

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4485 OF 2018

Raju Gopal Chavan,
Age 50 years, Occ : Service,
As Deputy Accountant, PCMC
R/at: Kamraj Nagar, Yerawada,
Pune 411 006.

... **Petitioner**

Versus

1. The Commissioner,
Pimpri Chinchwad Municipal
Corporation, Pimpri, 411 008

2. Pimpri Chinchwad Municipal
Corporation Through :
its Secretary, Pimpri 411 008.

... **Respondents**

Mr. Abhijeet Kandharkar, Advocate for the Petitioner.

Mr. G. H. Keluskar, Advocate for the Respondent Nos.1 and
2.

**CORAM: S.V. GANGAPURWALA, Acting CJ &
S.G. CHAPALGAONKAR, J.**

DATED : DECEMBER 13, 2022

ORAL JUDGMENT (Per S. V. Gangapurwala, ACJ)

1. Rule. Rule made returnable forthwith. With the
consent of the parties, taken up for final disposal.

2. The petitioner joined services of respondents/
Corporation on 9th February 1984 as 'Clerk'.

3. The criminal case was instituted against the petitioner
for offences punishable under Sections 306 and 498A of the

Indian Penal Code (**IPC**) in the year 1985. The petitioner was convicted on or about 16th May 2002 for the said offences by the Sessions Court. The petitioner preferred an appeal before this Court. Upon conviction of the petitioner in sessions case, the respondents/Corporation dismissed the petitioner from service on or about 30th December 2004. on 3rd July 2014, the appeal filed by the petitioner is allowed and the petitioner stood acquitted in the said sessions case. On or about 29th September 2015, the petitioner is reinstated in service on the minimum basic salary for the post of Deputy Accountant.

4. On or about 1st June 2017, the respondents/Corporation rejected the request of petitioner for continuation of service and back wages.

5. The learned Advocate for the petitioner submits that the petitioner has been honourably acquitted in the sessions case. In view of that, the petitioner is entitled for salary from the date the petitioner was terminated to the date of reinstatement. The departmental enquiry was not conducted. According to the learned Counsel, the petitioner would have been entitled for all consequential benefits such as increments, continuity in service. The petitioner has superannuated in the year 2019.

6. The learned Advocate for respondents/Corporation submits that the petitioner was convicted for the offences punishable under Sections 306 and 498A of the IPC. The Corporation has, within its rights, reinstated the petitioner on the minimum basic salary for the post on which the petitioner was working. No illegality has been committed by

the Corporation. The petitioner was convicted by the Competent Court. As such, the Corporation took conscious decision of terminating the services of petitioner and upon acquittal is reinstated in service and salary is also paid from the date prior to the reinstatement i.e. the date of judgment of this Court acquitting the petitioner. The learned Advocate for Corporation relies upon the judgment of Division Bench of this Court in ***Vasant Krushnaji Kamble v. State of Maharashtra & Anr.***¹.

7. We have considered all the submissions.

8. The factual matrix narrated supra do not seem to be disputed. The Authorities have purportedly relied upon Rule 70(1)(a) and (b) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, while negating the claim of the petitioner for continuation in service, increments and back wages.

9. In the present case, the Corporation did not initiate a departmental enquiry against the petitioner. In case, the petitioner would have been terminated upon conducting the departmental enquiry, then the respondents would have all grounds to agitate even against reinstatement. However, as the petitioner was terminated without conducting a departmental enquiry only on the basis of judgment of the Sessions Court convicting the petitioner, the respondents would be bound by the judgment of the Appellate Authority acquitting the petitioner. In light of that the consequences would follow. It is the fact that the petitioner could not

1 2004 (1) Bom.C.R. 396.

perform his duties for the period from the date of conviction by the Session Court and the date the petitioner was reinstated.

10. In light of that, it would be inappropriate on the part of respondents/Corporation to deny the petitioner the benefit of continuity in service. The petitioner would be entitled for continuity in service and notional increments for the period the petitioner was terminated and reinstated. As the petitioner could not perform his duties during the period the petitioner was terminated on his conviction and reinstatement, we are not inclined to give back wages to the petitioner.

11. In light of that, we pass the following order :

ORDER

- i) The respondents/Corporation shall grant continuity of service to the petitioner and all the notional increments that the petitioner would have been entitled to, if the petitioner was in service and the salary of the petitioner shall be fixed accordingly from the date the petitioner was reinstated that is the judgment delivered by this Court acquitting the petitioner i.e. 3rd July 2014.
- ii) The further salary be calculated accordingly and so also the pensionary benefits.
- iii) The aforesaid exercise shall be done within four months from today.
- iv) Rule accordingly made absolute in the above terms.

v) The writ petition is disposed of. No costs.

(S.G. CHAPALGAONKAR, J.) (ACTING CHIEF JUSTICE)

Digitally signed
by RAJU
DATTATRAYA
GAIKWAD
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