



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No.2574 OF 2024

1. **The State of Maharashtra,**
Through Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. **The Director General of Police,**
Shahid Bhagat Singh Marg, Colaba,
Mumbai – 1.
3. **The Commissioner of Police,**
Thane Central Ground, Thane. ..Petitioners

Verses

Bhimrao Rohidas Ghadge,
R/at – 1004, A type, B-Wing,
Wadhwas Meadow, Borwadi,
Khadakpada, Kalyan (W),
Dist. Thane – 421 301. ..Respondent

Mr. N. K. Rajpurohit, AGP for the Petitioners (State).
Mr. S. B. Talekar a/w Ms. Madhavi Ayyappan i/by Talekar & Associates
for the Respondent.

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

Date on which arguments were heard : 26th FEBRUARY 2024.
Date on which the judgment is pronounced : 1st MARCH 2024.

JUDGMENT: (per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties.

2. This petition is filed under Article 226 of the Constitution of India by the Petitioner-State (original “respondents” before Tribunal) challenging the order passed by the Maharashtra Administrative Tribunal (for short ‘Tribunal’) in OA No.273 of 2022 dated 22nd November 2023, whereby the Respondent’s (“original applicant”) application to regularize the period of suspension from 23rd August 2015 to 28th November 2018 was allowed with all consequential benefits.

Brief facts are as under :-

3. The Respondent joined the service of the Petitioner as Police Sub-Inspector (PSI) in the year 1992 and was promoted as Assistant Police Inspector in the year 2002 and was further promoted to the post of Police Inspector in the year 2008.

4. On 23rd August 2015, the Respondent was suspended from the service and the said suspension was revoked on 28th November 2018. Thereafter various representations were made by the Respondent to regularize the suspension period, but since the Respondent did not receive any favourable reply an OA was filed with the Tribunal being OA No.402 of 2022. The said OA was disposed of by the Tribunal with a direction to the Petitioner to decide the representation within six weeks. On 16th February 2023, representation of the Respondent was rejected. Being aggrieved by the said rejection, the Respondent filed an OA on 10th March 2023 before the Tribunal being OA No.273 of 2023.

5. On 22nd November 2023 the Tribunal allowed the said OA on the ground that the suspension order was based on an offence in which the Respondent has been exonerated and with respect to the other cases, the Respondent has been either acquitted or discharged and no stay has been obtained by the Petitioner in appeal against such acquittal / discharge. It is on this backdrop that the present petition is before us.

6. The Petitioners submits that with respect to the acquittal orders passed by the Court, an appeal is preferred by the Petitioners and same is pending. However, the Petitioners fairly stated that there is no stay to the order of acquittal by the Appellate Court. With respect to CR No.48 of 2015 under the Prevention of Corruption Act, 1988 the Respondent is discharged by a detailed order passed by the learned Additional Sessions Judge, Kalyan on 21st November 2022 since no proper sanction was taken by the Petitioners before initiation of the proceedings under the Prevention of Corruption Act, 1988. However, the Petitioners were granted liberty to seek fresh sanction and proceed against the Respondent. However, the Petitioners fairly submitted that till today, no fresh sanction has been obtained for initiating proceeding against the Respondent. The Petitioners submitted that since the appeals against the acquittal are pending, the order passed to regularize the suspension period by Tribunal is not justified and therefore the same is required to be set aside.

7. Per contra, the Respondent submitted that suspension order is based on CR No.48 of 2015 and since the Respondent is discharged in the said proceedings and no fresh sanction has been obtained, no interference is required in the order of the Tribunal and prayed for dismissal of the petition.

8. We have heard the learned counsel for the Petitioners and the Respondent and with their assistance have perused the documents annexed to the petition.

9. There is no dispute that on 26th August 2015, an order was passed by the Petitioners to suspend the Respondent from 23rd August 2015 and the said order of suspension was revoked on 28th November 2018. The suspension order was based on CR No.48 of 2015 under the Prevention of Corruption Act, 1988. The proceedings under the Prevention of Corruption Act, 1988 were adjudicated by the learned Additional Sessions Judge, Kalyan and the Sessions Court on 21st November 2022 discharged the Respondent on the ground that the Petitioners have not taken sanction of proper authority for initiating proceedings under the Prevention of Corruption Act, 1988. However, the Sessions Court granted liberty to the Petitioners to obtain fresh sanction and proceed against the Respondent. However, although the said order was passed on 21st November 2022, till today the Petitioners

have not obtained any fresh sanction so as to proceed against the Respondent under the Prevention of Corruption Act, 1988 although the period of almost more than 1 year and 3 months have passed. If the Petitioners were serious in proceeding with the charges under the Prevention of Corruption Act, 1988 against Respondent then they would have and ought to have expedited obtaining the sanction. This only indicates that the Petitioners are not serious in pursuing proceedings under the Prevention of Corruption Act, 1988.

10. It is further not disputed that the suspension order was based on the aforesaid proceedings under the Prevention of Corruption Act, 1988 and the Respondent having been discharged in the said proceedings, the whole basis of the suspension order falls to ground. It is also well settled that reasons recorded in the suspension order cannot be improvised by relying upon proceedings initiated subsequently against the Respondent in other charges. The Petitioners submitted that there cannot be more than 1 suspension order. However, the Petitioners could have passed suspension order with respect to other criminal proceedings against the Respondent and in that order they could have stated that the period for which the earlier suspension order was passed would run concurrently with subsequent orders. However, no such orders of suspension running concurrently seems to have been passed by the

Petitioners. Therefore, reliance placed by the Petitioners with respect to other proceedings against the Respondent to reverse the Tribunal's order is erroneous.

11. The Respondent is justified in contending that in the departmental enquiry proceedings with respect to CR No.48 of 2015 under the Prevention of Corruption Act, 1988 he was exonerated. If in the departmental enquiry proceedings he was exonerated then when it comes to proceedings in the Court under the Prevention of Corruption Act, 1988 the probability of the Respondent being convicted becomes bleak as held in *Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police & Anr*¹. Therefore, since the Respondent is found not to be guilty under the departmental enquiry proceedings, the submission of the Petitioners that the sanction as directed by the learned Sessions Judge, Kalyan is sought to be obtained loses its significance.

12. Even otherwise, with respect to other proceedings, the Respondent has been acquitted / discharged by the Appellate Court vide orders dated 3rd September 2022, 28th September 2022 and 29th September 2022. Although the Petitioners have challenged the said orders in appeal, but till today there is no adverse order against the Respondent. Therefore even on this count, the contention of the Petitioners to reverse the order of the Tribunal cannot be accepted.

1 Civil Appeal No.575 of 2020 decided on 8th September 2020

13. Viewed from any angle, in our opinion, the order passed by the Tribunal cannot be said to be perverse and therefore, no interference is required by this Court under Article 226 of the Constitution of India.

14. The Writ Petition is dismissed with no order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)