

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11880 OF 2016

Sanjay s/o Kishanrao Karpe,
Age : 51 years, Occu. Nil,
R/o House No.4-11-13-7,
Ramlal Colony, Padampura,
RTO Road, Aurangabad,
District Aurangabad

PETITIONER

VERSUS

The Municipal Commissioner,
Municipal Corporation,
Aurangabad

RESPONDENT

Mr. S.S. Thombre, Advocate for the petitioner
Mr. S.S. Tope, Advocate for the respondent

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

ORDER RESERVED ON : 12th DECEMBER, 2018

ORDER PRONOUNCED ON : 18th DECEMBER, 2018

ORDER (PER : R.G. AVACHAT, J.) :

Petitioner by this petition under Article 226 of the Constitution of India seeks his reinstatement in service as a consequence of his acquittal in a criminal case.

FACTS :

2. The petitioner had been in service with the respondent – Municipal Corporation, Aurangabad as a cashier. One Naibrao Bhivsan Janjal had also been serving in the Accounts Department of the Municipal Corporation. The Assistant Commissioner of the Municipal Corporation lodged an F.I.R. against both of them, alleging to have misappropriated sum of Rs.5,16,632/-. The F.I.R. was lodged on the basis of a report of the Auditor. Departmental Enquiry was, therefore, initiated against both of them way back in 2004. The Departmental Enquiry culminated in holding the petitioner guilty of the charges framed against him. The respondent – Corporation accepted the report and terminated the services of the petitioner.

The F.I.R. lodged by the Assistant Commissioner was also taken to its logical conclusion. Chargesheet was filed against the petitioner. The learned Chief Judicial Magistrate, Aurangabad tried the petitioner for the offences of criminal breach of trust and falsification of accounts, thereby misappropriating the public funds, being offences punishable under Sections 409 and 477-A of the Indian Penal Code. The petitioner

was acquitted on 5th November, 2015 of all the charges framed against him. The petitioner, therefore, moved an application to the respondent – Corporation, asking for his reinstatement in service. The Corporation turned down the petitioner's request. Hence, the petition.

3. The respondent Corporation countered the claim of the petitioner, contending the petitioner to have not challenged his dismissal from service as a consequence of the charge having been proved in the Departmental enquiry.

4. Heard the learned counsel for the parties.

5. Mr. S.S. Thombre, learned counsel appearing on behalf of the petitioner, would submit that the Court of Chief Judicial Magistrate has honourably acquitted the petitioner of all the charges framed against him. The Departmental Enquiry and the criminal prosecution were based on the same set of facts and evidence. To buttress his submissions, learned counsel has placed a strong reliance on the judgment of the Apex Court in the case of ***G.M. Tank Vs. State of Gujarat and another, AIR 2006 SC 2129***. In view of the result of acquittal of the petitioner, the respondent Corporation ought to have

reinstated him in service.

6. Mr. S.S. Tope, learned counsel for the respondent Corporation would, on the other hand, submit that services of the petitioner were terminated after proper Departmental Enquiry. Mere acquittal of the petitioner by a Criminal Court has no impact on the result of the disciplinary proceedings initiated against him. In support of his contentions, the learned counsel has relied upon the following authorities :-

- (i) ***The Deputy Inspector General of Police and Anr.
Vs. S. Samuthiram
2013 (1) SCC 598***
- (ii) ***Noida Entrepreneurs Association Vs.
NOIDA and others
2007 (10) SCC 385***

7. The petitioner was in the service with the Municipal Corporation, Aurangabad. The Assistant Commissioner of the Corporation had lodged an F.I.R. against the petitioner way back in January, 2004. The petitioner was alleged to have misappropriated sum of Rs.5,16,632/-. It was the case of the Municipal Corporation that, the petitioner was serving in the Accounts Department of the Corporation. The amounts received towards property tax, water tax, etc. were

supposed to be accounted for by the petitioner by depositing in the Bank account. The petitioner was alleged to have misappropriated the amounts received. Based on the Audit report, submitted by the Chief Accountant, a Departmental Enquiry was initiated against the petitioner and one Naibrao Bhivsan Janjal. In the Departmental Enquiry, the petitioner was found guilty. The Municipal Corporation accepted the report of the Departmental Enquiry and terminated the petitioner from service on 16th October, 2008.

The petitioner did not take exception to his dismissal before any of the judicial forums available to him. The crime registered pursuant to the F.I.R. lodged against the petitioner was investigated and the petitioner was proceeded against by filing the chargesheet before the Criminal Court. The petitioner was charged with the offences of criminal breach of trust and falsification of accounts, being offences punishable under Sections 409 and 477-A read with Section 34 of the Indian Penal Code. On full-dress trial, the petitioner and the co-accused have been acquitted by the learned Chief Judicial Magistrate on 5th November, 2015. The learned Chief Judicial

Magistrate gave the petitioner clean chit. According to the learned counsel for the petitioner, it was an honourable acquittal of the petitioner, entitling him reinstatement in service.

8. In the case of **S. Samuthiram** (supra), the Hon'ble the Supreme Court has observed as under :-

"Mere acquittal of an employee by Criminal Court has no impact on the disciplinary proceeding initiated against him. In absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a Criminal Court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a Criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient."

The Apex Court has, in the case of **S. Samuthiram** (supra), referred to the decision in the case of **State of Assam and another Vs. Raghava Rajgopalachari, 1972 S.L.R.45**, wherein it has been observed as under :-

"The expression "honourable acquittal" is one which is unknown to Court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals."

9. In the case of **Noida Entrepreneurs Association** (supra), the Hon'ble the Supreme Court has observed as under :-

"The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service."

10. The appellant in the case of **G.M. Tank** (supra), was charged for amassing assets disproportionate to his known sources of income. A Departmental Enquiry was, therefore, ordered against him. He was found guilty of the charge. The respondent therein, by order dated 21st October, 1982, dismissed the appellant therein from service as punishment.

Against the said dismissal order, the appellant had preferred a Writ Petition before the High court. The appellant was unsuccessful in the Writ Petition and even in Letters Patent Appeal (L.P.A.), preferred against the decision in the Writ Petition. The said decision was, therefore, challenged in the Appeal by Special Leave. Meanwhile, the appellant was honourably acquitted by the Criminal Court holding the prosecution to have failed to prove the charges levelled against him. The acquittal was complete exoneration and not by giving benefit of doubt.

The facts of the case before the Hon'ble the Apex Court indicate that the appellant had furnished convincing explanation. The Apex Court found it to be a case of no evidence. In the view of the Apex Court, the

facts and evidence in the Departmental Enquiry as well as the criminal prosecution were same without there being an iota of difference. The appellant (Mr. Tank), therefore, was successful before the Apex Court.

11. The facts of the petition on hand make all the difference. In the departmental proceedings, the petitioner was held guilty. The respondent – Corporation accepted the report and terminated him from service. The termination is dated 16th October, 2008. The petitioner herein did not challenge his termination, although he was acquitted in a criminal case in 2015.

We are conscious of a legal position that the jurisdiction of superior Courts in interfering with the findings of fact arrived at by the enquiring officer is limited and this Court would also ordinarily not interfere with the quantum of punishment. The High court does not sit in appeal over the decision in a departmental proceeding.

12. A mere glance at the report in the Departmental Enquiry would suggest that there was evidence to hold the petitioner guilty of the charge. Some of the

colleagues of the petitioner identified his handwriting in the accounts books. True, the Enquiry Officer had suggested for examination of all those documents by handwriting expert. In the Departmental Enquiry, it was the case of the petitioner that he was not serving with the Accounts department during the relevant period. He, however, admitted that a sum of Rs.12,400/- had not been promptly accounted for. Later on, he deposited the amount.

Be that as it may, the dismissal of the petitioner pursuant to the report in the Departmental Enquiry, has not been taken exception to. The learned counsel for the petitioner did not make out a case that the report of the enquiry was based on no evidence. It is reiterated that there was material in the evidence produced before the Enquiry Officer. As such, it is not a case of both the departmental and criminal proceedings being based on same facts and evidence. The reliance on the judgment in the case of **G.M. Tank** (supra) is, therefore, of no avail to the petitioner. In case of **Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. and another (1999)ILLJ 1094 SC**, relied on by the appellant in the case of **G.M. Tank** (supra), D.E. had not proceeded

and in criminal case, the appellant therein was acquitted.

12. In the sequel, the Writ Petition fails and is therefore dismissed. No costs.

[R.G. AVACHAT]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

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