IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4670 OF 2013

Pandit Suka Kapde .... Petitioner
Vs.
Chief Executive Officer,
Zilla Parishad, Nashik & Anr. .... Respondents

Mr. H.E. Palwe for the Petitioner.
Mr. Ashwinikumar R. Kapadnis for Respondent No.1.
Mr. P.G. Sawant, Asst. Government Pleader, for Respondent No.2.

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

DATE : FEBRUARY 17, 2017

ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.):

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus or any other order or direction, directing the respondents to pay him the post-retirement benefits in accordance with law and by ignoring the disciplinary proceedings concluded by the impugned orders.

2. We have to refer to very few facts to appreciate the argument of Mr. Palwe, appearing for the petitioner.

3. The first respondent to the writ petition is the Chief Executive Officer (for short, “CEO”) of the Zilla Parishad, Nashik. The second respondent is the State. The petitioner was an employee of the first respondent. He was serving as a Gram Sevak. He was to retire from service on 31-5-2005, on attaining the age of superannuation. However, he admits that prior to such retirement, he was implicated in a case styled as a criminal case and for offences punishable under Sections 409 and 467 r/w Section 34 of the Indian Penal Code (for short, “the IPC”). The petitioner was arrested and was in custody for more than 48 hours. Due to his detention in custody for a period of more than 48 hours, he was suspended from service. The petitioner says that the regular criminal proceedings being Regular Criminal Case No.682 of 2004 ended with a Judgment and Order, dated 27-1-2010.

4. The petitioner states that despite such honourable acquittal, the Zilla Parishad, Nashik initiated disciplinary proceedings against him. The petitioner subjected himself to such proceedings. The Enquiry Officer submitted a report of the inquiry and exonerated the petitioner from all the charges.

5. However, the CEO was not satisfied with the contents of this inquiry report. He proposed to differ from them. According to the petitioner, he initiated a procedure unknown to law. Though the petitioner was entitled to know the reasons for his difference or disagreement with the contents of the inquiry report, those reasons were not communicated. The petitioner invites our attention to a document annexed to the writ petition, namely, the letter at page 29 to submit that, that will not meet the requirement in law. The CEO issued a final show cause notice, dated 19-11-2010, but that does not indicate any reason for not accepting the findings in the inquiry report. Mr. Palwe would submit that an attempt is made to get over the findings of the Enquiry Officer and fill in the lacunae. That is not permitted. Mr. Palwe then relies upon another communication,

dated 10-2-2011, wherein the CEO informs the petitioner that he has disagreed with the findings in the enquiry report, made a thorough inquiry himself and found the petitioner guilty of misconduct. That is how he directed that an amount to the extent of 10% be deducted from the monthly pension of the petitioner.

6. Aggrieved and dissatisfied with this order, the petitioner preferred an appeal and the Divisional Commissioner (Appellate Authority) though confirmed the order, he directed that the 10% deduction should be revisited. Accordingly, the deduction was brought down to 5%. However, the direction to deduct/adjust the sum of Rs.67,500/- being the alleged pecuniary loss caused to the State was maintained.

7. Mr. Palwe also submits and faintly that the petitioner has not received the entire sum due and payable as retiral benefits. There have been illegal and unlawful deductions. It is in these circumstances that a second show cause notice was issued purporting to treat the petitioner's period of suspension as

not spent on duty. The allowances and benefits in relation thereto were also sought to be recovered. It is in these circumstances that by addressing a reminder and finding no response, that the writ petition is filed.

8. Apart from reiterating the averments in the writ petition and the grounds, Mr. Palwe would submit that the proceedings in the present case cannot be said to be traceable to Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short, "the Pension Rules"). Even if the authority has drawn support from the language of this Rule, it is evident from its reading that the ingredients of the same have to be satisfied. It is not that every such proceedings can be termed as traceable to Rule 27. If proceedings are initiated with an intention to recover any amount or withhold the pension, then only Rule 27 can be invoked in the case of a superannuated employee. Even in that case the preconditions have to be satisfied. Mr. Palwe would submit that in the present case the intent is to impose punishment and that is apparent and clear from the language of the orders passed by the authorities. Therefore, the order of the

first respondent is without jurisdiction. He has assumed the power which he does not possess in law. The Appellate Authority's order is equally vague inasmuch as the same penalty or punishment is sought to be confirmed. The authorities have proceeded on the footing that the petitioner is in service but the factual position is otherwise. Long before their orders, he retired from service.

9. On merits, Mr. Palwe would submit that the petitioner earned a clean acquittal from the Chief Judicial Magistrate. This is not a case of acquittal by granting benefit of doubt. This is a clear and honourable acquittal. Therefore, there was no justification for imposing any punishment and of the nature referred above. For all these reasons, Mr. Palwe would submit that the writ petition must succeed.

10. In support of his contention, Mr. Palwe relies upon a Judgment of a learned single Judge of this Court in the case of ***Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Another V/s.***

Bhujgonda B. Patil, reported in 2003 (5) Bom.C.R. 197.

11. On the other hand, Mr. Kapadnis, appearing for respondent No.1, would submit that there is no merit in the writ petition. The writ petition is not an appellate proceeding. The petitioner cannot request this Court to re-appreciate or re-appraise the factual findings. In this case, the acquittal, as recorded, was not honourable and clean. It is a case where there was a benefit of doubt extended because the witnesses did not stand by their version. Mr. Kapadnis would submit that if pecuniary loss is caused to the Government and by the wrongful and illegal act of the employee, then, in addition to launching criminal prosecution, departmental proceedings are also maintainable. The degree of proof required for departmental proceedings is much less rigorous than that of a criminal prosecution. The only proof that is required is based on preponderance of probability. In a criminal case, the requirement is of proof beyond reasonable doubt. In the present case, the petitioner was entrusted with monies as a Gram Sevak. Those were public monies. They were to be spent for the rural

sanitation programme. The amounts which were made over to him were thus entrustment of public funds. He was endowed with a duty to spend them only for the programme or the scheme of the State. He spent all the monies on that scheme but a sum of Rs.67,500/-. He misappropriated it and tried to demonstrate as if that sum was spent for the beneficiaries under the scheme. He prepared false records and documents in relation thereto. Thus, by forging and fabricating records, he has misappropriated the money and taken away the public funds. It is in these circumstances that the CEO disagreed with the Enquiry Officer. He has assigned cogent and satisfactory reasons for his communication styled as a show cause notice. He was not obliged to deliver a detailed order or a judgment like a Court. He has broadly indicated as to how the Criminal Court has not recorded a clean acquittal and clearly the petitioner is guilty of a serious misconduct of misappropriating public money for his personal benefit.

12. Mr. Kapadnis would submit that the petitioner proceeded to reply to the show cause notice issued by the CEO.

He faced the fresh inquiry. When he did not succeed and was visited with a penalty, that he challenges the order of the Disciplinary Authority. That the order was passed after retirement and the acquittal from the criminal case does not mean that the authority did not invoke Rule 27. Rule 27 could have been validly and legally invoked and it was invoked. The order of the CEO, as confirmed by the Divisional Commissioner, indicates that both were aware that the petitioner had retired on attaining the age of superannuation in the meanwhile. In such circumstances, there is no merit in the contention that there were no reasons supplied for differing with or not accepting the inquiry report. Secondly, there is no substance in the argument that the intention was not to recover any amount by invoking Rule 27 but to punish the petitioner-employee as if he continues to be in service. Thirdly and finally it is submitted by Mr. Kapadnis that there is no merit in the contention that any amount directed to be recovered and beyond the percentage set out in the impugned orders, has been withheld or recovered. The facts, figures and the record shows that the petitioner has been receiving the monthly pension. To the extent directed to be recovered and not released (5%), the pensionary sum has been reduced. Beyond that nothing has been done so as to cause any prejudice to the petitioner. Hence, this writ petition be dismissed.

13. With the assistance of learned Advocates appearing for the parties, we have gone through the petition and the annexures thereto including the order of the Criminal Court. We have also perused Rule 27 of the Pension Rules. That Rule reads as under:-

> "27. Right of Government to withhold or withdraw *pension*
>
> *(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:*
>
> *Provided that the Maharashtra Public Service Commission shall be consulted before any*

final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -

(i) shall not be instituted save with the sanction of the Government,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted

while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

(5) Whether Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, of if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognisance is made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court."

14. A bare perusal of this Rule would indicate as to how the authority is empowered to proceed and to withhold or withdraw pension. The power of the employer to withhold or withdraw pension in terms of Rule 27 can be exercised even by the CEO of Zilla Parishad as that Rule is applicable, admittedly, to the employees of Nashik Zilla Parishad. This power of the Government has to be exercised by making an order in writing. There is a power to withhold or withdraw a pension or any part of it, whether permanently or for a specified period. Over and above this, there is also a power to order recovery from such pension, the whole or part of any pecuniary loss caused to the Government. This order can be passed after the pensioner is found guilty of gross misconduct or negligence during the period of service in some departmental proceedings. We are concerned here with a case where criminal prosecution was launched. As it was a State prosecution, the burden was entirely on it to establish and prove the charge. The ingredients of Sections 409

and 467 of the IPC were held not proved by the Chief Judicial Magistrate. Mr. Palwe would read but a part of the order of the Criminal Court. We have read the whole of it very carefully. We find that it is not the complainant's version alone which the Chief Judicial Magistrate relied upon to record an acquittal. Even the version of the prosecution witness referred in para 24 has been relied upon. Then the order recites as to how a forged Form No.15 and claimed as such was not proved. The admitted signatures of the beneficiary and on the Form 15 itself were not forwarded to a hand-writing expert for expert's opinion. Therefore, the forged signature on Form 15 was held not proved. Therefore, what has been held is that the petitioner/accused cannot be pronounced guilty in the absence of satisfactory evidence. Thus, the finding in para 26 is, there is no strong, cogent and satisfactory evidence brought on record by the prosecution to prove the guilt of the accused. That he has misappropriated the property, that is, the amount of beneficiaries in his capacity as a public servant and by making forged signatures he prepared the requisite Form and withdrew the amount for his own benefit is the charge and of criminal breach of trust which was held as not proved. Once the finding and the conclusion is that the evidence of the prosecution is doubtful and the benefit of doubt goes to the accused, then, this is not a case where the acquittal can be said to be clean or honourable. The accused was working with the Zilla Parishad. He has not disputed that he has received the entire grant and for being utilised for the benefit of those beneficiaries covered by the rural sanitation scheme. It is a common concern that in rural areas in the State of Maharashtra particularly proper sanitation is hopelessly lacking. That has created problems of health hygiene and public safety. It is in this regard that such schemes are introduced and amounts are offered to Zilla Parishads for being used to implement the rural health and rural sanitation programmes. The present case was of a rural sanitation programme. The petitioner does not dispute that he expended the sums and knew the procedure of releasing the amount to the beneficiaries on the beneficiaries executing certain documents. He had to provide the details of the beneficiaries and they ought to be genuine and *bona fide*. The petitioner was charged with utilising the sum for his own benefit to the extent of Rs.67,500/- that he did by preparing a false record of the beneficiaries. If this is the charge and which could have been inquired in a departmental proceeding, then, there was overwhelming documentary evidence indicating the petitioner's role. That is over-looked and discarded erroneously by the Enquiry Officer. That is why the CEO disagreed with his findings and, in our opinion, rightly. He has indicated in his communication/show cause notice to the petitioner that this was not a clean acquittal, much less a honourable one. The petitioner earned the benefit of doubt though his role and involvement was clear. Therefore, the Enquiry Officer could not have exonerated him. This much was sufficient to put the petitioner to notice for we find that the petitioner promptly addressed his reply to this show cause notice and set out his version. He not only set out his version but alternatively also prayed that deduction, as proposed from his pension, be scaled down. A copy of the communication from the petitioner at pages 31 to 33 of the paper-book leaves us in no manner of doubt that the petitioner was properly advised and knew the consequences of the inquiry being re-opened. The inquiry was re-opened and the petitioner had full opportunity to defend himself. The CEO rendered a finding against the petitioner by pronouncing him guilty of misconduct. This is a misconduct under the service rules and which could have been inquired into under Rule 27. The language of the letter/show cause notice, as also the impugned order of the CEO leaves us in no manner of doubt that the intent of the Government/Zilla Parishad in this case was to invoke Rule 27. The CEO was aware that in the meanwhile the petitioner has retired from service. He, therefore, communicated to the petitioner that the proposal is to recover the pecuniary loss and to reimburse the Government to the extent indicated in the impugned order. Further, in terms of Rule 27 the punishment or penalty of withholding of the pension to the extent of 10% was imposed. Against such an order a detailed appeal memo was forwarded by the petitioner on 8-3-2011 to the Divisional Commissioner. The Divisional Commissioner once again, just like the CEO, was not required to render an elaborate or a detailed Judgment, has indicated and in clearest terms his broad agreement with the reasoning of the CEO. He was not, therefore, required to reproduce the order of the CEO parawise or finding wise and express his agreement with it. The petitioner requested in the alternative to scale down the percentage of the deduction. Even that was considered and favourably by the Divisional Commissioner. He brought down the deduction to 5%.

15. Thus, throughout we find that the petitioner was treated fairly and reasonably. He was given complete opportunity to defend himself. There is no merit in the contention that the principles of natural justice have been breached and violated. We do not think that any principle and which could be culled out from the applicable Rules has been breached or violated. There is no prejudice or bias at all and as complained. The petitioner has been proceeded against because he was a public servant and equally his superiors were bound and rather responsible to proceed against him as they were discharging a public function and performing a public duty. The

CEO, who is an independent functionary, does not necessarily entertain any bias or prejudice. He only performs his duty.

16. In the above circumstances, we do not think that the findings and concurrently rendered by the first respondent and the Divisional Commissioner can be re-appreciated and re-appraised in our limited jurisdiction. We have not been able to see any perversity or error of law apparent on the face of the record in the impugned orders. We agree with Mr. Kapadnis and when he says that the petitioner has misconducted himself. In that regard he rightly relies upon para 3 of the affidavit in reply at pages 56, 57 and 58. We have not been shown any material regarding any monetary loss to the petitioner. He has not been deprived of any sum beyond the stipulated amount.

17. It is in these circumstances that we are in agreement with Mr. Kapadnis that the Judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Police, New Delhi and another V/s. Mehar Singh***, reported in (2013) 7 SCC 685 would apply. This Judgment cannot be brushed aside as lightly

as contended by Mr. Palwe on the specious plea that it only concerns and speaks of a case where a person with criminal antecedents and doubtful character seeks to be appointed. This case restates those principles by which the Courts have to be guided. For an acquittal to be termed as "clean and honourable", the Hon'ble Supreme Court has set down certain principles. For the first time how that expression was considered and its application thereafter is traced in the Judgment. The powers that are available to the Disciplinary Authority to proceed even when there is a finding of acquittal against the delinquent are undisputed. In paras 25 and 26, the Hon'ble Supreme Court restates the guiding principles. These paras read as under:-

> "25. The expression "*honourable acquittal*" was *considered by this Court in S. Samuthiram {(2013) 1 SCC 598}. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in RBI v. Bhopal Singh Panchal {(1994) 1 SCC 541}, where in somewhat similar fact situation, this Court*

upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted.

26. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

Prior to that, in para 23, the Court has proceeded on the footing that it is only officers of the Screening Committee who are experienced enough who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed in a police force. It will have to consider the nature and extent of the person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it, is the guiding principle. If the acquittal is based on some serious flaw in the conduct of the prosecution case or is a result of the material witness turning hostile, then, such an acquittal can never be termed as clean or honourable. Precisely that is the case emerging from the record of the present proceedings.

18. We have also no hesitation in holding that the single Judge's Judgment in the case of ***Bhujgonda B. Patil*** (supra), beyond restating the principles can have no application to the facts before us. There the Management challenged an order of the School Tribunal setting aside the order of termination and punishment. The School Tribunal held that the petitioner having

retired on attaining the age of superannuation, is entitled to all the benefits which a retired employee is entitled to under the provisions of law. That order was sought to be challenged by contending that the Tribunal has overlooked Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Upon the facts as noted in para 3 of the Judgment of the learned single Judge, the legal principle was stated. It is that the intent has to be clear while invoking Rule 27. One cannot for quashing the order of the Tribunal rely upon this Rule and to question an order like the one passed in that case. Therefore, the learned single Judge held that the intent ought to be clear. The principles laid down in para 13 are salutary. It has only their application to the given facts and circumstances in each case must be the decisive factor. We find that in the present case the said Judgment cannot be invoked and applied.

19. As a result of the above discussion, the writ petition fails and it is dismissed but without any order as to costs.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)