

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

WRIT PETITION NO.524 OF 2022

Dnyaneshwar Kashinath Shingane
Age : 40 years, Occu : Service as Assistant
Teacher presently working with Zilla Parishad
Primary School Adarshnagar, Jafrabad,
Tq. Jafrabad, Dist. Jalna

.. Petitioner

Versus

1. State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Additional Commissioner,
Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Jalna,
Dist. Jalna.
4. The Education Officer (Primary)
Zilla Parishad, Jalna,
Dist. Jalna.
5. The Block Education Officer,
Panchayat Samiti, Jafrabad,
Tq. Jafrabad, Dist. Jalna.

.. Respondents

...

Mr. Arvind G. Ambetkar, Advocate for the Petitioner
Mr. K.N. Lokhande, AGP for the Respondent - State
Mr. A.S. Usmanpurkar, Advocate for Respondent Nos.3 to 5

...

CORAM : SANDEEP V. MARNE, J.

DATE : 09-11-2022

ORAL JUDGMENT :

. Rule. It is made returnable forthwith. Mr. K.N. Lokhande, learned AGP waives service for the respondent - State and Mr. A.S. Usmanpurkar, learned advocate waives service for respondent Nos.3 to 5. At the joint request of the parties, the matter is heard finally at the admission stage.

2. By this petition, Petitioner assails order dated 31.05.2019 passed by the Chief Executive Officer, Zilla Parishad, Jalna as well as the order dated 20.07.2021 passed by the Additional Divisional Commissioner, Aurangabad by which the period of his suspension from 20.03.2013 to 30.04.2017 has been treated as suspension thereby denying him pay and allowances as well as pay fixation for that period. The period is however directed to be treated towards qualifying service for pension.

3. While working as Assistant Teacher in Zilla Parishad School, Petitioner came to be arrested on 20.03.2013 in pursuance of FIR lodged against him for offences under Sections 498-A, 307, 494 r/w. 34 of the Indian Penal Code. On account of his custody for a period exceeding 48 hours, he came to be placed under suspension by order dated 04.07.2013 from the date of his arrest. During pendency

of criminal prosecution, a preliminary enquiry was conducted to examine whether initiation of disciplinary proceeding was warranted. The Enquiry Officer appointed by Zilla Parishad gave a report on 05.04.2016 recommending that initiation of disciplinary proceedings was not warranted.

4. In Sessions Case No.77 of 2013, Petitioner came to be acquitted vide judgment and order dated 22.10.2016. He came to be reinstated by order dated 13.04.2017. A show cause notice was issued to him on 09.04.2018 proposing to treat the suspension period from 20.03.2013 to 30.04.2017 only as qualifying service for pension. Petitioner submitted his representation to the show cause notice on 23.04.2018 and after consideration of the same, Chief Executive Officer of Zilla Parishad passed order dated 31.05.2019 / 03.06.2019 directing that the suspension period from 20.03.2013 to 13.04.2017 shall be treated only for payment of subsistence allowance and would be counted only towards qualifying service for pension. The appeal preferred by him before the Divisional Commissioner has been rejected by order dated 20.07.2021.

5. Mr. Ambetkar, the learned counsel for Petitioner would submit that Petitioner has been acquitted in the criminal case and

therefore, the entire period of suspension is required to be treated as duty for all purposes. He relies upon provisions of Rule 72 of the Maharashtra Civil Service (Joining Time, Foreign Services and Payments during Suspension, Dismissal and Removal) Rules, 1981 to contend that the petitioner is required to be paid full pay and allowances since the suspension is found to be totally unjustified. Mr. Ambetkar would rely upon judgment of the Apex Court in **Brahma Chandra Gupta vs. Union of India**, 1984 AIR (SC) 380 as well as decision of this Court in **Baban Shriram Wafare vs. Zilla Parishad**, 2002 (4) of ALL M.R. 155.

6. Inviting my attention to the Enquiry Officer's report dated 05.04.2016, Mr. Ambetkar would contend that since a conscious decision was taken not to conduct any disciplinary enquiry, the finding of acquittal recorded by the criminal court is required to be implemented for all purposes for payment of full pay and allowances to the petitioner.

7. Mr. Lokhande, the learned AGP opposes the petition submitting that Petitioner had got himself embroiled in the criminal case and his acquittal in the same cannot be a reason for payment of full pay and allowances. He would submit that the impugned orders

are passed after granting due opportunity of hearing to Petitioner.

8. Mr. Usmanpurkar, the learned counsel appearing for the respondent - Zilla Parishad also opposes the petition. He would submit that the petitioner has an alternate remedy of filing revision before the State Government under Rule - 15 of the Maharashtra Zilla Parishad District Service (Discipline and Appeal) Rules, 1964. So far as the merits of the petition is concerned, Mr. Usmanpurkar would submit that the petitioner was working on the post of Assistant Teacher and the allegations made against him in the criminal case were serious in nature. He would submit that this Court ought to take into consideration the serious accusation made against Petitioner of attempting to kill his wife and solemnizing second marriage with another lady. He would further submit that the acquittal is a result of compromise between the parties and that the same cannot be treated as a honorable acquittal for the purpose of payment of full pay and allowances to him. He would therefore pray for dismissal of the petition.

9. Rival contentions of the parties now fall for my consideration.

10. In the present case, Petitioner remained under

suspension for a long period from 20.03.2013 to 13.04.2017. By order dated 28.10.2014 subsistence allowance payable to him was increased to @ 75% of his pay and allowances. Petitioner has thus received 75% of the pay and allowances during the period of his suspension from 20.03.2013 to 13.04.2017. The only issue is about the balance 25% pay and allowances as well as the benefit of pay fixation. The suspension period is already treated as qualifying service for the purpose of pension.

11. The issue of treatment of period of suspension and payment of pay and allowances during intervening period has been dealt with by the Apex Court in its judgment in **Krishnakant Raghunath Bibhavnekar v. State of Maharashtra**, (1997) 3 SCC 636 in which the Hon'ble Supreme Court has held as under:

“4. Mr Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72 (3) of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules, 1991 (for short “the Rules”), the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension, as not being warranted under the Rules. We find no force in the contention. **It is true that when a government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the**

suspension period as duty period, as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Penal Code, 1860. **If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject**

of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paras 5 and 6 of the additional affidavit.”

(emphasis supplied)

12. As per the ratio laid down by the Hon'ble Supreme Court, it is necessary to go through the order of acquittal for the purpose of determining whether the employee can be paid full pay and allowances during the period of his suspension. Accordingly, I have gone through the judgment of the acquittal dated 22.10.2016. Perusal of the judgment shows that the petitioner was accused of attempting to kill his wife Dipika on 18.03.2013 by pouring kerosene on her person. He was also accused of having illicit relations with

another lady named Surekha Lalman More with whom he was alleged to have solemnized another marriage. No doubt, the petitioner has been acquitted in the criminal case. However, the acquittal is on account of his wife Dipika not supporting the prosecution's case. This was possibly on account of subsequent divorce between the couple and a compromise between them. Since Dipika did not support the prosecution case, the Sessions Court was left with no option but to acquit the petitioner. This is thus not a case of honorable acquittal. In my opinion, therefore the petitioner would not be entitled to full pay and allowances during the period of his suspension.

13. Also of relevance is the fact that Petitioner has faced criminal prosecution arising out of his private affairs unconnected with performance of his duties. His employer had not registered FIR against him nor was it responsible for his prosecution. Petitioner had disabled himself from attending duties on account of his arrest and prosecution. The law mandates keeping a government servant to be placed under suspension owing to his custody beyond 48 hours. The employer was thus not responsible for Petitioner's non performance of duty during the period of his prosecution. Despite this, the Zilla Parishad has paid 75% of pay and allowances to Petitioner during the

period of suspension. In such a situation, whether the employer can be saddled with the liability of pay full pay and allowances is the question. The issue of liability to pay backwages to employee embroiled in criminal case in his/her private capacity is dealt with by this Court in **Sandhya v. State of Maharashtra**, (2020) 1 Mah LJ 935 in which it is held as under:

“10. The petitioner was convicted in the criminal trial on 30-11-2004 and on that basis, her services were terminated by the order dated 10-5-2005. Prior thereto she was placed under suspension in view of the fact that she was arrested on 18-9-1999 and was in police custody till 24-9-1999. From 10-5-2005 till 25-4-2018 she was not in a position to render her services as the order of conviction was not set aside till that date. It is only after 25-4-2018 when the order of conviction was set aside that the petitioner was in a position to render services. **The prosecution of the petitioner was not on account of any act committed during the course of employment with the department. In other words, for an act committed when she was a citizen the petitioner came to be prosecuted. The department was in no manner involved but it was deprived of taking services of the petitioner for the aforesaid period. Since the department was not at fault, it cannot be called upon to pay the petitioner backwages for the entire period when it could not take services from the petitioner.** In this regard, it is necessary to refer to the decision in *Union of India v. Jaipal Singh*, 2004 (3) Mh.L.J. (S.C.) 793 : (2004) 1 SCC 121. The services of the employee therein came to be terminated on account of his involvement and subsequent conviction for an offence punishable under section 302 of the Penal Code, 1860. On his acquittal, the employer was directed to reinstate the said employee in service with full backwages and other consequential benefits. This order passed by the High

Court was challenged by the employer before the Hon'ble Supreme Court. In that context the following observations in paragraph 4 were made which are found to be relevant:

4. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different consideration may arise. **On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent."**

In *Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujrat Electricity Board, Himmatnagar*, (1996) 11 SCC 603, an employee who was dismissed from service on account of his conviction under section 302 of the Penal Code, 1860 was directed to be reinstated in service after his acquittal in appeal. He was denied backwages on the ground that he had disabled himself from rendering service on account of his conviction and incarceration in jail.

11. **From the aforesaid it becomes clear that if the employee as a citizen gets involved in a criminal case and the department is not responsible in any manner then the employer cannot be called upon to pay the employee for the period for which it could not avail the services of the employee.** A similar situation arises in the present case. The involvement of the petitioner in the criminal case had nothing to do with her employment as an Assistant Teacher. She was prosecuted as a citizen and hence for the period for which the conviction continued, the department could

not have engaged her services. It is only on her acquittal that it was possible for the employer to take her services. Hence, the petitioner would be entitled for backwages from 25-4-2018 when Criminal Appeal No.764/2004 was allowed and the petitioner came to be acquitted. She was not liable to be kept out of service thereafter. It is thus held that the petitioner is not entitled for backwages from 10-5-2005 to 24-4-2018.”

(emphasis supplied)

14. The principles enunciated in **Krishnakant Raghunath Bibhavnekar** (*supra*) and **Sandhya** (*supra*) are fully attracted in the present case. Therefore, mere acquittal of Petitioner would not automatically entitle him to full pay and allowances during the period of suspension.

15. There is yet another factor which is required to be borne in mind. Petitioner was accused of committing a serious crime and remained under custody for a long period of 66 days. If the prayer of Petitioner is accepted, he will have to be paid full pay and allowances even during the period during which he remained under custody. This cannot be countenanced in law. I am therefore of the opinion that the decisions taken by the Chief Executive Officer, Zilla Parishad Jalna and Divisional Commissioner, Aurangabad cannot be fault with.

16. What remains now is to deal with the judgments relied upon by Mr. Ambetkar. The decision in **Brahma Chandra Gupta** (*supra*) has been rendered by the Apex court in the peculiar facts and circumstances of the case. The Appellant therein had already retired from service and was fighting for a paltry sum of Rs. 3595/-. The facts in the present case and the facts in **Brahma Chandra Gupta** (*supra*) are entirely different. I have already dealt with the circumstances under which an order of acquittal came to be passed in the present case. Therefore the decision in **Brahma Chandra Gupta** (*supra*) is clearly distinguishable.

17. The judgment in **Baban Shriram Wafare** (*supra*) is rendered by this Court in absence of relevant provision being placed before it. This Court has observed that “*We have not been shown any other rule in the Appeal Rules as applicable to the petitioner which empowers the Zilla Parishad to deny him the benefit of continuity in service with consequential benefits including pay and its fixation, on acquittal in appeal, by this Court the employee therein was convicted and later acquitted in appeal.*” As against this, Rule 72 of Rules of 1981 specifically empowers the authority not to treat the period of suspension as duty depending on facts of a particular case. Rule 71 reads thus:

“72 Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty.

1. When a Government servant who has been suspended is reinstated or would have so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order:-

a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and

b) whether or not the said period shall be treated as a period spent on duty.”

18. Thus the decisions in **Bramha Chandra Gupta** and **Baban Shriram Wafare** (*supra*) cannot be construed to mean that in every case of acquittal, suspension period must be treated as duty for payment of full pay and allowances. As against the two judgments cited by Mr. Ambetkar, the judgment of the Apex Court in **Krishnakant Raghunath Bibhavnekar** (*supra*) is clear and specific. Payment of full pay and allowances is not automatic on acquittal of a government servant.

19. I am therefore of the considered view that no case is made out by the petitioner for interference by this Court in exercise of extraordinary jurisdiction under Article 226 or 227 of the Constitution of India. Petitioner has already received 75% pay and

allowances and entire period of suspension is directed to be treated as a qualifying service for pension, which includes the period of 66 days during which he remained under custody. Zilla Parishad cannot be saddled with further liability to pay full pay and allowances to Petitioner, who disabled himself from performing duties.

20. The Petition is thus devoid of merits. It is dismissed without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)