

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10732 OF 2016

The Municipal Commissioner and anr.	.. Petitioners
Vs.	
Mr.Gunaji Suryaji Kamble	.. Respondent

Mr.S.S.Pakale a/w Mr.Vinod Mahadik, for the Petitioners.
Mr.Ramesh D.Bhat, for Respondent.

CORAM : M.S.KARNIK, J.

DATE : 25th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. Heard learned Counsel for the petitioners and learned Counsel for the respondent. The petitioners by this Petition filed under Articles 226 & 227 of the Constitution of India assailed the order dated 29/07/2016 passed by the Industrial Court, Mumbai directing the petitioners to revoke the

order of suspension dated 28/03/2008 of the respondent and determine payable wages/salary with effect from 29/07/2016 as a regular employee on their establishment. The respondent is an employee of the petitioner- Corporation. For an incident that had occurred on 05/02/2008 at around 16.30 hrs., an FIR was registered against respondent and others under sections 143, 147, 148, 149, 387, 506(2) of IPC read with sections 3 & 25 of the Bombay Arms Act. The respondent was arrested and was in custody for more than 48 hours. The respondent was placed under suspension by an order dated 28/03/2008. In the order of suspension, it is clearly mentioned that in respect of serious misconduct, the respondent is being suspended from Municipal service from the date of his arrest i.e. 12/02/2008 subject to the decision of the Court in this regard and subject to the departmental enquiry.

3. The departmental enquiry proceeded and for the proved misconduct against the respondent, fine of Rs. 3000/- was imposed on the respondent as a punishment. It was further

mentioned that as the criminal case is going on in the Court against the respondent, the decision of taking him back in service and the period of his suspension will be taken separately after the decision of the Court in the matter.

4. The respondent therefore approached the Industrial Court by filing Complaint (ULP) No. 345 of 2015. The respondent also filed an application Exhibit U-2 for interim relief praying that the order of suspension dated 28/03/2008 be revoked and he may be paid wages /salary with effect of 29/07/2016 as regular employee. By the impugned order dated 29/07/2016, the Industrial Court allowed the application Exhibit U-2 and revoked the order of suspension dated 28/03/2008 and the petitioners are directed to pay wages/salary to the respondent from 29/07/2016.

5. Learned Counsel for the petitioner contended that the Industrial Court has virtually granted the final relief at the interim stage. He would submit that the respondent is punished

in the departmental enquiry, nonetheless, as the criminal case is pending against him, the petitioners decided to keep him under suspension. Mr.Pakale would submit that the respondent was arrested on a very serious charge and therefore it was imperative to continue with the suspension pending the criminal trial. Mr.Pakale would submit that merely because for the proved misconduct, he has been punished in the departmental proceedings initiated against the respondent, does not by itself put any fetters on the power of the Corporation to continue the suspension till the criminal trial concludes.

6. Learned Counsel for the respondent on the other hand supports the impugned order passed by the Industrial Court. He would submit that the respondent is under suspension for more than 10 years. He has been exonerated in the departmental enquiry. Even punishment has been imposed on him. Mr.Bhat would submit that nothing is pointed out by the petitioners as to under what provisions of law, the suspension of respondent can be continued even after the

conclusion of the departmental enquiry. Mr.Bhat relied upon the decision of the Apex Court of in the case of **Agnani (W.M.) Vs. Badri Das and others reported in (1963) 1 L.L.J.684** to contend that the criminal case registered against the respondent had no concern with the employment and therefore pendency of the criminal case is no ground to continue the suspension even after the departmental proceedings are over.

7. Heard learned Counsel for the parties. I find that by the interim order, the Industrial Court revoked the order of suspension. The Industrial Court has virtually allowed the Complaint at the interim stage by granting final relief. In my opinion, in the present facts, the order passed by the Industrial Court is unsustainable. There is no dispute that the respondent was arrested on the allegation that he committed serious offence. The criminal trial is pending. The order of suspension clearly records that he is suspended on both counts i.e. disciplinary proceedings contemplated and also as the criminal proceeding which is pending. It may be that the departmental

proceedings have resulted in imposing punishment of fine of Rs. 3,000/- for the proved charges. The criminal proceedings are still pending. Whether the petitioners are justified in continuing with the suspension or not is an issue that can always be decided when the Complaint is finally heard. Present is not the case for revoking the suspension at the interim stage. The order passed by the Industrial Court therefore calls for interference. Hence, following order is passed.

ORDER

- (i) The impugned order is quashed and set aside.

- (ii) Considering the fact that the Complaint is of the year 2015 and the respondent is under suspension for almost 10 years, the Industrial Court is requested to decide the Complaint expeditiously and preferably within a period of one year from today.

- (iii) Needless to mention that the Industrial Court not to be influenced by any observations made by me or the observations made in the impugned order. The Complaint be decided on its own merits.

8. Writ Petition is disposed of in the above terms. Rule is made absolute with no order as to costs.

(M.S.KARNIK, J.)