

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

WRIT PETITION NO.263/2016

PETITIONER : Maharashtra State Road Transport
Corporation,
Through its Divisional Controller,
Amrawati Division, Amrawati.

...VERSUS...

RESPONDENT : Mohangir Shankargir Gosavi
R/o Giriraj Housing Society,
Kondeshwar Road, Nagpur.

Shri Mohangir Shankargir Gosavi
R/o Giriraj housing Society,
Kondeshwar Road, Amrawati.

[Correct Address of R-sole
taken on record vide
Registrar (J) order dated 12/8/16]

(Amended as Registrar (J) order dated 12/8/16)

Mr. S.C. Mehadia, Advocate for petitioner
Mr. N.R. Saboo, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 10/02/2021
Judgment pronounced on : 16/02/2021

J U D G M E N T

1. The present petition raises a challenge to the judgment and order dated 11/9/2015, passed by the learned Industrial Court,

Amravati in Revision ULP No.16/2013, arising out of judgment and order dated 6/12/2012, passed in Complaint ULP No.42/2008 by the Judge, Labour Court, Amravati.

2. Heard Mr. Ashish Mehadia, learned Counsel for the petitioner and Mr. Naresh Saboo, learned Counsel for the respondent. The respondent, who was employed as a Building Inspector, with the petitioner, came to be prosecuted for proceedings under Section 138 of the Negotiable Instruments Act, for dishonour of a cheque issued by him, which resulted in his conviction on 13/6/2008, which conviction was affirmed by the Sessions Court but was set aside by the High Court in Criminal Revision Application No.204/2009 vide judgment dated 22/2/2011.

3. In the meantime, the services of the petitioner due to the conviction by the J.M.F.C., on 13/6/2008, came to be terminated on 24/9/2008, which termination came to be challenged by the respondent before the Labour Court, by way of Complaint (ULPA) No.42/2008, which taking note of the subsequent acquittal by this Court by the judgment dated 22/2/2011, came to be allowed vide

judgment dated 6/12/2012, whereby the termination of the respondent was set aside and a direction was issued to reinstate the respondent on his former post with continuity of service and 50% back wages.

4. This judgment of the Labour Court, came to be challenged by the petitioner by way of Revision (ULP) No.16/2013 before the Industrial Court, which dismissed the same by judgment dated 11/9/2015, while noting that in the meantime, the respondent had retired from his services, as he had crossed the age of superannuation.

5. Mr. Ashish Mehadia, learned Counsel for the petitioner, by inviting my attention to Rule 81 of the Bombay State Transport Employees Service Regulations, (for short, “the Regulations” hereinafter) by which the respondent is governed, submits that the rule permits the termination of an employee, if he has been convicted by a Criminal Court, without notice. He submits that in spite of the absence of any requirement to issue any notice, a notice was issued and an opportunity to explain was given to the

respondent. He therefore submits, that the action of the petitioner is in consonance with Rule 81 of the Regulations. He further submits, that the acquittal by the High Court, was not a clean acquittal but the same was on account of the matter being compounded, and therefore, cannot form the basis of an order of reinstatement, for which reliance is placed on *Baljinder Pal Kaur Vs. State of Punjab and others, (2016) 1 SCC 671*, *Hafizuddin Inayatullah Kazi Vs. J. C. Agarwal and others, 1980 (41) F.L.R. 171* and *Dattatraya Vasudeo Kulkarni Vs. Director of Agriculture, Maharashtra and others, 1984 Mh.L.J. 406*. He further submits that the Courts below ought not to have granted back wages, for which reliance is placed on *Basanti Prasad Vs. Chairman, Bihar School Examination Board and others, (2009) 6 SCC 791*. He further places reliance upon *Maharashtra State Electricity Distribution Co. Ltd., Kolhapur Vs. Pundalik Dattatray Sawadkar, 2010 (3) Mh.L.J. 279* to contend that the act of filing an appeal against an order of conviction, would not be enough to keep the matter in abeyance awaiting the result of the appeal and therefore, the action taken by the petitioner, immediately upon acquiring knowledge of the conviction of the respondent was justified. He therefore submits that the impugned judgments cannot

be sustained and are liable to be quashed and set aside.

6. Mr. Naresh Saboo, learned Counsel for the respondent, opposes the petition and submits that the entire action on part of the petitioner was hasty and without any application of mind. He submits that the conviction of the respondent, was merely on account of dishonour of cheque under Section 138 of the Negotiable Instruments Act, against which an appeal was provided and the petitioner ought to have waited for the final decision of the matter. According to him, it is not the case of the petitioner, that the respondent was not rendering any services to the petitioner or had become incapable of rendering services. He submits that the conviction, since it did not come in the way of rendering services, the termination of the services of the respondent was clearly illegal and improper at the outset itself and therefore, the relief as granted by the Labour Court, ought to be maintained. He further submits, that the petitioner was acquitted on 22/2/2011, which was brought to the knowledge of the petitioner, who was liable to reinstate the respondent, since the only reason for termination of services of the respondent was the conviction, which was no longer existing. He

submits that even otherwise, the respondent, had about one and half years of service left on the date of his acquittal, and the action on part of the petitioner in not reinstating the respondent back in service, is clearly malafide. He further submits that the respondent would be entitled to full back wages from the date of acquittal till the date of superannuation, which was on 30/9/2012. Reliance is placed upon *Bahadur S. Solanki Vs. LIC of India and another, (2002) 10 SCC 105*.

7. It is not in dispute that the conviction of the respondent, under Section 138 of the Negotiable Instruments Act by the learned J.M.F.C., has ultimately been set aside by this Court by judgment dated 22/2/2011. A copy of this judgment has not been placed on record along with the petition or subsequently also to substantiate the contention, that the acquittal was due to compounding of the offence. Since a ground in this regard has been canvassed, it was necessary for the petitioner to place a copy of the same on record. The record of the lower Courts has also not been received, from which the above position could be ascertained, as it is an admitted position, as reflected from the judgment of the lower Courts that the

judgment of acquittal had been placed on record. Be that as it may, no rule or authority, has been pointed out by the learned Counsel for the petitioner, to indicate that a reinstatement in services with continuity, could not have been directed, on account that the judgment of acquittal was on account of compounding, even if it is so presumed. If at all, any distinction was sought to be canvassed, the same could only be on the basis of a statutory provision/rule or an authority, all of which are absent. In fact, even in the application for amendment of the written statement of the petitioner before the Labour Court (Annexure-D/pg.21) there is no averment to the effect that the acquittal of the respondent was on account of compounding of the offence. ***Baljinder Pal Kaur*** (supra) relied upon by Mr. Mehadia, learned Counsel for the petitioner, does not support this proposition, for the reason that what was under consideration therein, was Rule 16.3 of the Punjab Police Rules, 1934, which specifically provided what action was to be taken on a judicial acquittal, equally providing for exceptions to the rule on the ground that the criminal charge had failed on technical grounds or the prosecution witnesses had been won over etc., in light of which, the initiation of a departmental enquiry was being opposed. It is in the

background of the above rule, that the Hon'ble Apex Court had held that the requirement of the rule, was to be adhered to while considering the need for a departmental enquiry on the same charges. *Baljinder Pal Kaur* (supra) therefore is of no assistance to the learned Counsel for the petitioner. *Hafizuddin Inayatullah Kazi* (supra) relied upon by Mr. Mehadia, learned Counsel for the petitioner, holds that the expression “honourably acquitted” is incapable of being defined precisely but would not include acquittal or discharge because of some technicality not having been complied with or on benefit of doubt. In the instant case though Rule 81 of the Regulations, has been quoted the Regulations have not been produced on record to indicate whether parameters have been fixed by them for determining the norms vis-a-vis the nature of acquittal, for the purpose of reinstatement, as has been done in Rule 16.3 of the Punjab Police Rules in *Baljinder Pal Kaur* (supra), in absence of which, the judgment is of no assistance to Mr. Mehadia, learned Counsel for the petitioner. In fact, in *Dattatraya Vasudeo Kulkarni* (supra) relied upon by Mr. Mehadia, learned Counsel for the petitioner, a Division Bench has held that the concept of “honourable acquittal” or “full exoneration” was inappropriate *qua*

the result of a criminal prosecution.

8. The dictum as laid down in *Pundalik Sawadkar* (supra) cannot be disputed, and in all cases where there is a conviction, the department would be justified in initiating appropriate action as per the rules applicable unless there is any provision to keep such action in abeyance, for whatsoever reason. No such Rule has been pointed out in the present case and therefore the contention of Mr. Saboo, learned Counsel for the respondent does not hold any water.

9. In so far as the contention that the respondent was not entitled to 50% back wages, as granted, it is to be kept in mind, that the respondent was not terminated for any misconduct in the performance of his services, by conducting a departmental enquiry but merely on the ground of his conviction by the learned J.M.F.C., under Section 138 of the Negotiable Instruments Act. It has been averred in the complaint before the Labour Court that during the period of his conviction and acquittal, the respondent was not gainfully employed. The fact of acquittal of the respondent by this Court, was made aware to the petitioner, in March, 2011 itself,

which is indicated from the application for amendment filed before the Labour Court (Annexure-B/pg.13), pursuant to which the petitioner, ought to have reinstated the respondent in service, in March, 2011 itself, since the reason for his termination, did not survive and could have availed the benefit of the services of the respondent till the time of his superannuation. The petitioner, for reasons, best known to it, did not do so and forced the respondent to continue with the litigation before the Labour Court, which resulted in the direction for his reinstatement with continuity in services and 50% back wages. Not only this, the petitioner, challenged the said judgment before the Industrial Court by way of a revision during which period, the respondent retired having crossed the age of superannuation. In spite of the dismissal of the revision, as filed by the petitioner, and stay to the effect, operation and execution of the orders passed by the subordinate Courts, except to the extent of the direction to pay 50% back wages, being declined, and a direction to process the claim of the respondent for other retiral benefits, the order dated 11/9/2015, records that this has not been done. This conduct, on part of the petitioner clearly defies logic. However, in a similar case of *Basanti Prasad* (supra), upon which reliance is placed

by Mr. Mehadia, learned Counsel for the petitioner, the Hon'ble Apex Court had declined to grant back wages, placing reliance upon an earlier judgment in *G.M. Tank Vs. State of Gujarat and others*, (2006) 5 SCC 446, which I prefer to follow in preference to *Bahadur S. Solanki* (supra). In *Baldev Singh Vs. Union of India and others*, (2005) 8 SCC 747, relied upon by Mr. Mehadia, learned Counsel for the petitioner, the Hon'ble Apex Court has held that merely because there has been an acquittal, it does not automatically entitle the employee to get salary for the period concerned. Thus, the award of 50% back wages, to the respondent, in light of the above position of law, is not sustainable. However, the claim for back wages from the date of acquittal till the date of superannuation, is clearly sustainable in law, as the petitioner, being aware of the acquittal, was duty bound to take back the respondent in service, the conviction being the sole ground for his termination in the first place, which no longer survived, consequent to the acquittal by the High Court on 22/2/2011. I therefore feel it proper to modify the impugned judgments in the following manner :-

(A) The direction as passed by the learned Labour Court for reinstatement of the respondent with continuity of service is maintained.

(B) The direction as passed by the learned Labour Court to pay 50% back wages is hereby set aside.

(C) The petitioner is directed to pay full back wages to the respondent from the date of acquittal, i.e., from 22/2/2011 to the date of superannuation.

(D) All the above payments should be made within three months from the date of this order, subject to adjustments of any amounts which may have been received by the respondent earlier.

The writ petition is partly allowed. Rule accordingly.
No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar

**Shailendra
Wadkar**

Digitally signed by
Shailendra Wadkar
Date: 2021.02.16
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