

UNREPORTED**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.7097 OF 2004**

Tarachand S/o Sampat Lingayat,
Age 60 years, Occ.Pensioner,
R/o Plot No.2/2, Samarthnagar,
Near R.L.Colony, Jalgaon,
Dist.Jalgaon. ... Petitioner.

Versus

1. The State of Maharashtra
through the Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Superintendent of Police,
Jalgaon, Dist.Jalgaon. ... Respondents.

...
Mr.K.C.Sant, advocate for the petitioner.
Mrs.A.V.Gondhalekar, Additional Government
Pleader for the State.

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

Date : 14.08.2017.

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

1. The present petitioner had filed Original Application before the Tribunal, challenging the order of the Respondent treating the suspension period "as such". The Tribunal

dismissed the Original Application. Aggrieved thereby, the present petition.

2. Mr.Sant, learned counsel submits that the petitioner was suspended on 15.11.1990 on the ground that a complaint is lodged against the petitioner under the provisions of Prevention of Corruption Act. The said suspension was revoked on 10.1.1993. Subsequently, the petitioner was acquitted of the charges by the Special Judge and Additional Sessions Judge, Amalner, under its judgment and order dated 28.7.2003. The learned counsel submits that the acquittal in favour of the petitioner was a clean acquittal. The show cause notice was issued to the petitioner that the acquittal of the petitioner was on technical ground and as such why the suspension period should not be treated "as such". The petitioner replied, however, the authority did not consider the explanation given by the petitioner. The Tribunal also committed an error in appreciating the fact. It ought to have been considered that without any basis the petitioner was suspended. The provisions of Rule 72 sub-rules (2) and (3)

have not been properly applied by the authority as well as the Tribunal. The case of the petitioner is fully covered under sub-rule (3) of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. The learned counsel relies on the judgment of the Apex Court in a case of **"Brahma Chandra Gupta Vs. Union of India"** reported in **AIR 1984 Supreme Court 380**.

3. Mrs.Gondhalekar, learned Additional Government Pleader supports the order of the Tribunal and submits that the suspension of the petitioner was not totally unjustified. Criminal case under the provisions of the Prevention of Corruption Act was filed against the petitioner. In view of the Criminal case being filed, the petitioner was suspended. Thereafter, the authority reviewed his suspension and reinstated him on 10.1.1993. As the order of suspension was based on a Criminal case being filed, the discretion vests with the authority to treat the suspension period as such. The acquittal of the

petitioner was on technical ground. During the suspension period, the petitioner has not discharged his duties, as such rightly the order has been passed by the authority and confirmed by the Tribunal to treat the period of suspension as such. The learned Additional Government Pleader relies on the judgment of the Apex Court in a case of **"Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others"** reported in **AIR 1997 Supreme Court 1434** and another judgment of the Apex Court in the case of **"State of A.P. and others Vs. S.Sree Rama Rao"** reported in **AIR 1963 Supreme Court 1723**.

4. The factual matrix is not disputed.

(a) The petitioner was suspended under order dated 15.11.1990;

(b) Criminal case under the provisions of the Prevention of Corruption Act, was filed against the petitioner;

(c) The suspension of the petitioner was revoked on 7.1.1993 and the petitioner resumed

his duties on 10.1.1993;

(d) The Special Judge and Additional Sessions Judge, Amalner under judgment and order dated 20.7.2003, acquitted the petitioner.

5. Though the suspension of the petitioner was on account of criminal case being filed against him, the revocation of suspension and reinstatement was not on account of acquittal but was on account of review of the suspension order being made by the authority in the year 1993. The acquittal was in the year 2003. On what basis suspension order was reviewed and the petitioner reinstated is not brought before the Court, nor it is brought on record that revocation of suspension is subject to the decision in Criminal case i.e. considering the manner of acquittal.

6. As observed above, the reinstatement and the revocation of suspension was much prior to the acquittal in the Criminal case. In fact, the suspension order was suo-motu reviewed by the

authority and the petitioner reinstated.

7. We could have even appreciated the case put forth by the Respondents, had the Respondents conducted any departmental inquiry against the petitioner. The Respondents at no material point of time ever conducted any departmental inquiry against the petitioner.

8. The acquittal in the said Criminal case is also a clean acquittal and not on the basis of benefit of doubt as is observed in the judgment of the Criminal case. The said observation of the learned Judge in the said Criminal case are reproduced as under :

" In the conspectus of the above discussion, and in the light of the above decision laid down by the Supreme Court as well as different High Courts to which my attention has been invited by the learned defence counsel Mr.Atre. I left with no option but to record the finding of clean acquittal in favour of the

accused."

9. Thus it would be clear that the Judge recorded that he is left with no option but to record the finding of clean acquittal in favour of the accused. It was also observed that even the Officer who has granted sanction to prosecute did not apply his mind. It was also observed that it was neither the duty nor the power of the police officer to restore the possession of any property to any person.

10. Be that as it may, no departmental inquiry was ever conducted. The acquittal was a clean acquittal.

11. The authority is vested with the discretion either to treat the suspension period "as such" or as a duty period as laid down under Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. However, the said discretion that vests with authority is not merely an ordinary or

unregulated discretion but a judicious discretion which has to be exercised as per judicial norms and legal principles.

12. In the present case, we do not find the authority having exercised his discretion objectively. The Apex Court in a case of **"Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others"** referred to supra has no doubt observed that 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.

13. As in the present case, no departmental inquiry was ever conducted. The Court dealing with the Criminal case has recorded finding of a clean acquittal and the acquittal is not on the basis of benefit of doubt. Sub-rule (3) of Rule 72 would be attracted.

14. In light of the above, we quash and set aside the impugned order passed by the Tribunal

and also the letter dated 8.1.2004 issued by the Respondent No.2. The period of suspension from 15.11.1990 to 10.1.1993 shall be treated as a duty period and all benefits arising thereof shall be accorded to the petitioner.

15. Rule accordingly made absolute in above terms. The said exercise be completed within six months. No costs.

Sd/-

(MANGESH S. PATIL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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