



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 4293 of 2024

Manjushree Mahesh Dalimbkar
Age 42 years, occ. Service
R/o Aai Niwas, Mauli Nagar,
Miri Road, Shevgaon, Tq. Shevgaon
District Ahmednagar

....Petitioner

VERSUS

1. The Chief Executive officer
Zilla Parishad, Ahmednagar

2. The Education Officer (Primary)
Zilla Parishad, Ahmednagar

.....Respondents

Mr. S. S. Jadhavar, Advocate for the Petitioner
Mr. A. D. Aghav, Adovcate for Respondent Nos. 1 and 2.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 25th APRIL, 2024.

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The Petitioner has put forth prayer clauses 'B' and 'C',
as under :-

B) By issuing writ of mandamus or any other appropriate writ, order or direction, respondent No. 1 may kindly be directed to grant 100% back wages to the petitioner for the period from 25.01.2007 to 09.09.2023 by treating said period as in-service period.

C) By issuing writ of mandamus or any other appropriate writ, order or direction, respondent No. 2 may kindly be directed to grant benefit of continuity of service to the petitioner from 25.01.2017 (date of termination) to 09.09.2023 (date of reinstatement) by treating said period as in service period with further direction to grant all consequential benefits to the petitioner including annual increment, benefits of 6th Pay Commission, revision in pay scale, payment of arrears of revised pay etc.

3. The Petitioner was an accused along with her husband in Crime No. I-98/2014 and the First Information Report was registered for offences punishable under Sections 376, 341 and 506 read with Section 34 of the Indian Penal Code. By judgment dated 20.05.2016, the learned Trial Court convicted the Petitioner for committing an offence punishable under Section 342 read with Section 34 of the

Indian Penal Code and her husband was convicted for the offence punishable under Section 376 of the Indian Penal Code.

4. The Petitioner approached this Court in Criminal Appeal No. 336/2016, along with an application for suspension of conviction. The learned Single Judge (Summer Vacation) delivered an order on 03.06.2016 in Criminal Application No. 2849/2016 and observed in Paragraph No. 8 as under :-

“8. So far as the prayer made by the learned Counsel for the applicants for suspension of conviction against applicant no. 2 is concerned, I find substance in the same. If the conviction recorded against applicant no. 2 is not suspended, there is every possibility that she may invite the penalty of dismissal from the service on the basis of the said conviction. I, therefore, think it fit to suspend the conviction, so far as applicant no. 2 is concerned. The application is liable to be allowed partly with the following order:-

(a) The substantive sentence imposed upon applicant no. 1 (original accused no. 1), namely, Mahesh Ambadas Dalimbar, for the offences punishable under Sections 376, 342 read with Section 34 and Section 506 of the Indian Penal Code, vide judgment and order dated 20.05.2016, in Sessions Case No. 244 of 2014, passed

by the Special Judge and Addl. Sessions Judge, Ahmednagar, are suspended and the said applicant is directed to be released on bail pending hearing and final disposal of the Criminal Appeal No. 336 of 2016, on his executing personal bond in the sum of Rs. 15,000/- (Fifteen thousand) with a surety in the like amount.

(b) The conviction recorded and substantive sentence imposed upon applicant no. 2 (original accused no. 2), namely, Manjushri Mahesh Dalimbar, for the offence punishable under Section 342 read with Section 34 of the Indian Penal Code, by the aforesaid judgment and order, are suspended and she is directed to be released on bail pending hearing and final disposal of Criminal Appeal No. 336 of 2016, on her executing personal bond in the sum of Rs. 10,000/- (Ten thousand) with a surety in the like amount.

(c) Bail bonds shall be furnished before the trial Court.

(d) The Application stands disposed of accordingly.

5. The Petitioner was issued with an order of termination dated 30.11.2016, on the sole ground that the Petitioner was convicted for a criminal offence and a sentence was imposed upon her. Being aggrieved by the said termination, the Petitioner

approached the Divisional Commissioner, Nasik Division in Appeal No. 12/2017, which was rejected by order dated 30.11.2018.

6. The Petitioner therefore approached the learned Single Judge of this Court and, by order dated 14.06.2023, the learned Single Judge has recorded in paragraph No. 9 as under :-

“9. Learned advocate for the petitioner submits that the order of termination is passed solely on the ground that there is a conviction recorded by the criminal court. He submits that once there was stay/suspension to the order of conviction, there was no question of terminating the petitioner on the ground of conviction. Technically on the day of passing of the order there was no conviction in existence and prayed for quashing of the order.

7. We have no reason to deal with the observations of the learned Single Judge on the issue of suspension of conviction as set out in the above reproduced paragraph. The law on this point is settled. In National Insurance Company Limited & others vs. T. Mahendran, **(2010) 12 Supreme Court Cases 47**, the Hon'ble Supreme Court concluded that entitlement to reinstatement with backwages, if conviction is set aside by the Appellate Court, is not automatic. The High Court allowed reinstatement with backwages,

without examining in details as to whether the employee would be automatically entitled to backwages and other benefits consequent upon reinstatement, including promotion. The matter was remanded for decision afresh.

8. In Basanti Prasad vs. Chairman, Bihar School Examination Board & others, **(2009) 6 Supreme Court Cases 791**, after the conviction was set aside by the Appellate Criminal Court, the Hon'ble Supreme Court set aside the termination which was based purely on the conviction, in the absence of any Departmental Enquiry. However, it was held that the widow would not be entitled to the backwages.

9. In State Bank of India & another vs. Mohammed Abdul Rahim, **(2013) 11 Supreme Court Cases 67**, the Hon'ble Supreme Court held that reinstatement following reversal of conviction, is permissible. Grant of backwages is not automatic on reinstatement and such entitlement is to be judged in the context of the totality of the facts of a given case. His subsequent acquittal though obliterates his conviction, does not operate retrospectively to wipe out the legal consequence of conviction under the act.

10. In Banshi Dhar vs. State of Rajasthan & another, **(2007) 1 Supreme Court Cases 324**, the Hon'ble Supreme Court concluded that acquittal in a case and reversal of the conviction would not automatically entitle the employee for backwages. No hard and fast rule can be laid down in regard to grant of backwages. Each case is to be determined on its own facts. In Corp. Mithilesh Kumar @ Mithilesh Singh vs. Union of India & others, **(2020) 2 Supreme Court Cases 423**, the Hon'ble Supreme Court concluded that mere acquittal does not entitle the appellant to backwages and consequential benefits.

11. In Ram Lal vs. State of Rajasthan & others, **(2024) 1 Supreme Court Cases 175**, the Hon'ble Supreme Court reiterated that mere acquittal in criminal proceeding does not confer any right on an employee to claim benefits, including reinstatement. However, where charges in Departmental Enquiry and Criminal Court are identical, evidence, witnesses and circumstances are also the same, and where the Court in exercise of judicial review finds that the acquittal in criminal proceedings was after full consideration of prosecution evidence which miserably failed to prove the charges, the

Court can interfere with the order passed by the disciplinary authority.

12. The prayer of the Petitioner before us is that the Petitioner be treated as being in continued service and as the termination is set aside, the Petitioner should be granted 100% backwages from 25.01.2017 till 09.09.2023.

13. We have perused prayer clause (E) set out by the Petitioner before the learned Single Judge, in Writ Petition No. 2987/2019, which was partly allowed by judgment dated 14.06.2023. Prayer clause 'E' reads as under :-

E) By issuing writ of mandamus or any other appropriate writ order or direction, the respondents may kindly be directed to reinstate the petitioner in service as an Assistant Teacher on the Establishment of Zilla Parishad, Ahmednagar with full back wages and all other consequential benefits.

14. As such, the Petitioner did pray for full backwages and consequential benefits. The learned Single Judge, while dealing with the said Petition, in which the order dated 14.06.2023 has been passed, has recorded in paragraph No. 14 that the petition stands

allowed in terms of prayer clauses B, C and D. With regard to the rest of the prayers, the learned Single Judge recorded as “*Needless to say that the petitioner is at liberty to prosecute for other reliefs.*”

15. The issue, therefore, is as to whether the Petitioner can be termed to be reinstated in service full backwages. Apparently, the learned Single Judge has not granted full backwages to the Petitioner. The Criminal Appeal is still pending before the High Court. The learned Advocate for the Zilla Parishad submits that if the conviction is confirmed by the learned Single Judge, the Petitioner will have to be again dismissed from the service. It is trite law that in such circumstances, if the conviction is confirmed, the employer can dismiss the employee and such dismissal would relate back to the first date of dismissal from employment upon conviction. The doctrine of ‘relation back’ would be squarely applicable in such cases.

16. The Petitioner is before us under Article 226 of the Constitution of India praying for a Writ of Mandamus. This is a Court of equities and equities will have to be balanced by considering the facts and circumstances of each case. The Petitioner’s

reinstatement in service is apparently conditional which is dependent upon the fate of the pending Criminal Appeal. If the conviction is confirmed, the Petitioner will have to be dismissed from service.

17. As such, it would be equitable at this stage to refuse backwages to the Petitioner since this would be dependent upon the decisive decision in the pending Criminal Appeal. If the Criminal Appeal is dismissed confirming the conviction, dismissal from service will have to be confirmed. The issue would be as to how should the backwages for the period from 25.01.2017 to 09.09.2023, during which period the Petitioner had not been in employment, could be recovered.

18. The Government Resolution dated 14.09.2015, issued by the General Administrative Department, State of Maharashtra, pertaining to suspension of conviction in criminal matters, provides that if the conviction is suspended, the employee need not be dismissed from service. It is well settled that if the sentence is suspended, the employee cannot be reinstated in service. It is only if the conviction is suspended that, for the time being, the employee may be reinstated in service. Since this litigation is dependent upon

the fate of the Appeal which will lead to either acquittal or confirmation of conviction, it would be pragmatic to keep the issue of backwages pending till the decision in the Criminal Appeal, lest, it would amount to granting entire relief to the Petitioner though conviction is the subject matter of confirmation before the High Court.

19. The learned Advocate for the Petitioner is justified in contending that notwithstanding the above fact situation, the Petitioner would be entitled to the salary scale at par with the comparable co-employees. Though the Zilla Parishad has opposed this prayer, we find that the Zilla Parishad would not be justified in refusing equal salary for equal work, in the light of the peculiar facts of this case.

20. In view of the above, **this Writ Petition is partly allowed.** While declining the relief in terms of prayer clause 'B' at this stage, keeping it open to be canvassed by the Petitioner if the conviction is converted into acquittal, we have no hesitation in directing the Zilla Parishad to treat the Petitioner at par with the comparable co-employees and the salary as per the Sixth Pay

Commission or 7th Pay Commission, as the case may be, shall be calculated and the present salary scale shall be made applicable. Arrears, on this aspect of the salary scale from the date of reinstatement of the Petitioner, can be calculated and the said arrears from 10.09.2023, subject to the decision in the pending Criminal Appeal, can be granted to the Petitioner. Let such arrears be paid within 90 days and let the re-calculated pay scale be commenced from the salary payable in the month of June.

21. Rule is made partly absolute in the above terms.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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