

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3098 OF 2018

SANTOSH MANIKRAO JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Smt. Kulkarni M.A.
AGP for Respondent 1 : Shri Shinde B.A.
Advocate for Respondent 2 : Shri Tandale P.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 05, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 12.1.2018, by which the Deputy Chief Executive Officer, Zilla Parishad, Latur has strangely advised the petitioner to approach the High Court and obtain orders from the High Court and has declined to entertain his request for reinstatement, post acquittal.

2. I have heard the learned Advocates for the respective sides. Learned Advocate for the Zilla Parishad has placed reliance upon the judgment of the Honourable Apex Court in the matter of Union Territory, Chandigar Administration Vs. Pradip Kumar and another [(2018) 1 SCC 797], to contend that as this petitioner is not honourably acquitted, he cannot claim reinstatement in service, though his termination was by virtue of his conviction by the Criminal Court vide

judgment dated 2.7.2013.

3. This petitioner had earlier approached this Court by preferring Writ Petition No. 1415 of 2014, contending that his Criminal Appeal No.3 of 2013 was pending before the learned Additional Sessions Judge and the substantive sentence was suspended. This Court, by order dated 1.8.2015, disposed off the Writ Petition by recording that in Service Jurisprudence, if an employee is dismissed from service, on account of a conviction, he can claim reinstatement only after being acquitted by the superior Court. The sentence awarded to the petitioner was suspended by the appellate court and the conviction was not stayed. Even if the conviction would have been stayed, in service jurisprudence there would not have been automatic reinstatement in service.

4. In service jurisprudence, an employee who is simplicitor dismissed from service on account of conviction by a Criminal Court, cannot be treated at par with an employee, who despite pendency of the criminal proceedings, has been subjected to disciplinary proceedings as per the service rules applicable and has been dismissed not on account of his conviction, but on account of he having been held guilty in such a departmental enquiry.

5. In the matter of Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others [(1997)3 SCC 636], the Honourable Apex Court has dealt with a case of suspension pending the criminal trial. Upon acquittal, the employee sought regularization of his suspension period and also full payment for the said period. The Honourable Apex Court concluded that the rules enable the disciplinary Authority to exercise its discretion. If a public servant is suspended pending his trial, it would be deleterious to the maintenance of discipline if a person who was suspended on valid consideration, is given full back wages as a matter of course on his acquittal. The disciplinary authority has an option either to enquire into the misconduct unless the said conduct was subject matter of the charge and on trial, the acquittal was not based on benefit of doubt, but on a positive finding that the accused did not commit the offence at all.

6. The learned Division Bench of this Court in the matter of Dattatraya Vasudeo Kulkarni Vs. Director of Agriculture, Maharashtra and others [1984 Mh.L.J.406], has considered the suspension of a public servant pending a criminal trial. He was convicted by the Trial Court and ultimately acquitted by the High Court. It was held that he was not entitled for full pay for the period of suspension.

7. In Union of India and another Vs. Ashok Kumar Aggarwal

[(2013) 16 SCC 147], the Honourable Apex Court has considered the purpose of suspension of an employee pending departmental enquiry. It was ruled that during suspension, the relationship of Master and servant continues between the employer and the employee, who is forbidden to perform his official duties. A suspension order does not put an end to the service of an employee. Paragraph No.26 reads as under :-

“14. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Sardul Singh, (1970) 1 SCC 108; P.V. Srinivasa Sastry v. Comptroller & Auditor General of India, (1993) 1 SCC 419; Director General, ESI & Anr. v. T. Abdul Razak, AIR 1996 SC 2292; Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. & Ors., AIR 1988 SC 2118; Delhi Cloth General Mills vs. Kushan Bhan, AIR 1960 SC 806; U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Sanjeev Rajan, (1993) Supp. (3) SCC 483; State of Rajasthan v. B.K. Meena & Ors., (1996) 6 SCC 417; Secretary to Govt., Prohibition and Excise Department v. L. Srinivasan, (1996) 3 SCC 157; and Allahabad Bank & Anr. v. Deepak Kumar Bhola, (1997) 4 SCC 1, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case

pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.”

8. In Dhananjay Vs. Chief Executive Officer, Zilla Parishad, Jalna [(2003) 2 SCC 386], the Honourable Apex Court has concluded that when an employee is terminated simplicitor in view of his conviction, though he is not entitled to automatic reinstatement, it could be open to the competent authority to direct an enquiry.

9. The learned Division Bench of this Court, in the matter of Dewaji s/o Dasar Gaikwad (died), through LR's and another Vs. Zilla Parishad, Bhandara and others [2017(2) Mh.L.J.45], held that if an employee is suspended pending criminal trial and initiation of disciplinary proceedings, the rules permit the employer to suspend an employee when he was arrested for a serious offence of murder. On acquittal he can be reinstated.

10. In the present case, the respondent/Zilla Parishad has neither placed the petitioner under the suspension pending his criminal trial, nor has it issued him any charge sheet prior to his conviction by the Trial Court. Even after his acquittal by the Appellate Court on 12/07/2017, till today, the petitioner has neither been suspended nor has any departmental enquiry being initiated against him.

11. The Zilla Parishad, despite being informed by the petitioner that he has been acquitted by the judgment of the appellate court on 12.7.2017, by his communication dated 27.7.2017, the Deputy Chief Executive Officer of the Zilla Parishad has advised the petitioner to approach this Court and seek reliefs from this Court, by his communication dated 12.1.2018. I find that the Deputy Chief Executive Officer Shri Namdeo Kendre has practically abdicated his jurisdiction and has conveniently avoided taking a decision. He could not have

advised the petitioner to approach the High Court and seek relief from this Court. I find his conduct to be unbecoming on the part of the Deputy Chief Executive Officer.

12. The learned Advocate for the Zilla Parishad has cited the judgment in the case of Union Territory (supra). The issue before the Honourable Apex Court was with regard to consideration of candidates for their suitability to be inducted in Police service. The screening committee had prescribed certain determinative tests for scrutinizing the candidates and screening them for being considered in the process of selection. It was on these premises that the issue was considered as to whether an acquittal, not being an honourable acquittal, could be a ground for considering a candidate for his suitability to appointment in the Police Service. The Honourable Apex Court set aside the order of the High Court permitting the screening of such candidates and concluded that the appointing authority can take into account criminal antecedents and an acquittal not being an honourable acquittal, would not give any benefit to the candidate for being considered for recruitment.

13. The law laid down in the said case is, therefore, not applicable to the case of this petitioner since he has been dismissed from service on the basis of his conviction and without conducting disciplinary

proceedings. Had he been dismissed from service pursuant to a departmental enquiry, by which, it was established that the employer had lost confidence in such an employee, the case could have been looked at in a different perspective. In the absence of the departmental proceedings and on his acquittal by the appellate Court, the conviction as well as the sentence have been quashed and set aside.

14. In view of the above, the impugned communication dated 12.1.2018 stands quashed and set aside and this petition stands allowed. The respondent No.2 shall reinstate the petitioner in service with continuity, but without backwages from the date of his dismissal till the date of the judgment of the appellate Court acquitting him, considering the law discussed above.

14. I deem it appropriate to strike a note of caution to the said Deputy Chief Executive Officer, by observing that he should apply his mind to every case before him and should avoid abdicating his powers. He would also stop advising his employees to approach the High Court for reliefs.

(RAVINDRA V. GHUGE, J.)

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