IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 172 OF 2018

PETITIONERS: Manohar S/o Shankar Dhoke,
aged about 53 years, Occ. Service,
Permanently residing at Ram Nagar,
Ward No. 20, By-pass Potegaon Road,
Near Reddy Godown, Gadchiroli,
District - Gadchiroli.

...VERSUS...

RESPONDENTS: 1. The Chief Executive Officer,
Zilla Parishad, Gadchiroli,

2. The Additional Commissioner,
Nagpur Division, Nagpur.

None for Petitioner.
Mr. W.G.Pounikar, Advocate for respondent No.1
Ms. H. Jaipurkar, AGP for respondent No.2

CORAM : AVINASH G. GHAROTE, J.
DATE : 08/03/2021.

1] None appears for the petitioner. Mr. W.G.Pounikar, learned counsel appears for respondent No.1 and Ms. Hemlata Jaipurkar, learned AGP appears for respondent No.2.

2] Notice for final disposal of the matter was issued on 20.03.2018.

3] The short point involved in this petition is denial of the benefit of full payment to the petitioner for the period of suspension from 20.3.2012 to 29.4.2014, on the ground that the petitioner was exonerated by the criminal Court.

4] The authorities below have by the impugned orders dated 03.10.2016 and 06.04.2017, denied benefit of full payment of salary to the petitioner on the ground that the acquittal of the petitioner by the J.M.F.C. Nagpur, in Misc. Criminal Application No. 180/12, by judgment dated 16.11.2013, was not an honourable acquittal, but on account of benefit of doubt. Reliance is also placed upon Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, to contend that even in case of reinstatement, it was permissible under clauses 3, 5 and 7 of Rule 72 of the Rules, to deny the benefit of treating the period of suspension as period on duty.

5] Learned AGP appearing for respondent no. 2 supports the impugned order. Reliance is also placed upon *Krushnakant*

Raghunath Bibhavnekar vrs. State of Mah and others. [**(1997) 3 SCC 636**].

6] No doubt, in the instant matter, the judgment of acquittal of the petitioner dated 16.11.2013, in para 17 records that the benefit of doubt should be given to the petitioner, however, such an observation is made on the basis of the fact that the evidence tendered by the prosecution contains material omissions, due to which the issues as framed were answered in negative and the petitioner was acquitted of the charges, as framed against him. This would clearly indicate that the prosecution failed to bring home the guilt of the accused by necessary and cogent evidence, as required by law. That being the position, a stray observation in the judgment dated 16.11.2013, cannot be construed to mean that the acquittal of the petitioner, was not a clean acquittal, but was on account of any benefit of doubt.

7] That apart, there is another factor which has not been considered. It is an admitted position that the petitioner was also subjected to a departmental enquiry on account of his facing a prosecution in Criminal Case No. 280/2012, in which, the petitioner was placed under suspension on 20.3.2012 and the departmental enquiry continued, which resulted in his being exonerated, leading to his reinstatement on 29.4.2014. Thus, if the misconduct of the petitioner was of the nature which would require punishment to be imposed upon him, it could have been done under the departmental enquiry. The exoneration of the petitioner in the departmental enquiry clearly adds to the benefit of the petitioner. In case of Krishinikant Bibhavnekar (supra), the issue of initiation and exoneration of the delinquent in a departmental enquiry was not under consideration, which is why it has been indicated that the initiation of a departmental enquiry was one of the course which could have been adopted.

8] In the instant case, not only the judgment of the J.M.F.C. Nagpur in Criminal Case No. 280/2012, acquits the petitioner, but the departmental enquiry also exonerates him of any charges of misconduct. This being the situation, the benefit of treating the period of suspension as period on duty clearly was permissible and ought to have been granted. The authorities below, therefore, clearly appear not to have applied their mind to this aspect of the matter, due to which, the same cannot be sustained and are accordingly quashed and set aside. It is directed that the period of suspension from 20.03.2012 to 29.04.2014 be treated as period on duty and the arrears of salary and allowances, as permissible in law, be paid to the petitioner.

9] Rule accordingly. No costs.

JUDGE

Rvjalit