

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

2 WRIT PETITION NO. 3964 OF 2016

DINESH ATMARAM ISHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr. Thote Dhananjay K
AGP for Respondents/State : Mr. P.S. Patil
Advocate for Respondents : Mr. Bharat S. Deokar for R/2.
...

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.
DATE : 12.09.2017**

P.C. :-

. Mr. Thote, the learned counsel for the petitioner submits that the petitioner is working as a Primary Teacher from September 2006 with respondent no.2. A crime was registered against the petitioner under Section 498(A) read with Section 34 of the Indian Penal Code.

2. The learned counsel submits that after the complaint was registered the petitioner was suspended on 05.11.2007. The petitioner was acquitted in the criminal case on 29.07.2009. The petitioner was reinstated in service on 26.02.2010. Even the criminal revision filed by the complainant against the order of acquittal is withdrawn by the complainant. The learned counsel submits that the Chief Executive

Officer passed an order that the suspension period of the petitioner is to be treated as admissible leave and the amount be adjusted in gratuity. The petitioner challenged the said order before the Commissioner, the Commissioner dismissed the appeal. According to the learned counsel, in respect of another employee who was prosecuted for offence punishable under Section 302 of the I.P.C. upon his acquittal the Chief Executive Officer passed the order that the suspension period be treated as duty period and in case of the petitioner, the instant order is passed, which is illegal. According to the learned counsel, who relies on the judgment of the Division Bench of this Court in a case of **Baban s/o Shriram Wafare v/s. Zilla Parishad** reported in **2002 (3) Bom. C.R. 212**.

3. The learned counsel for respondent no.2 submits that after the criminal case was lodged, the petitioner was taken in custody and was put behind bars for twenty four hours, thereafter, the petitioner was suspended. The learned counsel submits that, it is the discretion of the authority under Rule 72 (7) of the Maharashtra Civil Services (Joining Time Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 to consider the suspension period as such. Considering the fact the criminal case was lodged, the petitioner was also taken in custody and the acquittal in favour of the petitioner is not a

clean acquittal but has been given benefit of doubt, the authority has rightly exercised the discretion.

4. We have considered the submissions. The petitioner was not prosecuted for any mis-conduct relating to his service. The complaint was on account of domestic affairs which has nothing to do with service. It would also be considered that the petitioner was not reinstated immediately upon acquittal but was reinstated only after seven months of he being acquitted. It will also have to be considered that no departmental inquiry was initiated against the petitioner at any point of time. The learned Judge while acquitting the petitioner has observed that there are lot of contradictions in the testimony of the complainant and her brother.

5. It also needs to be considered that in case of an employee who was prosecuted for an offence under Section 302 of the I.P.C. and was suspended on account of it, upon his acquittal the Chief Executive Officer passed an order that his suspension period be treated as service period invoking Rule 72 (3) of the Rules 1981.

6. The judgment in the case of **Baban (supra)** also would be relevant.

7. Considering the above, we pass the following order.

ORDER

- i) The impugned orders passed by the Chief Executive Officer and the Commissioner are quashed and set aside.
- ii) The suspension period of the petitioner shall be treated as a duty period, however, we are not inclined to grant back wages and whatever suspension allowance has been paid to the petitioner shall be sufficient for the said period.
- iii) The said period however shall be counted for continuity in service and all other benefits.
- iv) Writ petition accordingly stands allowed. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]