

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8892 OF 2016

MUKUND NARHARRAO CHAWARE
VERSUS
THE SUPERINTENDING ENGINEER, MSEDCL

...
Advocate for Petitioner : Shri Patni Pramod F.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: February 03, 2017

...

PER COURT :-

1. The petitioner is aggrieved by the judgment of the Industrial Court dated 29.6.2015, by which, the judgment of the Labour Court dated 24.1.2013 was modified to the extent of granting back wages to the petitioner only from the date of his acquittal.
2. I have heard Shri Patni, learned Advocate for the petitioner and have gone through the petition paper book with his assistance.
3. The undisputed factors are as under:-
 - (a) The petitioner was charge sheeted on 6.8.2005, after he was caught red-handed in an anti corruption Bureau's trap, while accepting illegal gratification.

(b) He was convicted of the said offence by the criminal court on 12.12.2007 in Special Case.

(c) This Court acquitted the petitioner on 2.12.2010 in Criminal Appeal No.510 of 2007.

(d) After his conviction, he was dismissed from service and the departmental enquiry was aborted.

(e) Since he was acquitted by this Court, the Labour Court, by judgment dated 24.1.2013 granted full back wages with continuity of service, keeping in view that the petitioner was already reinstated after his acquittal.

(f) The Industrial Court by the impugned judgment set aside the order of full back wages and ordered that the petitioner should be paid backwages from the date of his acquittal.

4. This issue is no longer res integra. In cases of such nature, where the employer does not conduct a departmental or domestic enquiry and upon relying on the conviction of an employee, dismisses him from service, such an employee would acquire the

right to reinstatement, if he is acquitted by the superior Court. It is equally settled that upon such acquittal and on reinstatement, though continuity of service would be maintained, he would not be entitled for backwages keeping in view that the principle of “No work - No pay” would be applicable.

5. The Honourable Apex Court in the matter of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer [(1996) 11 SCC 603], has observed in paragraph Nos.2 and 3 as under:-

“2. This case does not warrant interference for the reason that, admittedly, the petitioner was charged for an offence under Section 302 read with 34 IPC for his involvement in a crime committed on October 1, 1986. The Sessions Judge had convicted the petitioner under Section 302 read with 34 IPC and sentenced him to undergo imprisonment for life. On that basis, the respondents had taken action to have him dismissed from service since he was working as a Junior Clerk in the respondent-Electricity Board. The petitioner challenged the validity of the dismissal order by way of a special civil application filed under Article 226 of the Constitution. Pending disposal the Division Bench of the High Court by its judgment dated October 14, 1992 acquitted him of the offence. Consequently, while disposing of the writ petition, the learned single Judge directed the respondent to reinstate him into the service with continuity of the service, but

denied back wages, The petitioner then filed Letters Patent Appeal No. 319/93 which was dismissed by the impugned order dated August 26, 1993. Thus, this special leave petition.

3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is : whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single Judge and the Division Bench have not committed any error of law warranting interference.”

6. In the light of the above, the case of the petitioner being

squarely covered by the judgments in Ranchhodji (supra), I do not find that the Industrial Court has committed any error. The impugned judgment cannot be termed as being perverse or erroneous.

7. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

...

akl/d