

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

WRIT PETITION NO. 5911 OF 2005

The State of Maharashtra and anr. ...Petitioners
Versus
Shri. Appa B. Lengare ...Respondent

Mr. N.C. Walimbe, AGP for the Petitioners/State.
None present for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 14.06.2018.

ORAL JUDGEMENT:

1] Heard Mr. Walimbe, learned AGP for the State/Petitioners.

2] The respondent though served, neither present nor represented.

3] The petitioners- State challenge the judgment and order dated 22.06.2005 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 75 of 2005 quashing the respondent's suspension by order dated 20.01.2005 and directing his reinstatement in a non-executive post.

4] Mr. Walimbe, learned AGP for the State, submits that the respondent was arrested on 24.04.2002 in Special Case No. 6 of 2003 by Anti Corruption Bureau (ACB). He submits that on account of such arrest and pending prosecution the respondent placed under suspension by order dated 27.05.2002. He points out that the petitioners, in pursuance of directions in O.A. No. 676 of 2004 instituted by the respondent, considered the respondent's representation but rejected the same by order dated 20.01.2005. Mr. Walimbe points out that the Government Resolution (GR) dated 14.12.1995 states that unless the criminal case against a Government servant is finalised, the suspension order ought not to be revoked. Mr. Walimbe submits that the action of the petitioners was entirely consistent with the Government Resolution dated 14.12.1995, which was never challenged by the respondent before the MAT. Accordingly, the MAT was not at all justified in passing the impugned judgment and order and admittedly on the date of such order, the criminal prosecution against the respondent was very much pending. Mr. Walimbe submits that it is for this reason that the impugned judgment and order made by the MAT was

stayed by this court on 5.10.2005, pending the hearing and final disposal of the petition.

5] Since, the criminal prosecution against the respondent had been launched in the year 2003, we had adjourned the matter in order to enable the learned AGP to obtain instruction as to the fate of the prosecution. Since, learned AGP was unable to obtain the details, we have obtained the details from the Registry. In Special Case No. 6 of 2003 launched against the respondent, the respondent has been acquitted by the Special Court on 27.09.2007. There is no record of any appeal filed by the State against such acquittal.

6] The G.R. dated 14.12.1995, upon which reliance has been placed by Mr. Walimbe only entitles the petitioner - State to continue suspension pending the finalisation of the criminal case. This was, in fact, the submission made by Mr. Walimbe. Now that the respondent is reported to have been acquitted on 27.09.2007, the suspension shall have to be revoked from 27.09.2007 and the respondent will have to be awarded all consequential benefit in pursuance

of such revocation. To that extent, the impugned judgment and order will have to be modified.

7] Accordingly, we dispose of this petition with the following order:

(a) The petitioners are directed to reinstate the respondent, if in service, within a period of one month from today. Such reinstatement shall be with effect from 27.09.2007 and the respondent shall have to be paid all consequential benefits on such basis within three months from today;

(b) In case the respondent has already attained the age of superannuation, then, the respondent shall have to be notionally treated as reinstated with effect from 27.09.2007 and paid all consequential benefits on such basis within three months from today;

(c) The directions in the impugned judgment and order shall stand modified in the aforesaid terms;

(d) Rule in this petition is disposed of in the aforesaid terms; and

(e) All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)