

(This is the corrected copy of the order)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14083 OF 2023

IN

REVISION APPLICATION (ULP) NO. 115 OF 2015

IN

COM (ULP) NO. 218 OF 2013

M.C.G.M.

...Petitioner

V/s.

Shri. Shridhar Govind Hatim

....Respondent

Mr. Drupad Patil with Mr. R.Y. Sirsikar and Mr. Santosh Parad, for the Petitioner.

Mr. Vinay V. Menon, i.by. Mr. Kishore Shetty, Ms. Kirti Shetty and Mr. Deep Samant, for the Respondent.

Mrs. Sunita Lokare, Administrative Officer (Establishment) from Rajawadi Hospital present.

CORAM : SANDEEP V. MARNE, J.

Dated : 9 November 2023.

P.C. :

1. The Municipal Corporation for Greater Mumbai has filed the present petition challenging the Judgment and Order dated 4 August

2021 passed by the President, Industrial Court, Mumbai thereby allowing Revision Application (ULP) No. 115 of 2015. The Industrial Court has set aside the Judgment and Order dated 18 November 2015 passed by the 4th Labour Court, Mumbai in Complaint (ULP) No. 218 of 2013 and has allowed the said complaint. The Industrial Court has set aside the dismissal order dated 22 January 2013 and has directed the Municipal Corporation to reinstate the complainant in service w.e.f. 19 December 2012 with backwages.

2. The facts in brief are that Respondent joined municipal service in the year 1986 and was posted as Ward Boy in the year 1998. He was posted as Ambulance Attendant on 19 May 1990. It appears that the Respondent was prosecuted for offence punishable under Section 498A of the Indian Penal Code which resulted in his conviction Vide Judgment and Order dated 7 February 2012. he was sentenced to undergo rigorous imprisonment for six months and fine of Rs.2,000/-. It appears that in pursuance to his conviction, he remained in custody from 7 February 2012 to 16 June 2012. On account of his conviction, the Municipal Corporation issued show cause notice to the Respondent on 23 November 2012 and after receipt of his reply dated 4 December 2012, the Municipal Corporation issued order dated 22 January 2013 imposing the penalty of dismissal from service. The penalty order was however given effect from 19 December 2012.

3. The Respondent approached the Labour Court, Mumbai by filing Complaint (ULP) No. 218 of 2013, which came to be dismissed by the Labour Court by its judgment and order dated 18

November 2015. The Respondents filed Revision Application (ULP) No. 115 of 2015 before the Industrial Court which has allowed the Revision Application and while reversing aside the decision of the Labour Court, has directed reinstatement of the Respondent w.e.f 19 December 2012 by setting aside the dismissal order dated 22 January 2013.

4. It is common ground that during pendency of the Revision Application before the Industrial Court, the Respondent came to be acquitted by this Court by Judgment and Order dated 14 February 2020. It is also common ground that apart from his conviction, the Municipal Corporation did not initiate any disciplinary enquiry against the Respondent and the only reason for his dismissal was the conviction in the Criminal Court. In view of his acquittal by this Court on 14 February 2020, the Respondent became entitled for reinstatement from the date of his acquittal. However, it appears that the Municipal Corporation did not reinstate him in service in pursuance of his acquittal. In the meantime, the Industrial Court delivered Judgment and Order dated 4 August 2021 setting aside the dismissal order.

5. I have heard Mr. Patil, learned counsel appearing for the Petitioner-Municipal Corporation and Mr. Menon, the learned counsel appearing for the Respondent.

6. After considering the submissions canvassed by the learned counsel appearing for the parties, I am not in agreement with the

findings recorded by the Industrial Court in allowing the Revision Application and for setting aside the dismissal order. In my view, once the Respondent was convicted by a Court of competent jurisdiction and was sentenced to undergo rigorous imprisonment of six months, the employer was entitled to impose the penalty of dismissal from service by taking into consideration the conviction of the employee. It really does not matter as to whether the conviction was on account of an offence involving moral turpitude or not. In any case, the Respondent was convicted for the offence punishable under Section 498A of the Indian Penal Code and it is difficult to hold that the said offence does not involve moral turpitude.

7. Be that as it may, the Respondent now stands acquitted by Judgment and Order of this Court dated 14 February 2020. Since his conviction was the sole reason for imposition of penalty of dismissal from service, on account of conviction being set aside by this Court, he has become entitled to be reinstated in service. He has also become entitled for payment of full salary and allowances from the date of his acquittal. The only issue that remains now is about treatment of intervening period from the date of dismissal i.e. 19 December 2012 till the date of his acquittal i.e. 14 February 2020.

8. My attention is invited to the order dated 15 November 2020 passed by the Municipal Corporation reinstating Respondent in service subject to conduct of disciplinary enquiry. It also appears that the Respondent has in the meantime attained the age of superannuation and has retired from service on 31 January 2023. Considering these

developments, the present petition can be disposed of by directing reinstatement of the Respondent in service consequent to his acquittal with a further direction to pay him full salary and allowances from the date of acquittal till the date of superannuation with liberty to the Municipal Corporation to take a decision in respect of the treatment of intervening period.

9. I accordingly proceed to pass the following order :

- (i) The Judgment and Order dated 4 August 2021 passed by the Industrial Court is set aside and modified to the extent that the Respondent shall stand reinstated in service w.e.f 19 December 2012 consequent to his acquittal vide Judgment and Order dated 14 February 2020 passed by this Court.
- (ii) The Municipal Corporation shall pay salary and allowances to the Respondent from 14 February 2020 till the date of his actual retirement in pursuance of order dated 15 November 2020, within a period of two months.
- (iii) The Municipal Corporation shall pass an order in respect of the treatment of period from 19 December 2012 to 13 February 2020 in accordance with Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and payments during Suspension, Dismissal and Removal) Rules, 1981, Such decision be taken by the Municipal Corporation within a period of two months from today.

(iv) In the event, the intervening period is directed to be treated as 'Duty' and a decision is taken for payment of full or part backwages, the amount of backwages arising out of such decision be paid to the Respondents within a period of two months from the date of the decision.

(v) The Municipal Corporation shall process the pension proposal of the Respondent immediately after taking decision with regard to the intervening period.

10. With the above directions, the Writ Petition is **disposed of**. Any interim applications pending therein shall also stand disposed of.

SANDEEP V. MARNE, J.

Note : Corrections are carried out in para-8 only pursuant to speaking to the minutes order dated 4 April 2024.

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