

dik

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

WRIT PETITION NO. 7763 OF 2013

Mohan Moreshwar Agashe, :
Age years, Occupation:- Junior :
Engineer, M.S.E.D.C.L. Dapoli :
Taluka:- Dapoli, Dist. Ratnagiri : ...Petitioner

VERSUS

1 The Managing Director, :
 Maharashtra State Electricity :
 Distribution Company Ltd., :
 (Distribution Commercial & Co. :
 Coordinating – 1 & Competent :
 authority Prakashgad Imarat, :
 4th Floor, Plot No.G9, Station :
 Road, Bandra, East Mumbai :

2 The Superintending Engineer :
 (RC) Maharashtra State :
 Electricity Distribution Company :
 Ltd. Ratnagiri, Nachane Road, :
 Ratnagiri. : ...Respondents

.....

Smt. Seema Sarnaik, for the Petitioner.
Ms A.R.S. Baxi for the Respondents.

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

**Reserved on : 23rd February, 2017
Pronounced on : 3rd March, 2017**

JUDGMENT [PER B. P. COLABAWALLA J]:

1. By this Writ Petition, under Article 226 of the Constitution of India the Petitioner *inter alia* prays for issuance of a Writ of Mandamus calling for the record and files in respect of the service of the Petitioner from the office of the Respondents and after perusal of the same to declare the letters dated 30th October, 2012 (Exh “**J**”) and 26th March, 2013 (Exh “**N**”) as bad-in-law, illegal and liable to be quashed and set aside. A further relief that is sought, is to direct the Respondents to pay to the Petitioner a sum of Rs.20,02,178/- or such further amounts towards the salary and other allowances for the period 4th December, 2008 to 28th February, 2012. The main and the only contention raised before us is that the Petitioner has been acquitted in a Criminal Case and thereafter reinstated in the service of the Respondents, and hence should be paid back wages and other benefits for the period from 4th December, 2008 to 28th February, 2012.

2. The brief facts necessary for appreciating this contention are as follows:-

(a) The Petitioner was employed with the Respondents since 23rd May, 1980 and according to him, his service record was unblemished and he also received various certificates of good conduct. Whilst the Petitioner was on duty in the capacity of Junior Engineer with the Respondents at Dapoli, District :- Ratnagiri, he was issued a charge-sheet on 29th September, 2007 for misconduct of accepting a bribe of Rs.5,000/-. Pending the inquiry, the Petitioner was suspended vide an order dated 20th September, 2007. The allegation against the Petitioner was that he was caught while accepting a bribe of Rs.5,000/- on 12th September, 2007 from one Sunil Atmaram Bothare. The Petitioner refuted these allegations by filing his reply.

(b) Be that as it may, the Petitioner was arrested on 12th September, 2007 and was released next day on bail. Thereafter, Respondent No.1 issued a show-cause-notice dated 3rd January, 2008 as to why the services of the Petitioner should not be dismissed without holding a Domestic (Departmental) Enquiry. Being aggrieved by the dismissal notice, the Petitioner filed a complaint before the Labour Court, Ratnagiri and also applied for

interim relief from taking any action on the said show-cause-notice. When the Petitioner applied for interim relief, the same was rejected by the Labour Court vide its order dated 8th May, 2008. Being aggrieved thereby, the Petitioner filed a Revision Application before the Industrial Court, who by its order dated 15th July, 2008 allowed the Revision Application and set aside the order passed by the Labour Court. The Industrial Court further directed that the Petitioner be continued in service on his original post and directed the Labour Court to expedite the matter.

- (c) Being aggrieved by the order passed in the Revision Application, Respondent No.1 approached this Court by filing Writ Petition No.6751 of 2008. This Court by its order dated 17th November, 2008 set aside the order passed by the Industrial Court in Revision and ordered that the application for interim relief was to stand dismissed. After this order, the Respondents terminated services of the Petitioner by their order dated 4th December, 2008. Being aggrieved by this termination, the Petitioner preferred a First Appeal before the

appropriate authority, which was also dismissed on 7th December, 2009. Thereafter, the Petitioner preferred the Second Appeal which was also dismissed on 9th October, 2010.

(d) Be that as it may, during the pendency of the disposal of the complaint filed by the Petitioner before the Labour Court, the criminal prosecution in respect of the incident of corruption on 12th September, 2007 (bearing Special Case No.06 of 2008) was disposed of by the learned Special Court, Khed, by its Judgment and Order dated 3rd May, 2011. The Petitioner was acquitted as the prosecution had failed to prove the commission of the alleged offences beyond a reasonable doubt. A copy of this Judgment can be found at Exh “E” to the Petition.

(e) In view of the fact that the Petitioner had been acquitted from the Criminal Case, by his representations dated 3rd August, 2011 and 8th August, 2011, the Petitioner requested the Respondents for reconsidering his termination dated 4th December, 2008. Considering the representations made by the Petitioner as well as the fact

that the Anti Corruption Bureau, Ratnagiri had decided not to challenge the Judgment and Order dated 3rd May, 2011 (acquitting the Petitioner), the Respondents by their letter dated 21st February, 2012 revoked the order of termination and permitted the Petitioner to resume his duties again as a Junior Engineer. However, the period from 4th December, 2008 to 28th February, 2012 was treated by the Respondents as a period “**without pay**” and which was communicated to the Petitioner by their letter dated 30th October, 2012. The Petitioner was informed that the period from 4th December, 2008 to 28th February, 2012, was treated as “leave without pay” on the principle of “**NO WORK NO PAY**”. The same was again informed to the Petitioner by the Respondents vide their letter dated 26th March, 2013. It is, in these circumstances, that the Petitioner is before us challenging the letters dated 30th October, 2012 (Exh “**J**” to the Petition) and 26th March, 2013 (Exh “**N**” to the Petition).

3. In this factual backdrop Ms Sarnaik, the learned advocate appearing for the Petitioner contended that the Petitioner was

always ready and willing to work with the Respondents. The Petitioner being acquitted honourably in Special Criminal Case No. 6 of 2008, and having been terminated in a summary manner without holding any inquiry on the ground that the Petitioner was involved in a case of corruption, the Petitioner would be entitled for reinstatement with continuity in service with all consequential benefits. She submitted that the Petitioner has been wrongly deprived of the wages and other benefits from the date of termination till he resumed his duties on 28th February, 2012.

4. To be fair to Ms Sarnaik, she brought to our attention a recent decision delivered by us in the case of **Ramchandra Bapusaheb Desai Vs Maharashtra State Electricity Distribution Company Limited**,¹ where we have considered the exact same arguments. She sought to distinguish this decision basically on two grounds:-

- (i) She submitted that the reliance placed by us on the Service Regulation 10-A to dismiss the said Writ Petition, was inapplicable in the facts of the present case, because the said Regulation applied only to cases where an employee was first convicted by the trial court and thereafter got acquitted in appeal. It

¹ Writ Petition No.2301 of 2013, decided on 9th January, 2017

is only, in such circumstances, that the said Service Regulation stipulates that even though an employee can be reinstated in service, he would not be eligible for any payment from the date of termination of his service to the date of his reinstatement, on the principle of “**NO WORK NO PAY**”. According to Ms Sarnaik, the facts of the present case would clearly show that the Petitioner before us was not one that was originally convicted and thereafter acquitted in appeal. He was acquitted by the trial court itself and in fact the order of acquittal was not even challenged by the Anti Corruption Bureau, Ratnagiri and had attained finality. She, therefore, submitted that this Judgment would have no application to the facts of the present case;

- (ii) in the facts before us in Writ Petition No.2301 of 2013, the same was not a case of a clean acquittal but the acquittal was on the basis of a reasonable doubt. According to Ms Sarnaik, this was another fact which was to be taken into consideration by us to grant relief to the Petitioner.

5. For all the aforesaid reasons, she was at pains to persuade us that the facts of the present case were materially different from the ones that were before this Court in Writ Petition No.2301 of 2013 and hence we ought to take a different view. For all

the aforesaid reasons, she submitted that the Writ Petition be allowed in terms of prayer clauses (b) to (e) respectively.

6. On the other hand, Ms Baxi, learned counsel appearing on behalf of the Respondents brought to our attention the MSEDCL Employees' Service Regulations, 2005 as well as the Circular dated 24th November, 1992 and submitted that there is no bar to hold and continue a Departmental Enquiry, simultaneously, pending the outcome of the criminal case. If this be the case, then all the more such requests as are emanating from the Petition cannot and ought not to be granted. According to her, Service Regulation 10-A was clear and unambiguous and granting any relief to the Petitioner would be contrary to that very Regulation. Ms Baxi submitted that identical arguments were considered by this Court in Writ Petition 2301 of 2013 and were rejected and the grounds on which the said decision is sought to be distinguished are totally frivolous and baseless. For all the aforesaid reasons, Ms Baxi submitted that there was no merit in this Writ Petition and the same ought to be dismissed with costs.

7. We have heard the learned counsel for parties at length and perused the papers and proceedings in the Writ Petition. We find

considerable force in the argument of Ms Baxi. It is now well settled that the charge of bribery and corruption though punishable as a criminal offence (and which was the subject matter of a criminal case in the present matter), 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 organization 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. In fact, 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 that does not mean that he would be entitled to payment of wages and salary for the time he did not work. A public servant cannot as of right, therefore, demand these dues as he has rendered no service nor has he performed any work. Even otherwise, back wages do not follow reinstatement and as a matter of course. Everything depends on facts and circumstances of each case.

8. Having said this, we find that Service Regulation 10-A

completely supports the case put forth by Ms. Baxi. Service Regulation 10-A reads thus:-

"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 "NO WORK 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."

9. As can be seen from said Regulation, an employee who is acquitted should be reinstated in service, but would not be eligible for

any payment from the date of termination of his service to the date of his reinstatement, on the principle of “**NO WORK NO PAY**”. He would, however, be eligible for restoration of his seniority and other terminal benefits.

10. In view of this clear Regulation, and the validity of which has not been challenged in these proceedings, we are unable to agree with Ms Sarnaik's submission that it would be inapplicable to the Petitioner, because his was a case where he was acquitted by the trial court and was not acquitted in appeal. This Court in the case of **Ramchandra Bapusaheb Desai Vs Maharashtra State Electricity Distribution Company Limited**,¹ (in paragraph 10 of its decision) has categorically held that a perusal of this Regulation (Regulation 10-A) would indicate as to how in case an employee gets acquitted in appeal or is acquitted otherwise by the trial court itself, he shall be reinstated in service. He would however not be eligible for any payment from the date of termination of his service to the date of his reinstatement on the principle of ‘No work no pay’. We, therefore, find no substance in the argument of Ms Sarnaik that this Regulation would apply only in a case where an employee is first convicted by the trial court, and thereafter, acquitted in appeal. The principle of

¹ Writ Petition No.2301 of 2013, decided on 9th January, 2017

“NO WORK NO PAY”, would apply not only in cases where an employee is first convicted and thereafter acquitted in appeal, but would also apply in a case of an employee who is acquitted by the trial court itself. We must mention here that even in the case of **Ramchandra Bapusaheb Desai Vs Maharashtra State Electricity Distribution Company Limited**¹ the Petitioner was acquitted by the trial court itself. Despite this, placing reliance on Regulation 10-A, this Court took the view that the Petitioner therein was not entitled to any payment from the date of termination of his service to the date of his reinstatement. Not only is the said decision binding on us but we are in full agreement with the same.

11. We also do not find any merit in the argument of Ms Sarnaik that we ought to take a different view because in the facts of the present case, it was a case of a ‘clean acquittal’ or a ‘honourable acquittal’ rather than one that was on ‘reasonable doubt’. Firstly, we do not find any such differentiation in Regulation 10-A. Regulation 10-A clearly stipulates that where an employee is acquitted he should be reinstated in service, but would not be eligible for any payment from the date of termination of his service to the date of his reinstatement. The Regulation makes no differentiation between an acquittal by virtue of reasonable doubt or what Ms Sarnaik would

term as an “honourable acquittal” or a “clean acquittal”. In view of the clear and unambiguous language of Regulation 10-A staring the Petitioner in face, and which Regulation has not been challenged before us, then all the more we are unable to to agree with Ms. Sarnaik on this point.

12. This apart, even otherwise in the facts of the present case, we find that this submission is factually incorrect. It is the case of the Petitioner itself (in paragraph 17 of the Petition) that he would be entitled to reinstatement with all the benefits as the prosecution had failed to prove the case “beyond reasonable doubt”. Even on perusal of the decision of trial court in Special Case No. 6 of 2008 acquitting the Petitioner, we do not find that the same is what Ms Sarnaik would term as a “clean acquittal”. From perusal of the said decision, we find that the complainant in fact had turned hostile and did not support the case of the prosecution even though PW 2 supported the case of the prosecution. It is in these circumstances that the trial court held that the evidence of the complainant and PW 2 would not be sufficient to establish the bribery charges. Therefore, the trial court at paragraph 22 held that the prosecution had failed to prove the commission of the alleged offences by the accused beyond reasonable doubt. In these circumstances, we are, therefore, unable

to agree with Ms Sarnaik that this was a case of a “clean acquittal”, and therefore Regulation 10-A would not be applicable.

13. With regard to what is a “clean acquittal” it would be apposite to refer to a decision of the Supreme Court in the case of **Commissioner of Police, New Delhi and another Vs. Mehar Singh.**² This decision restates those principles by which the Courts have to be guided. For an acquittal to be termed as “clean and honourable”, the Supreme Court has set down certain principles and for the first time, how the said expression was considered and its application thereafter, is traced in this decision. Paragraphs 24, 25 & 26 are very instructive in this regard and read thus:-

“24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of correlation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of

2 (2013) 7 SCC 685

doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "*honourable acquittal*" was considered by this Court in *S. Samuthiram [Inspector General of Police v. S. Samuthiram]*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]. 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 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 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619], 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 the 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 the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can

possibly be said that the accused was honourably acquitted.

26. In light of the above, we are of the opinion that since the purpose of the 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."

14. As a result of the above discussion, we find no merit in this Writ Petition and the same is accordingly dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA J.)

(S. C. DHARMADHIKARI J)