV employee with respondent No.3 in the year 1991. On or about 4th February 2001, a case was logged against the petitioner under section 85(1) of the Bombay Prohibition Act and Sections 110/117 of the Bombay

Police Act. The said Criminal Case was filed against the petitioner on the ground that the petitioner was found in an intoxicated state and was behaving in disorderly manner at public place. Based upon the registration of the said case, matter was reported to the disciplinary authority i.e. respondent No.3. Upon conclusion of the departmental enquiry, the petitioner was found guilty. Disciplinary Authority imposed punishment of dismissal from service. The petitioner filed an appeal. The Appellate Authority dismissed the appeal confirming the punishment imposed by the Disciplinary Authority. Aggrieved thereby, the present petition.

2. Mr.Surve, the learned counsel for the petitioner strenuously contends that the services of the petitioner were unblemished. The petitioner is acquitted in the criminal case filed against him. The witnesses who were examined in the disciplinary proceedings were also the witness in the criminal case. Upon evidence of said witnesses, the Court acquitted the present petitioner. The learned counsel submits that if the evidence relied upon in the departmental proceedings is the same as was relied in the criminal case and the charges being the same, in such case the

dismissal order passed by the disciplinary authority deserves to be set aside upon acquittal of the delinquent in the criminal case. For the said purpose learned counsel relied on the Judgment of the Apex Court in **G.M.Tank Vs. State of Gujrat**, reported in **2006 Law Suits (SC) 412**.

3. The learned counsel further submits that, the petitioner could not be held to have indulged in any misconduct. The evidence does not prove that the petitioner, at the relevant time, was in a intoxicated state nor does it prove that the behavior of the petitioner was disorderly. The departmental enquiry was solely on the basis of criminal case filed. In view of that, the order of dismissal requires to be set aside.

4. The learned counsel further submits that the alleged act of misconduct is not in the court premises nor during the working hours. Alleged act was on holiday i.e. Sunday. As such, it cannot be said that the misconduct was committed during the course of employment. The learned counsel, in the alternative, submits that the punishment imposed is too harsh and disproportionate. For the said purpose learned counsel

relies on the judgments of the Division Bench of this court in case of **Champalal S/o Chunnilal Paliwal Vs. Additional Commissioner, Nagpur** reported in 2012 (6) **Mah.LJ 545** and in the case of **N.B.Mulani Vs. Inspector General**, reported in 2007 (5) **MLJ 76**.

5. Mr.Godbole, the learned counsel for the respondents 2 and 3 submits that this Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India would not sit as an appellate authority over the decision taken by the disciplinary authority. This court can only consider the decision making process. According to the learned counsel, the standard of proof required in the criminal case and departmental proceeding is different. Mere acquittal in criminal case would not ipso facto entail setting aside the punishment imposed in the disciplinary proceeding. The learned counsel further submits that upon examination of Doctor and one more witness, it has been proved that, the petitioner was highly intoxicated, was in the drunken state and was shouting on road in front of the court premises. The same is sufficient to constitute misconduct. The learned counsel submits that the behaviour of the petitioner was unbecoming of the government servant. The misbehaviour of the Government

servant beyond office hours is also a misconduct. The petitioner behaved in disorderly manner under the influence of alcohol in front of Civil & Criminal Court Building, Paranda and thus, the said misconduct is violative of Rule 28(d) of Maharashtra Civil Service (Conduct) Rules 1979.

6. Mr. Godbole, the learned counsel relies on the judgments of the Apex Court in the case of **Kailash Chander Asthana Vs. State of U.P.** reported in 1988 (3) SCC 600, in the case of **P.Radhakrishna Vs.Government of A.P.** reported in AIR 1977 SC 854 and in the case of **High Court of Judicature at Bombay,Aurangabad Bench Vs. Shashikant S. Patil** reported in AIR 2000, Supreme Court 22.

7. We have considered the submissions canvassed by the learned Advocates of the respective parties.

8. The proposition that this Court, in its writ jurisdiction, would not embark upon reassessment of evidence does not require any debate. The same is settled proposition of law. This court certainly would not sit as an appellate authority over the decision rendered by the disciplinary authority.

9. In the present case, upon the criminal case being filed against the petitioner on the charges of disorderly behaviour in public place under the influence of liquor, departmental proceedings were initiated against the petitioner. The petitioner has been acquitted in the criminal case filed against him. Upon perusal of the evidence in criminal case and departmental proceedings, it is manifest that witnesses in the criminal case and departmental proceedings were one and the same. It also does not require any debate that standard of proof required in the criminal case and departmental proceeding is different. In criminal case, guilt has to be proved beyond reasonable doubt, whereas the same extent of proof would not be required in departmental proceedings and the findings in the departmental proceedings can be given on the basis of preponderance of probability.

10. The Apex Court, in a case of **G.M. Tank** referred supra has observed thus:

"31] The Judgments relied on by the learned Counsel appearing for the respondents are distinguishable on facts and on law. In this Case, the departmental proceedings and the criminal case are based on identical and similar

set of facts and the charge in a departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceeding and in the case of Criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The investigating Officer, Mr. V. B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances. It would be unjust and unfair and rather oppressive to allow the finding recorded in the departmental proceedings to stand.

32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Athony' s Case, (1999 (3) SCC 679) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

13. The facts of this case are akin to the facts before the Apex Court in the case of **G.M.Tank** referred supra. Even it requires to be considered that the said charges in the criminal case and departmental proceedings were based on disorderly behaviour of the petitioner on road. The same was on Sunday i.e. at the time when the petitioner was not on duty. The working was never hampered nor there is any allegation against the petitioner about his behaviour in his entire tenure while officiating duties.

11. Considering the aforesaid conspectus of the matter, it appears that the punishment of dismissal from service was too harsh. Denial of back wages would be a sufficient punishment. It is stated that approximately after four years the petitioner would attain the age of superannuation. Considering the above, we pass the following order:

O R D E R

- i. The impugned order passed by the Disciplinary Authority and the Appellate Authority is quashed & set aside.
- ii. The petitioner shall be reinstated in service however, shall not be entitled for back wages from the date of his termination till he resumes his duties. However, the said period shall be counted for the purpose of continuity in service and other consequential benefits.
- iii. Rule made absolute in above terms. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)