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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5856 OF 2023

Tulshidas F. Nagvekar

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Ms. Advaita M. Lonkar a/w Mr. Om N. Lonkar for petitioner.
Mrs. R. A. Salunkhe, AGP for State.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: MAY 2, 2023

P.C.:

1. The petitioner has filed Original Application bearing No.172 of 2021 before the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) challenging the order passed by the Deputy Commissioner of Police, thereby treating the period from 14th January, 2003 to 25th September, 2005 as period of suspension 'as such' for all purposes in terms of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

2. The learned counsel for the petitioner submits that though the petitioner was initially held guilty in the disciplinary proceeding, however, the revisional authority exonerated the petitioner by reversing the finding of the disciplinary authority. In all the three criminal cases against the petitioner, the petitioner is acquitted by the Sessions

Court. The said acquittal is clean acquittal. According to the learned counsel the suspension period has to be treated as duty period, more particularly, when the petitioner is exonerated in the departmental proceeding and also acquitted in the criminal cases filed against him. The learned counsel submits that it would be erroneous on the part of the disciplinary authority, so also the Tribunal to observe that the acquittal of the petitioner in the criminal cases is not a clean acquittal but the benefit of doubt has been given to the petitioner.

3. The learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in Writ Petition No. 4178 of 2001, dated 25th October, 2001 (**Shri Vitthal Ambadas Shinde vs. State of Maharashtra & Ors.**) and submits that when the evidence has been adduced in the criminal case and the evidence has been found to be not acceptable, then the acquittal is clean acquittal.

4. We have heard the learned AGP.

5. The disciplinary inquiry was initiated on two counts; (i) unauthorized absence and (ii) criminal case is filed against the petitioner.

6. The petitioner held guilty in the departmental proceeding by the disciplinary authority. The petitioner's appeal was also dismissed. However, the revisional authority allowed the revision on the ground that petitioner has been acquitted in the criminal cases.

7. The Deputy Commissioner of Police passed an order treating the period of suspension as suspension period and not as duty period. The Tribunal has considered the judgment delivered by the criminal court and held that the acquittal

given to the petitioner was not a clean acquittal but the acquittal on count of non-examination of witnesses. The Tribunal also relied on the judgment of the Apex Court in the case of **Krishnakant R. Bibhavnekar vs. State of Maharashtra & Ors.** reported in (1997) 3 SCC 636 and the judgment of the Division Bench of this Court in the case of **Vasant K. Kamble vs. State of Maharashtra**, reported in (2003) 4 Mh.L.J. 606.

8. The learned counsel for the petitioner took us through the judgments delivered by the Sessions Court in the criminal cases. In one criminal case, as the witnesses had turned hostile, the petitioner was acquitted. In criminal case bearing Sessions Case No. 212 of 2003, the petitioner was given benefit of doubt. In para 22 of the judgment, the Sessions Court observed that the prosecution could have examined at least one intendent person from them to lend support to the prosecution case that the accused looted the hotel, customers and lady dancers as alleged. Non-examination of independent witnesses, through available, creates doubt about the prosecution case.

9. All these aspects have been considered by the Tribunal in its judgment.

10. Though the revisional authority had allowed the revision and set aside the punishment imposed in the departmental proceeding; however, it appears that the effect of unauthorized absence was not considered by the revisional authority.

11. Be that as it may, we may not go into the merits of the same. The Tribunal has considered that the acquittal in the criminal cases was not a clean acquittal but based on benefit

of doubt and after considering the judgment of the Apex Court in **Krishnakant R. Bibhavnekar** (Supra) has rightly dismissed the original application.

12. In light of that, no case is made out for interference. The writ petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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DASHARATH
PANDIT
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