

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8755 OF 2018

Pramod s/o Rameshrao Khandetod,
Aged about 49 years,
Occupation – Primary Teacher in
Panchayat Samiti, Warud School,
R/o Roop Colony, Warud, District -
Amravati.

.... **PETITIONER**

VERSUS

- 1) The Divisional Commissioner,
Camp Road, Civil Lines, Amravati,
District – Amravati.
- 2) Chief Executive Officer,
Zilla Parishad, Amravati Camp Road,
Civil Lines, Amravati, District – Amravati.
- 3) Block Development Officer,
Panchayat Samiti, Morshi, Tq. Morshi,
District – Amravati.
- 4) Zilla Parishad, Amravati,
through it's Chief Executive Officer,
Camp Road, Civil Lines, Amravati,
District – Amravati.

.... **RESPONDENTS**

Mr. S.V. Deshmukh, Counsel for the petitioner,
Mrs. M.A. Barabde, AGP for respondent 1,
Mr. M.A. Sable, Counsel for respondents 2 to 4.

CORAM : ROHIT B. DEO, J.
DATED : 24th MARCH, 2022

ORAL JUDGMENT :

The petitioner is a Teacher on the establishment of the Zilla Parishad, Amravati.

2. The petitioner was arrested in Crime 115/2005 registered under the provisions of Sections 420, 468 and 120-B read with Section 34 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act) on the basis of complaint lodged by Mr. Rajabhau Bijwe.

3. In view of the arrest, the petitioner was suspended from service with effect from 23-8-2005.

4. A departmental enquiry was initiated under Rule 6 of the Maharashtra Zilla Parishads District Service (Discipline and Appeal) Rules, 1964 (Rules).

5. Perusal of the charge-sheet reveals that the petitioner was accused of committing breach of Rules 14 and 15 of the Rules on the premise that he acted as agent of the Demonet Marketing and Retail Trading Company Pvt. Ltd. (Company) without seeking the approval of

the departmental head, and further of having induced teachers and others to invest in the Company by promising delivery of vehicles at discounted price.

6. The petitioner denied the allegations in the charge-sheet unequivocally.

7. In the departmental enquiry the only witness examined in support of the charge is Mr. Rajabhau Bijwe, who deposed that Rs.17,000/- (Rupees Seventeen Thousand) was given to the petitioner for purchasing Victor two wheeler within six months, the vehicle was not delivered and the petitioner did not refund the amount. Mr. Rajabhau Bijwe then deposed that it was the petitioner who delivered to him cheque for Rs.15,000/- (Rupees Fifteen Thousand) issued by the Company, which was dishonoured, and after complaint under Section 138 of the Negotiable Instruments Act, 1881 was instituted, the Company paid the amount covered by the cheque. Mr. Rajabhau Bijwe further deposed that the petitioner induced teachers and other prosperous citizens to invest in the Company and the investors were not delivered the vehicle promised. While the petitioner did not cross-examine the witness, he gave a statement in the enquiry denying every allegation.

8. The Enquiry Officer held the charge proved and the disciplinary authority imposed punishment as stoppage of two increments and further directed that the period of suspension shall be treated as suspension.

9. Aggrieved, the petitioner preferred Appeal 18/DB/MDS/Amravati/2017-18 under Rule 14 of the Rules, which is dismissed by the appellate authority vide order dated 21-9-2018.

10. Dissatisfied with the punishment imposed and the dismissal of the appeal, the petitioner is invoking writ and supervisory jurisdiction.

11. After hearing the learned Counsel for the parties and scrutinizing the record, the question which fall for consideration is whether, the charge is proved, even if the entire evidence on record is accepted at face value.

12. Before I advert to the Rules invoked and the evidence on record, it would be apposite to state that on identical, and indeed more serious allegations, the petitioner was tried for offences punishable under the provisions noted supra and was given a clean acquittal by the learned Special Judge (MPID), Amravati vide judgment dated 02-5-2015. Mr.

Rajabhau Bijwe, who is the only witness examined in the departmental enquiry, entered the witness box in the criminal trial as the informant. The learned Special Judge has held that the evidence of Mr. Rajabhau Bijwe demolishes the prosecution case that accused played fraud on him and failed to repay the money. The petitioner was arraigned as accused 3 in the trial, and his role is discussed thus by the learned Special Judge :

“In this regard I see that, prosecution failed to prove any document to show that accused No.3 ever issued any cheque or that company issued any receipt or cheque. Informant admitted in his cross-examination that after lodging of the report, Demonrt Company paid back Rs.20,000/- to him including the principal amount and the interest on it. He further admitted in his cross-examination that he sworn affidavit on 12-08-2004 that the accused No.3 has no concern with that transaction. Thus, I see that evidence of this witness in fact demolished the prosecution case that accused played fraud on him and failed to repay the money to him by depositing amount to him.”

It would further be relevant to notice the following findings recorded by the learned Special Judge :

“15. Aforesaid discussion show that police failed to show that accused Nos.1 and 2 are Directors of Demonet Company and accused Nos.3 and 4 are agents of that company. Prosecution did not place on record any original document and thereby failed to prove any transaction between victims and Demonet Company through accused. Therefore, the prosecution utterly failed to prove its case. On the contrary, I see that the informant was paid back by the Demonet Company and therefore, Section 3 of M.P.I.D. Act is evaporated. Other Offences were not at all proved by the prosecution. Therefore, I answer all the points in negative.”

13. Ordinarily an acquittal in criminal trial may not have a bearing on the findings recorded in the departmental enquiry, since the standard of proof is different. While exoneration in the departmental enquiry of misconduct based on the same set of allegations may have some significance in the criminal trial, the reverse situation may not hold true. One exception would be if the evidence is common in the departmental enquiry and the criminal trial and the criminal court records a clean acquittal. While “clean” or “honourable acquittal” is not statutorily defined, an acquittal on the ground that the prosecution has miserably or totally failed to prove the case, is recognized to be a clean acquittal.

14. Mr. S.V. Deshmukh invites my attention to the decision of the Hon’ble Supreme Court in *G.M. Tank v. State of Gujarat & Another* reported in *2006 AIR (SC) 2129* to buttress the submission that in view of the clean acquittal recorded in the criminal trial, the punishment impugned must be set aside. Mr. S.V. Deshmukh would then rely on the decision of this Court in *Jijaba Namdeo Borude v. Union of India and Others* reported in *1995(2) Mh.L.J. 210*, which considers a situation where witness examined in the criminal trial did not support the prosecution and in the departmental enquiry deposed against the employee. This Court has held the enquiry report based on such

evidence vitiated.

15. Few other decisions are cited by Mr. S.V. Deshmukh which need not detain me since, I am satisfied that even *de hors* the acquittal in the criminal trial, the misconduct is not proved. The evidence of the only witness examined in the departmental enquiry Mr. Rajabhau Bijwe, as noted supra, is in two parts. The first part refers to the alleged incident of the employee having acted on behalf of the Company. Even if the evidence is accepted at face value, no conclusion can be drawn that the employee is engaged in trade or business, which is the misconduct alleged. Such misconduct will have to be established after bringing on record a pattern or more than one instances of the employee having acted on behalf of the Company sufficient to infer that the employee was engaged in trade or business. The latter part of the evidence is vague, omnibus and in the absence of details, the employee cannot be condemned on the basis of such evidence, which is even otherwise hearsay. Whether hearsay evidence can be looked into is not the issue which falls for adjudication. I am emphasizing that since the evidence is hearsay, in the absence of any relevant detail, even in a departmental enquiry, the probative value of such evidence is suspect.

16. The learned Counsel for the Zilla Parishad Mr. M.A. Sable has not

argued that apart from the evidence of the complainant Mr. Rajabhau Bijwe, there was any other or further evidence in the departmental enquiry to justify the finding of guilt.

17. The orders impugned are quashed.

18. The petition is allowed in terms of prayer clause (a), which reads thus :

“quash and set aside the order dated 21-9-2018 passed by the Respondent No.1-Divisional Commissioner, Amravati at Annexure-A and also the order dated 20-2-2018 passed by the Respondent No.2-Chief Executive Officer, Z.P., Amravati at Annexure-B, and direct the Respondents to grant the Petitioner all the consequential monetary benefits by quashing the aforesaid orders.”

JUDGE

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