

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION***

**WRIT PETITION NO. 2301 OF 2013**

Ramchandra Bapusaheb Desai, Age 53 years ]  
Occu: Service, Residing at Parshvanath Nagar ]  
Kupwad Road, Sangli, District : Sangli ] ... Petitioner

Versus

Maharashtra State Electricity Distribution ]  
Company Limited, Through Chief Managing ]  
Director, Disciplinary Action Desk, ]  
Prakashgad, 4<sup>th</sup> Floor, Anant Kanekar Marg, ]  
Station Road, Bandra (E), Mumbai - 400051 ] ... Respondent

Mr. Umesh Mankapure with Mr. Vinod Sangvikar for the  
Petitioner.

Ms. A.R.S. Baxi for the Respondent.

**CORAM : S.C. DHARMADHIKARI &  
B.P. COLABAWALLA, JJ.**

**MONDAY, 9TH JANUARY, 2017**

**ORAL JUDGMENT : [Per S.C. Dharmadhikari, J.]**

1 By this petition under Article 226 of the Constitution  
of India the petitioner prays that having been acquitted from a  
criminal case and reinstated in the services of the respondent, he  
should be paid the back wages from the period of his suspension /  
dismissal dated 27th September, 2010, to the date of his

reinstatement dated 3rd May, 2012. The communication from the respondent refusing to grant this relief dated 19th October, 2012, be declared as vitiated by arbitrariness and discrimination so also violative of the mandate of Articles 14 and 16 of the Constitution of India.

2           The facts necessary for appreciating the argument of Mr. Mankapure appearing for the petitioner is that the respondent, though registered as a company under the Indian Companies Act, 1956, is entirely controlled by the State of Maharashtra. It deals with the business of distribution of electricity in the State of Maharashtra. The petitioner who is an employee of the respondent was, at the relevant time, working as a Junior Engineer at Sangli. One complaint was lodged on 20th May, 2009, with the Anti Corruption Bureau. The allegation is that the petitioner demanded a bribe for granting a new electricity connection. That is how CR No.30 of 2009 was registered by the Anti Corruption Bureau, Vishrambag Police Station, Sangli. Thereafter on completion of the investigation, a charge-sheet was filed in the Court of Special Judge, Sangli. The offences with which the petitioner was charged were punishable

under sections 7, 13, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Thereafter, the matter went to trial and the petitioner relies upon the order of acquittal recorded on 3rd December, 2011.

3           In the light of the fact that the petitioner was proceeded against on the charges of bribery and corruption, he came to be dismissed from service on 27th September, 2010. However, on his acquittal he made a representation dated 1st March, 2012, for reinstatement with continuity of service and back wages. On 21st April, 2012, the petitioner was reinstated in service with consequential benefit of continuity of service. His seniority was also protected, but as far as the grant of wages from the date of dismissal dated 27th September, 2010 to 3rd May, 2012, the respondent, by the impugned communication, rejected that request. The respondent, relying upon the MSEDCL Employees' Service Regulations, 2005, and particularly in the light of Regulation 10-A inserted vide Circular dated 24th November, 1992, rejected this request. It is this communication, copy which is at page 33 of the paper book, which is impugned in this writ petition.

4           During the course of arguments, reliance is placed on the Division Bench judgment of this Court, in the case of *Vijay Bhauraoji Amale vs. Maharashtra State Electricity Transmission Company Limited*, Writ Petition No. 29 of 2009, delivered by the Nagpur Bench on 17th March, 2009.

5           On the other hand, Ms. Baxi would submit that the attention of the Division Bench was not invited to the above specific Regulation and the Circular. She would submit that this judgment is rendered in complete ignorance of such Regulation and the Circular. She would submit that even otherwise this case is not identical and on par with that of the petitioner before the Division Bench. The Division Bench was essentially considering the issue of delay in the action of reinstatement. When reinstatement was granted, the back wages were denied. The argument was that the principle of 'No work no pay' would have no application in this case. However, the attention of the Division Bench was not invited to the settled legal principles and that Regulation 10-A has been inserted in the Regulations so also there is a important clarification by the Circular itself. Ms. Baxi

would submit that the law does not bar holding of a Departmental Enquiry even when the criminal case is pending or on its conclusion / disposal, then, all the more such requests as are emanating from the employees should not be granted. It is admitted that the petitioner has been dismissed from service and could not have reported for work or performed any duty in any manner. Hence the request, as made, has been rightly refused.

6           After perusal of the entire record we are of the opinion that there is substance in the contention of the respondent. The law is fairly well settled and hardly requiring any reference to any legal precedent. Suffice it to note that in the recent judgment delivered by the Hon'ble Supreme Court and particularly in the case of *Union of India vs Jaipal Singh* reported in *AIR 2004 SC 1005*, the earlier judgment is referred. The Hon'ble Court held as under :

*“3. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well.*

*On going through the same, we are in respectful agreement with the view taken in (1996) 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertng to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages are liable to be and is hereby set aside.”*

7           The genesis for all this is to be found in two earlier pronouncements of the Hon'ble Supreme Court reported in *AIR 1997 SC 608 (State of Uttar Pradesh vs. Vedpal Singh & Ors)* and *AIR 1997 SC 1435 (Krishnakant R. Bibhavnekar vs. State of Maharashtra & Ors)*. Both these binding judgments are authored

by His Lordship Hon'ble Mr. Justice Ramaswamy. In these judgments His Lordship laid down the law thus :

From AIR 1997 SC 608 :

*“4. Corruption is the result of deep-seated moral degradation and unsatiated greed for wealth. The office of public service affords an opportunity to the public servant to abuse of the office in that pursuit to accept illegal gratification for the discharge of official duty. Criminal prosecution launched against the public servant many a time may end may be due to technical defects inapathy on the part of the prosecution or approach in consideration of the problem or the witnesses, turn hostile or other diverse reasons but the meet of the matter is that on equitable consideration the Government servant claims reinstatement into service. Equity per se may not prevent the Government to take appropriate action under the conduct rules or under Article 311 of the Constitution but many a time they do become fruitless exercise. Resultantly public servant on reinstatement claims consequential benefits including back wages. On many occasion, public servant avoids the detection of corruption or by skilful management proof of commission of corruption would be wanting. But his conduct gains notoriety in service and among public in that behalf payment of back wages and impetus and a premium on corruption. The society has to pay the price for corrupt officers from public exchequer. Therefore, when the court directs payment of back wages or reinstatement, the court/tribunal is required to consider the backdrop of the circumstances and pragmatically apply the principle to the given set of facts. No abstract principle of universal application could be laid in that behalf. The confidential reports of the officer prior to initiation of the prosecution do furnish the evidence of conduct of the public servant. It is the duty of the officer to place his material and of the Government to place all the necessary record in that behalf before the court/*

*tribunal for consideration and it would be for the court/tribunal to consider and decide the matter. This Court has pointed out in several cases the need to record confidential reports objectively and dispassionately with a reformative purpose to enable the public servant to reform himself to improve quality of the service and efficiency of the administration. Parochial, sectorial or nepotic approach would be deleterious to the efficiency of administration and maintenance of discipline in service. Confidential reports placed on record in this case do disclose such deleterious tendency in writing the confidential reports. One set of officers reported integrity of the appellant and while diametrically in opposite terms the predecessor had reported doubtful integrity of the appellant. They do demonstrate the lack of objectivity on the part of some officers in writing the confidential reports. This would be very sad state of affairs impinging upon efficiency of administration. We have confined to the question of payment of back wages with an intention that on reinstatement the appellant would reform himself purging from the proclivity of corrupt practices and prove himself to be a useful public servant to himself, to the family and to the society. In the light of the confidential reports indicating doubtful integrity we are of the view that it is not expedient to direct payment of back wages though he was acquitted by the criminal court may be on technical grounds or on merits he is not entitled to back wages. As stated earlier the circumstances of the case and conduct of the appellant do furnish justification in denying him the back wages lest it would be a premium on proclivity for corruption.”*

... ..

From AIR 1997 SC 1434 :

*“4. Mr. Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72(3) of the Maharashtra Civil Services (Joining Time, foreign Services, and Payment during Suspension, Dismissal and Removal) Rules, 1991 (for short, the 'Rules') the Rules cannot be applied to the appellant nor would*

*the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention. It is true that when a Government servant is acquitted of offences, he would be entitled to reinstatement. But the question is: whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts, conduct of a public servant has to be an open book: corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or fool proof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts, would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to the prosecution of him for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges: whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits? In our considered view, this grant of consequential benefits*

*with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal, Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty, (and on payment of subsistence allowance etc.) Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the Disciplinary Authority.”*

8           Thus it has been reiterated that the charge of bribery and corruption though punishable as a criminal offence and is subject matter of a criminal case does not mean that it is not a misconduct under the Service Regulations. It is equally a misconduct inasmuch as a public servant is expected to work honestly and diligently. Any conduct which is unbecoming of a public servant and brings his image and reputation together with that of the organisation in disrepute, if committed, then, all the more the avenue of disciplinary proceedings / Departmental Enquiry is open irrespective of the outcome of the criminal proceedings. Such proceedings can also be initiated during the

pendency of the criminal case. Therefore, on conclusion of the criminal case and the same resulting in the employee's acquittal, he may be reinstated in service, but there is no obligation to pay the wages and salary. A public servant cannot as of right, therefore, demand these dues as he has rendered no service nor has performed any work. Even otherwise, back wages do not follow reinstatement and as of course. Everything depends on facts and circumstances of each case. Back-wages can be denied as well. (See *AIR 2009 SC 2739 - C.N. Malla vs. State of J.&K. & Ors.*, and *AIR 2016 SC 3225 - Mulin Sharma vs. State of Assam & Ors.*)

9           It is this aspect which, with greatest respect, was not brought to the notice of the Division Bench and with reference to Service Regulation 10-A. That reads as under :

*“SR 10-A       Cir       No.GAD/V/A/DAC/6573       DT.  
24.11.1992.*

*Admission of an appeal does not stay the order of the trial Court. The Central Administrative Tribunal has concluded that release on bail is not the same as suspending conviction and that the Department may impose penalty when one has been convicted by lower court, even if he has filed an appeal.*

*In view of the above position following instructions are issued :*

*i) On conviction of an employee by a trial court the provisions under Service Regulation No. 10-A are to be invoked and action to terminate the services of such convicted employee should be taken by the Competent Authority, forthwith.*

*ii) In case such employee gets acquitted in Appeal in the Appellate Court, he should be reinstated in service. But he shall not be eligible for any payment from the date of termination of his service to the date of his reinstatement in the services, on the principle of 'NOWORK NO PAY'. He will, however, be eligible for restoration of his seniority and other terminal benefits.*

*Further, there is no bar to hold and continue a Departmental Enquiry, simultaneously, pending outcome of the criminal case provided the charges in Departmental Enquiry are other than the charges under the consideration in criminal case against such employee. In fact, it is advisable to start a separate Departmental Enquiry in all such cases of criminal offence and take independent action without awaiting the outcome of criminal case."*

10           A perusal of this Regulation which has been brought in by the Circular would indicate as to how in case a employee gets acquitted in appeal or is acquitted otherwise by the trial court itself, he shall be reinstated in service. However, he shall not be eligible for any payment from the date of the termination of his service to the date of his reinstatement on the principle of 'No work no pay'. In the present case, what we have found is that the petitioner is reinstated. He has been reinstated with seniority

and all benefits admissible to him on account of such continuity, but denied the back wages by invoking the above principle.

11           In fact, the Service Regulations, as amended and clarified, read that there is no bar to hold and continue Departmental Enquiry. Therefore, once it is advisable to start a Departmental Enquiry in all cases of criminal offence and take independent action irrespective of the outcome of the criminal case, then, all the more we do not think that the petitioner can be granted any relief in our equitable and discretionary jurisdiction.

12           The Division Bench, though considering somewhat identical request was not shown this legal position as emerging from the law laid down by the Hon'ble Supreme Court and equally by the Service Regulations and the amendments thereto. In fact, this principle was invoked by the respondent, but in the absence of any stipulation in the Service Regulation, the Division Bench proceeded to grant the relief. The Regulation 10 was only shown to the Division Bench and not the further provisions which we have adverted to above. Therefore, the observation of the Division Bench on the above aspect, with greatest respect, is

incorrect.

13           Once we have looked at the matter from this angle, then, it is not necessary to refer the matter to a larger Bench. The order of the Division Bench can be said to be suffering from a complete ignorance of the Service Regulations and stipulations in place so also the binding judgments of the Hon'ble Supreme Court noted above. The Division Bench judgment can safely be termed as *per incuriam*. Neither the Service Regulations and particularly the clarification inserted by Regulation 10A is challenged nor any declaration is claimed that the same is *ultra vires* any mandate of the Constitution. The Service Regulations are traceable to the statutory powers conferred by the Electricity Act, 2003 (see sections 131, 134 and 135). In such circumstances, in the teeth and presence of such Regulation as noted above, the petitioner had no right to claim the relief. The reasons assigned for rejecting the back wages are in accordance with the above legal principles and the grave and serious charge of corruption. The impugned action is neither arbitrary nor *mala fide*. Once the factual and legal position is noticed in the above

manner, we do not see any reason to grant the prayer in the writ petition.

14           The writ petition is dismissed.

*B.P. COLABAWALLA, J.           S.C. DHARMADHIKARI, J.*