

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11668 OF 2018

Rajeev Kumar

.....Petitioner

Versus

Union of India, Ministry of Finance
Through Revenue Secretary & Anr.

.....Respondents

Mr. Rajeev N. Kumar, Petitioner-in-person.

Mr. Neel Helekar i/by A.R. Gole, Advocate for Respondent Nos.1 and 2.

**CORAM : RANJIT MORE &
SURENDRA P. TAVADE, JJ.**

DATE : 12th DECEMBER, 2019.

P. C. :

1. Heard the petitioner-in-person and Mr. Helekar, learned counsel for respondent Nos.1 and 2.

2. By the present petition, the petitioner is taking exception to the Judgment and Order dated 29.08.2016 passed by the learned Central Administrative Tribunal, Mumbai in Original Application No.210/00135/2016 and subsequent review of the order dated 26.06.2018 in Review Application No.34/2016. By filing proceeding before the Central Administrative Tribunal, the petitioner challenged the order dated 14.08.2015 passed by the Under Secretary to the Government of India, by which, the petitioner's service was terminated.

3. Admittedly, the petitioner was charged and upon trial convicted

for the offence punishable under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for five years. On the basis of petitioner's conviction invoking Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the services of the petitioner came to be terminated and as stated above the challenge to the termination order was also overruled.

4. The petitioner challenged his conviction and sentence by filing Criminal Appeal No.1376 of 2012 before this Court. By the order dated 28.12.2012, the learned Single Judge suspended the sentence awarded to the petitioner. The petitioner thereafter filed separate application bearing Criminal Application No.1105 of 2015 for suspension of conviction. The learned Single Judge by his order dated 23.09.2015 granted interim relief to the petitioner, thereby suspending the conviction of the petitioner.

5. This writ petition was placed for admission before the Division Bench of this Court (Coram : B.R. Gavai & N.J. Jamadar, JJ) on 08.01.2019. On that day, after hearing both the parties, the Division Bench requested the learned Single Judge to decide the Criminal Application No.1105 of 2015 within a period of four weeks, so that the Court can appreciate the controversy raised in the present petition.

6. It appears that Criminal Application No.1105 of 2015 is still pending, however, the interim order passed therein suspending petitioner's conviction is still in operation.

7. The present petition was again placed before the Division Bench

on 26.09.2019. On that day, after hearing both sides, the Division Bench has passed the following order:-

By the order dated 8th January, 2019, the learned Single Judge was requested to dispose of Criminal Application No. 1105 of 2015. The petitioner in-person informs that the said Application could not be disposed of as CBI is seeking unnecessary adjournments before the learned Single Judge.

2. In above circumstances, we direct the petitioner in-person to file an affidavit placing on record the circumstances due to which the said application is not decided so far. The copy of affidavit be supplied to the Respondents within two weeks and respondent thereafter to file reply/affidavit within one week. Let the matter come up for admission on 6th November, 2019.

8. The said petition was again placed before this Court on 06.11.2019. After hearing the learned counsel appearing for the respective parties and upon perusal of the affidavit filed by the petitioner, we were inclined to give one more opportunity to the respondents to point out the above facts to the learned Single Judge with a request to expedite the hearing of the Criminal Application No.1105 of 2015 and the matter was adjourned to 12.12.2019 i.e. today.

9. Today, Mr. Helekar, learned counsel for respondent Nos.1 and 2 submitted that he tried to circulate the matter for early hearing of Criminal Application No.1105 of 2015, but it was not granted. He further submitted

that Criminal Application No.1376 of 2012 itself has been placed for final hearing on 27.01.2020. The fact remains that Criminal Application No.1105 of 2015 remains pending and the order dated 23.09.2015 suspending petitioner's conviction also remains in operation.

10. The above circumstances show that despite ample opportunity given to the respondents, they could not get the interim order dated 29.09.2011 vacated. The said order is in operation till date. The order passed by this Court either ad-interim, interim or final is binding on all concerned. By this interim order, the petitioner's conviction is suspended exercising jurisdiction under Article 226 of the Constitution of India. We cannot go into the validity or otherwise of interim order of the learned Single Judge suspending the petitioner's conviction. Nonetheless, the consequences of this order must follow.

11. As stated above, the petitioner's services came to be terminated solely on the ground that he was convicted and this order was challenged before the learned Central Administrative Tribunal, Mumbai. Subsequent to the termination order, the petitioner obtained interim order thereby suspending the conviction. The petitioner pointed out to the learned Tribunal about the order of the learned Single Judge suspending his conviction. Paragraph 49 of the impugned order shows that the learned Tribunal has taken note of the same, however, the Central Administrative Tribunal refused to accede to the request of the petitioner.

12. In our considered view the impugned order dated 29.08.2016 passed by the learned Central Administrative Tribunal, Mumbai has to be

quashed and set aside. Consequently, we dispose of the writ petition by passing following order:-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 29.08.2016 passed by the Central Administrative Tribunal, Mumbai and order dated 26.06.2018 passed in R.P.No.34 of 2016 are hereby quashed and set aside.
- (iii) The matter is remanded to the Central Administrative Tribunal for reconsideration afresh.
- (iv) The Central Administrative Tribunal shall take into consideration the order of the learned Single Judge suspending conviction of the petitioner and, thereafter, pass fresh order in accordance with law within six months.
- (v) The interim relief/protection granted as per paragraph 12 of the order dated 6th November, 2019, shall continue to remain in operation till the decision of the Central Administrative Tribunal.
- (vi) All points and contentions of the respective parties are expressly kept open.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]