

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7285 OF 2019

**BHARAT HARIBHAU BHOR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Petitioner : Shri Barde Parag Vijay
AGP for Respondent 1/ State : Mrs.G.L.Deshpande
Advocate for Respondent 2 : Shri V.S.Bedre h/f Shri K.N.Lokhande

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**CORAM : S.V. GANGAPURWALA
&
SHRIKANT D. KULKARNI, JJ.
DATE :- 28th January, 2020**

Per Court :-

- 1 The petitioner is assailing the order of dismissal from service.
- 2 The petitioner, at the relevant time, was working as a Sanitary Inspector with the respondent/corporation. Departmental enquiry was initiated against the petitioner on the charges of misappropriation. The petitioner was found guilty. The Corporation took the decision to revert the petitioner. The petitioner had challenged the said order before the appellate forum. The appellate forum set aside the order and restored the petitioner to his original position of Sanitary Inspector. Subsequently, criminal case was also filed. The Chief Judicial Magistrate convicted the petitioner along with other accused persons. The petitioner, upon conviction, was dismissed from service on 12.02.2019. The petitioner, in the appeal filed against the order of conviction, filed an

application for suspension of conviction. The learned Sessions Judge on 01.04.2019 suspended the conviction. The sentence was suspended earlier. The petitioner seeks reinstatement on the ground that the conviction is also suspended.

3 Shri Bedre, learned advocate for the respondent/ corporation, submits that the petitioner is convicted for serious charges. Such person cannot be allowed to be reinstated. While suspending the conviction, the learned Sessions Judge has made certain observations which are not relevant and germane for deciding the application for suspension of conviction. According to the learned advocate, the petitioner cannot claim reinstatement. The petitioner can also approach the Labour Court.

4 The learned advocate for the petitioner submits that the petitioner is not a workman.

5 We have considered the submissions. It is not disputed that the departmental enquiry and criminal case were based on the same charges. The petitioner is found guilty in the departmental enquiry and therefore, reverted. The petitioner challenged the said punishment before the appellate forum and the appellate forum set aside the reversion order and restored the petitioner to his original post. Subsequently, the petitioner was convicted in the criminal case and was sentenced to suffer simple imprisonment for three years. In appeal filed by the petitioner in the Sessions Court, the learned Sessions Judge suspended the conviction

apart from suspending the sentence. The said criminal appeal is still pending. Clause 9(j) of the Ahmednagar Municipal Corporation Services (Appointment and Staffing Pattern) Rules, 2016, relied upon by the learned advocate for the respondent/ corporation, prescribes that if the employee is convicted and punished with imprisonment of six months and more and if the said punishment is not set aside in appeal or revision, then, he shall be ineligible for reinstatement. In the present case, the conviction has been suspended by the learned Sessions Judge. In the departmental enquiry, though initially the punishment of reversion was issued, the same was set aside by the appellate forum.

6 In the light of the above, we set aside the impugned order of dismissal. The petitioner shall be reinstated in service and the same shall be subject to the final decision in the criminal appeal filed by the petitioner against his conviction. The petitioner shall not be entitled for back-wages from the date of the dismissal till reinstatement. However, the said period shall be counted for the purpose of continuity. The petitioner shall be reinstated within FOUR WEEKS from today. It is for the respondent/ corporation to post the petitioner at a suitable place considering his pay scale.

7 This Writ Petition is, accordingly, disposed of.