

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

WRIT PETITION NO. 3821/2007

- 1] Sanjay s/o Khandu Pawar
Age 34 years, Occu-Service
R/o Police head quarter Dhule
- 2] Deepak s/o Shivdas Jagdev
Age 36 years, Occu-Service
R/o Police head quarter, Dhule .. PETITIONERS
- Versus

- 1] State of Maharashtra
It's Secretary, Home Department
Mantralaya, Mumbai-32
- 2] The Inspector General of Police
Nasik Region, Nasik.
- 3] Superintendent of Police,
Dhule, Dist.Dhule

[copy to be served through Govt.
Pleader, High Court, Mumbai, Bench
at Aurangabad]

.. RESPONDENTS

...
Adv.Mr.B.R.Waramaa, for petitioner
AGP Mr.D.R.Kale for R.1 to 3.

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

DATE : 23/08/2017

PER COURT :-

The petitioner was suspended on 17/3/1999. The suspension

was revoked on 21/9/2001. The petitioner was reinstated. The cause for suspension of the petitioner was that the petitioner was booked in Crime No.113/1998 for the offences punishable u/s 376(2)(a), 448, 506 read with 34 of IPC. The said suspension was reviewed and before the decision in the Criminal case, the petitioner was reinstated and the suspension was revoked on 21/9/2001. The Sessions Court acquitted the petitioner for the offences alleged against him. The petitioner was served with the show cause notice dated 11/10/2002 as to why the suspension period should not be treated as such. The authority passed the order that the suspension period would be treated as such. The Tribunal affirmed the order of the authority. Aggrieved thereby, the present Petition.

2] Mr.Waramaa, the learned counsel submits that the absolutely false case was lodged against the petitioner for the offence punishable u/s 376 of IPC. The Sessions Court has observed that even the medical evidence does not support the case of the prosecution and the FIR is lodged after two months and five days. According to the learned counsel, the suspension was wholly unjustified. The learned counsel submits that the Departmental Enquiry was also not initiated against the petitioner at any point of time. The learned counsel relies on the judgment of the Apex Court in the case of Brahma Chandra Gupta V/s Union of India reported in

1984 (2) SCC 433.

3] Mr.Kale, learned AGP submits that mere acquittal in the criminal case does not ipso-facto lead to a conclusion that suspension was unjustified. The period of suspension is to be treated “as such”. The acquittal in the criminal case is on the ground that there was settlement between the parties outside the Court and that is why prosecutrix has also turned hostile. The Tribunal has considered the said aspect. Rule 72 of the Maharashtra Civil Services (Pension) Rules also have to be considered. The learned counsel relied on the judgment of the Apex Court in the case of Krishnakant Raghunath Bibhavanekar V/s State of Maharashtra and others reported in AIR 1997 SC 1434.

4] We have considered submissions and have gone through the order. The Sessions Court in its judgment while acquitting the petitioner has observed as under :

“The report and the certificate of doctor in respect of both the prosecutrix does not corroborate the story of the prosecution. Similarly it is important to note that it is the case of the complainant that in her report to the police dated 10-10-98 she has not disclosed the rape. No explanation is given as to why she has not disclosed rape in the said report. The alleged incident of rape is dated 20-09-98, while the report to the police is dated 24-11-1998. The prosecution does not explain the inordinate delay of 2 months and five days.”

5] The prosecutrix denied the contents of the first information report.

6] Even Departmental Enquiry was not initiated against the petitioner. In light of that, the observations of the Apex Court in the case of Brahma Chandra Gupta referred to supra, would be relevant.

7] Mr.Waramaa, learned counsel submits that the petitioner would not claim monetary benefits for the period under suspension apart from the subsistence allowance, which he has received.

8] Considering the above, the suspension period shall be treated as duty period, however, the petitioner will not be entitled for full salary during the said period, except the subsistence allowance which he has already received.

9] Writ Petition is disposed of. Rule accordingly made absolute in above terms.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)