

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1371 OF 2016

ALONGWITH
CIVIL APPLICATION NO. 2319 OF 2018

Dr. Prabhakar Krishnarao Pawar

Age : 59 years, Occ: Retired Medical Officer,

At Gondi, Gavthan,

Post Shivnagar, Tal : Karad,

District : Satara

....Petitioner

V/S.

The State of Maharashtra,

Through Principal Secretary,

Public Health Department,

Having Office at Mantralaya,

Mumbai-400 032.

....Respondent

* * * * *

Mr. Rahul S. Kate, Advocate for the petitioner.

Mrs. R.A. Salunkhe, AGP for respondent no.1.

Coram :- A.S. Oka, &
Sandeep K. Shinde, JJ.
Resd on : - 28th November, 2018.
Pron. On : - 10th December, 2018.

ORAL JUDGMENT (PER : SANDEEP K. SHINDE, J) :

1. Heard.
2. Rule. Rule, made returnable forthwith. Heard finally by consent of the Learned Counsel for the respective parties.
3. The petitioner joined the Government Services as Medical Officer-Class II in March, 1983. In the year 2005, the petitioner was working as Medical officer, Primary Health Center, Taluka-Karad, District-Satara. At the relevant point of time, he was running Jivan Jyoti Hospital at Goyandi/Julewadi, Taluka-Karad, District-Satara. It is alleged that he indulged in illegal procedure of detection of sex in fetus and had unregistered genetic clinic. Thus, appropriate authority appointed under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 ("the P.C.P.N.D.T. Act") launched prosecution against the petitioner by filing private complaint on 19th September, 2005 in the Court of Judicial Magistrate First Class, Karad for the offences

punishable under Section 3(1), 5, 6, 23, 25, 29(1)(2) of the P.C.P.N.D.T. Act and under Rules 3(1), 9, 10(1)(1)(A), 17(1)(2) and 18 of P.C.P.N.D.T. Rules, 1996.

4. On 5th January, 2006 the respondent passed the order of suspension of the petitioner under Rule 4[1][A] of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in contemplation of the departmental enquiry. The learned Judicial Magistrate First Class, Karad vide judgment and order dated 6th September, 2010 convicted the petitioner of the aforesaid offences and ordered to suffer imprisonment for a period of three years and fine of Rs.10,000/-.

5. In the circumstances, the respondent issued a show cause notice to the petitioner on 26th December, 2011 under Rule 13(1) of the aforesaid rules as to why the petitioner should not be dismissed from service. However, in the meantime, the petitioner preferred Criminal Appeal No. 34 of 2010 in the Court of Additional Sessions Judge, Karad, District-Satara which was allowed by judgment and

order dated 14th December, 2011. In view of this, the order of suspension was revoked vide order dated 16th May, 2012 and the petitioner came to be reinstated in service on 22nd May, 2012. However, the petitioner was under suspension from 5th January, 2006 to 21st May, 2012.

6. It is to be stated that after the acquittal, the respondents dropped a departmental enquiry against the petitioner.

7. The petitioner in the backdrop of the aforesaid facts, was expecting that the respondents would pass an appropriate order in favour of the petitioner treating the period of the petitioner as duty period for all purposes and as such made a representation to the District Health Officer, Zilla Parishad, District-Satara in May, 2012. The said representation was forwarded to the Director of Health Services, Maharashtra State, Mumbai who then instructed the Deputy Director, Health Services to verify whether Appeal is preferred against the order of acquittal. That since, the respondents did not decide the

representation, he had filed O.A. No. 1003 of 2012 before the Maharashtra Administrative Tribunal. That vide order dated 19th December, 2012 Tribunal directed the respondents to decide the representation and take decision on the subject representation within a period of one month.

8. The respondent vide order dated 23rd February, 2013 treated the entire period of suspension as such, on the ground that it was not an honourable acquittal but one on technical ground and thus justified the suspension in terms of provisions of Rule 72(5) of the Maharashtra Civil Services (Joining Time, Foreign Service etc.) Rules, 1981.

9. That being aggrieved by the aforesaid order dated 23rd February, 2013 the petitioner had preferred Appeal before the Appellate Authority who vide order dated 28th February, 2013 confirmed suspension.

10. The petitioner thus filed Original Application No. 1172 of 2013 before the Maharashtra Administrative

Tribunal. The Tribunal by judgment and order dated 12th February, 2014 rejected the Original Application and held that the suspension was not wholly unjust. This order was carried before this Court in Writ Petition No. 6504 of 2014. During the pendency of the Writ Petition, Criminal Application (Leave to file Appeal) No. 562 of 2012 filed by the State of Maharashtra against the judgment and order passed by the Additional Sessions Judge, Karad in Criminal Appeal No. 34 of 2010 was heard and rejected by the Hon'ble High Court vide reasoned order dated 25th February, 2014. Thus, in view of this circumstance, The Division Bench of this Court set aside the impugned order dated 12th February, 2014 passed by the Tribunal and remanded the matter back for reconsideration. After remand, the Administrative Tribunal by impugned judgment and order dated 3rd December, 2015 dismissed the Original Application of the petitioner on the ground that the respondent cannot be faulted for holding an opinion that petitioner's suspension was not wholly unjustified. Being aggrieved and dissatisfied by the order of the Tribunal, this petition is preferred under Articles

226 and 227 of the Constitution of India.

11. The only question that is required to be answered is whether, the respondents were justified for holding an opinion that petitioner's suspension was not wholly unjustified and whether the government servant prosecuted for commission of offence, though culminated into acquittal, is entitled for consequential benefits ?

12. The Supreme Court in the case of **Krishnakant Raghunath Bibhavnekar Versus. State of Maharashtra and Ors. (1997) 3 Supreme Court Cases page 636** has dealt with this issue and answered that if the conduct alleged is the foundation of prosecution, though it may end into acquittal, the Government Servant is not entitled to be reinstated with consequential benefits as a matter of course. The Apex Court, thus held, that the two course open to the disciplinary authority are viz, it may enquire into the misconduct, unless the self same was conduct was subject of a charge and on trial, the acquittal was recorded on a positive finding that the accused did not commit the

offence at all, but acquittal is not given on benefit of doubt.

13. Thus, what follows from the ratio laid down in the aforesaid judgment is that, it is always open to the disciplinary authority to initiate a departmental enquiry, when the prosecution culminates into acquittal where 'benefit of doubt' is extended to accused.

14. That after the order of acquittal, the petitioner was reinstated into service, however, respondents refused to treat the suspension period of the petitioner as on duty by order dated 28th February, 2013 which was confirmed by the Minister on 12th November, 2013. Admittedly, when these orders were passed, (which was impugned before the Maharashtra Administrative Tribunal) leave to Appeal preferred by the State against the order of acquittal was not decided. The said leave to Appeal was dismissed by the learned Single Judge of this Court on 25th June, 2014 whereby the leave was refused by a reasoned order. Precisely for this reason, the Division Bench of this Court vide order dated 17th November, 2014 remanded the

matter to the Maharashtra Administrative Tribunal to reconsider its order dated 12th February, 2014 passed in Original Application No. 1172 of 2013.

15. In our view, the respondents while refusing to treat the suspension period, as on duty have mechanically held it was not “clean acquittal but acquittal on technical issues”. We have minutely perused the judgment of the Additional Sessions Judge in Appeal and order dated 14th December, 2011 passed by the Learned Single Judge of this Court. It is recorded in para-20 of the judgment of Additional Sessions Judge, that the prosecution has failed to prove that the accused has conducted the test of sex determination. We have also perused the finding recorded in para-19 that the prosecution had not examined the key witness who were the members of the raiding party. Besides, P.W.1, who had filed an Affidavit being a decoy witness executed affidavit after the date of the incident. The learned Sessions Judge has observed thus, “Affidavit of pw4 Kavita vide Exh 32 is in the hand writing of pw1 Shaila, pw2 Dr. Yadav states prior to sending decoy case

affidavit of decoy witness is essential. But he admits affidavit of pw4 Kavita was prepared after the trap. In the affidavit date is mentioned as 9/9/2005. But court fee stamps on it shows the date as 15/9/2005. Therefore it is clear affidavit Exh 32 was created after the alleged trap. Therefore, prosecution evidence creates doubt about the alleged trap.” In the given set of facts and upon considering the findings recorded by the learned Additional Sessions Judge, which was found reasonable in the proceedings in leave to Appeal, in our considered opinion, it cannot be said that the petitioner was acquitted merely on technical ground. In fact, Tribunal ought to have considered the order of Learned Single Judge, once matter was remanded on that count.

16. Thus, considering the facts and circumstances of the case and the reasons as stated hereinabove, we hold that since the petitioner was not subjected to departmental enquiry, which course was otherwise open to the respondents in terms of the service rules and in view of the fact that acquittal of the petitioner was not

merely on the technical lapses, we hold that the petitioner is entitled for consequential relief, but in the peculiar set of facts, we decline to grant the relief by directing the respondents to pay backwages for the period during which he was suspended. Hence, the following order :

(i). The petition is partly allowed in the aforesaid terms.

(ii). That the period of suspension i.e. from 5th January, 2006 to 21st May, 2012 shall be treated as the period spent on duty only for the purpose of fixing the pension payable to the petitioner.

(iii) With these directions, the petition stands disposed of.

(iv) In view of disposal of the petition, Civil Application No. 2319 of 2018 does not survive. The same is disposed off as infructuous.