



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1137 OF 2014

Dr. Lalchand N. JumaniPetitioner
V/S
Municipal Corporation of Greater Mumbai & Ors.Respondents

Mr. Ashraf Shaikh i/b Ms. Rajashri D. Sapale *for the Petitioner.*

Mr. A.V. Bukhari, Senior Advocate with Mr. Burhan Bukhari and
Ms. Rupali Adhate i/b Ms. Komal Punjabi *for Respondent-MCGM.*

CORAM : S.M. MODAK &
SANDEEP V. MARNE, JJ.
DATE : 25 MARCH 2026.

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JUDGMENT (*Per Sandeep V. Marne J.*)

1. The Petitioner has filed the present Petition seeking a direction for treatment of suspension period from 29 November 1986 to 9 May 1990 as duty and for grant of full pay and allowances for the said period.

2. Petitioner joined the services of Municipal Corporation of Greater Mumbai in 1977 as Junior Medical Officer. He was promoted to the post of Medical Officer of Health on 1 January 1980 and was posted in various Wards. He was posted as Medical Officer of Health in 'S' Ward in the year 1985. On 20 November 1986, Petitioner was arrested by Anti Corruption Bureau (ACB) alleging demand and acceptance of illegal gratification of Rs.2,000/-. Petitioner was detained in custody and

accordingly he was placed under suspension with effect from 29 November 1986. Special Case No. 49 of 1987 was registered against him and chargesheet was filed on 9 October 1987 under Section 161 of the Indian Penal Code (**IPC**) read with Sections 5(2), 5(1)(d) and 5(1)(a) of Prevention of Corruption Act, 1947. Searches were also carried out in the residence and bank lockers of the Petitioner and it was alleged that the Petitioner possessed assets disproportionate to his known sources of income to the extent of Rs.7.7 lakh. Therefore, another case was registered against him by ACB under Section 5(1)(e) read with Section 5(2) of Prevention of Corruption Act, 1947. However, upon further investigations, the ACB did not file chargesheet in relation to offences of possession of disproportionate assets. Petitioner faced trial in Special case No.49 of 1987 relating to demand and acceptance of illegal gratification, and by judgment and order dated 28/29 September 1989, he was acquitted of all charges framed against him.

3. After Petitioner's acquittal in Special Case No.49 of 1987, he was reinstated in service with effect from 10 May 1990 by revoking the suspension. Municipal Corporation of Greater Mumbai (**MCGM**) however, proposed conduct of departmental enquiry against him and the Municipal Commissioner accorded sanction on 2 April 1991. However, in the meantime, ACB filed Criminal Appeal No.89 of 1990 before this Court challenging the acquittal order. On account of filing of Appeal by the ACB, MCGM did not issue chargesheet for conduct of departmental enquiry against the Petitioner. By judgment and order dated 6 November 2006, this Court proceeded to dismiss the Appeal preferred by the ACB.

4. In the meantime, Petitioner was once again trapped by ACB on 26 December 2000 on the allegation of demand and acceptance of illegal gratification and was again placed under suspension with effect from 3 January 2001. He was compulsorily retired from municipal service upon attaining the age of 55 years with effect from 4 November 2005 under Rule 14B of the Mumbai Municipal Corporation (Pension) Rules [MMC (Pension) Rules]. The proposals for treatment of suspension period from 29 November 1986 to 9 May 1990 as on duty was considered in the Municipal Corporation at various hierarchical levels from the year 2008 onwards. However, no final decision was taken for treatment of suspension period as duty. A file note put up on 7 September 2010 for treatment of suspension period from 29 November 1986 to 9 May 1990 as earned leave of 130 days, half pay leave of 368 days and 759 days as leave without pay and the same was approved by the Municipal Commissioner on 19 September 2010. This is how the Municipal Corporation has refused to treat the suspension period from 29 November 1986 to 9 May 1990 as duty. Petitioner preferred representation before the Municipal Commissioner on 16 June 2011. This was followed by several reminders dated 13 October 2011, 19 January 2012 and 15 March 2012. By letter dated 7 May 2012, Petitioner was informed that the Municipal Commissioner did not find it necessary to change the earlier decision. A Municipal Councilor thereafter made representation on behalf of the Petitioner to the Municipal Commissioner on 3 December 2012 and the Deputy Municipal Commissioner gave a response to the Municipal Councilor that necessary action was being taken on the representation.

5. In the above background, Petitioner has filed the present Petition seeking direction for treatment of suspension period from 29 November 1986 to 9 May 1990 as duty and for payment of pay and allowances for the said period.

6. Mr. Shaikh, the learned counsel appearing for the Petitioner has submitted that the suspension period is required to be treated as duty for all purposes, including full salary and allowances, on account of acquittal of the Petitioner in Special Case No.49 of 1987. That acquittal of the Petitioner is upheld by this Court by dismissing Criminal Appeal No.89 of 1990. He further submits that Petitioner has been acquitted honorably after holding that there was no evidence to prove charges against him. That MCGM has erroneously assumed that the acquittal is due to “benefit of doubt”. That in the entire judgment of the Special Judge, no finding is recorded to the effect that acquittal is on account of “benefit of doubt”. He submits that since suspension was only on account of criminal prosecution, natural consequence of acquittal is to treat the suspension period as duty under Regulation 75 of the Mumbai Municipal Corporation (Service) Regulations, 1989 [**MMC (Service) Regulations**]. He submits that positive opinions were given on three different occasions for treatment of suspension period as duty. That the said opinions are ignored and the Municipal Corporation has erroneously treated the suspension period as earned leave, half pay leave and leave without pay. That the Petitioner was implicated in a false case since he had raised issues about illegal recruitments done in the Municipal Corporation. That Petitioner has been compulsorily retired from service by taking into consideration lodging of fresh

criminal prosecution under Rule 14B of the MMC (Pension) Rules. That even in the subsequent prosecution, Petitioner is acquitted. That the Petitioner has thus lost job despite he not being held guilty in both the prosecutions. That in respect of charge involved in Special Case No.49 of 1987, no departmental enquiry was initiated. That therefore the entire suspension period is bound to be treated as duty for all purposes. He submits that though Petitioner was paid some subsistence allowance in respect of the suspension period from 29 November 1986 to 9 May 1990, the same has been illegally recovered from his retirement benefits. That the Petitioner has suffered immensely and is at an advanced age needing funds. He therefore submits that the entire period of suspension from 29 November 1986 to 9 May 1990 be treated as duty for all purposes by paying full salary and allowances with interest.

7. The Petition is opposed by Mr. Bukhari, the learned Senior Advocate appearing for Respondent-MCGM. He submits that mere acquittal does not automatically result in treatment of suspension period as duty. That Regulation 75 of MMC (Service) Regulations empowers the competent authority to take decision relating to quantum of salary and allowances payable during suspension period. That in the present case, Petitioner is found repeatedly indulging in corrupt practices and has been prosecuted twice. That the Municipal Corporation has already retired the Petitioner compulsorily after crossing the age of 55 years. He submits that there was sufficient evidence for proving the charge of bribery in the first incident in departmental enquiry. That the Municipal Commissioner had

sanctioned initiation of departmental enquiry, but the chargesheet could not be issued on account of ACB preferring appeal against the order of acquittal. In the present case, the Municipal Commissioner has applied his mind to the facts and circumstances of the case and has rightly decided to treat the suspension period as various kinds of leave. That the period of suspension is already computed as qualifying service for pension. That Petitioner is also paid subsistence allowance at the rate of 50% of salary during first three months and 75% of salary for the period after three months during the entire period of suspension. That therefore, no further payment is due to the Petitioner. That Petitioner is receiving pension. Mr. Bukhari relies on judgment of Division Bench of this Court in *Mohan Moreshwar Agashe vs. Managing Director, Maharashtra State Electricity Distribution Company Limited and Anr.*¹ He submits that there is no warrant for interference in the impugned decision. He prays for the dismissal of the Petition.

8. Rival contentions urged on behalf of the parties now fall for our consideration.

9. The short issue that arises for consideration is whether the period of suspension of the Petitioner from 29 November 1986 to 9 May 1990 can be treated as duty, particularly for the purpose of payment of full salary and allowances? Petitioner's suspension during the period 29 November 1986 to 9 May 1990 was owing to his prosecution in Special Case No. 49 of 1987. Special Case was registered against him for offences punishable under Section 5(2) read with Section 5(1)(d) and

¹ 2017 (3) Mh.L.J. 892.

5(1)(a) of Prevention of Corruption Act, 1947 read with Section 161 of IPC. However, he came to be acquitted in Special Case No.49 of 1987 vide judgment and order dated 28/29 September 1989. Though it is sought to be suggested in the Affidavit-in-Reply filed by MCGM, there is no finding in the entire judgment that the acquittal is owing to benefit of doubt. Mr. Bukhari has also fairly conceded this position. After Petitioner's acquittal on 29 September 1989, he came to be reinstated in service on 10 May 1990. The Appeal preferred by the ACB against the acquittal order is dismissed by this Court. This is how Petitioner's acquittal has attained finality.

10. By the impugned decision taken by the Municipal Commissioner on 19 September 2010, it has been decided to treat the entire period of suspension of 1257 days as leaves of various kinds. It appears that as on 20 August 2000, Petitioner had, in his leave account, 130 days earned leave and 368 days of half pay leave to his credit, from which suspension period of 498 days has been regularized. The balance period of suspension of 759 days has been regularized as leave without pay.

11. When an employee is suspended on account of criminal prosecution, he is entitled to seek reinstatement after acquittal. However, he is not automatically entitled to full backwages during the period of suspension. During suspension, the suspended employee is entitled to draw subsistence allowance as per the rules. In the present case, Mr. Bukhari has pointed out that Petitioner has been paid subsistence allowance at the rate of 50% of salary during first three months of suspension and 75% of salary in respect of balance period of

suspension. Though Mr. Shaikh has orally sought to suggest that the amount of subsistence allowance has been deducted from retirement benefits, there is no such averment in the Petition. Even otherwise, we do not see any reason why subsistence allowance could have been recovered from the Petitioner. The issue that remains for consideration is whether Petitioner is entitled to balance 25% of pay and allowances as a result of his acquittal in the criminal trial. Here it must be observed that on account of regularization of period of suspension into 130 days of earned leave and 368 days of half pay leave, Petitioner must have received pay and allowances for 498 days. Thus 25% of the salary is denied only in respect of balance period of 759 days. Of course, on account of adjustment of leave to his credit, Petitioner has possibly lost the benefit of leave encashment after his compulsory retirement.

12. Regulation 75 of MMC (Service) Regulations deals with reinstatement of corporation employee after suspension and provides thus:

75. Reinstatement of a Corporation employee after suspension and specific order of the competent authority regarding Pay and Allowances etc. and treatment of period as spent as spent on duty.

(1) When a Corporation employee who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order:

- (a) regarding the pay and allowances to be paid to the Corporation employee for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be and,
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Regulation 71 where a Corporation employee under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all

purposes and his family shall be paid the full pay and allowances (not being the emoluments which are held as payable only if specified duties are actually performed e.g. conveyance allowance) for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Corporation employee shall, subject to the provisions of sub-regulation (8), be paid the full pay and allowances (not being the emoluments which are held as payable only if specified duties are actually performed e.g. conveyance allowance) to which he would have been entitled, had he not been suspended subject to adjustment in respect of subsistence allowance already paid.

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Corporation employee had been delayed due to reasons directly attributable to the Corporation employee, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him, direct, for reasons to be recorded in writing, that the Corporation employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-regulation (3) the period of suspension shall be treated as a period spent on duty for all purposes.

5) In cases other than those falling under sub-regulations (2) and (3) the Corporation employee shall, subject to the provisions of sub-regulation (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Corporation employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-regulation (1) before the conclusion of the proceedings against the Corporation employee, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-regulation (3) or sub-regulation (5), as the case may be.

(7) In a case falling under sub-regulation (5), the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose :-

Provided that if the Corporation employee so requests, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Corporation employee.

Note: The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of:

(a) Extraordinary leave in excess of three months etc. in the case of a temporary Corporation employee: and

(b) Leave of any kind in excess of 5 years in the case of permanent Corporation employee.

(8) The payment of allowances under sub-regulation (2), sub-regulation (3) or sub-regulation (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-regulation (3) or under sub-regulation (5) shall not be less than the subsistence allowance and other allowances admissible under regulation.

13. Thus, once a suspended corporation employee is reinstated, the Competent Authority is required to pass an order regarding pay and allowances to be paid to him during suspension period and whether suspension period is to be treated as period spent on duty. Under sub-regulation (3), if the Competent Authority is of the opinion that the suspension was wholly unjustified, the corporation employee becomes entitled to be paid full pay and allowances and the period of suspension is to be treated as period spent for duty for all purposes. However, under sub-regulation (5), if the Competent Authority does not hold that the suspension was wholly unjustified, the corporation employee becomes entitled to be paid only such amount (not being the whole) of pay and allowances to which he would have been entitled had he not been suspended, as the Competent Authority determines. In cases falling under sub-regulation (5), the period of suspension cannot be treated as duty unless the Competent Authority specifically directs that it shall be so treated for the specified purpose. Under proviso to sub-regulation (7),

the Competent Authority can also direct conversion of period of suspension into any kind of leave that may be due and admissible to the corporation employee.

14. In the present case, the Municipal Commissioner has considered the entire factual background of the case, particularly the fact that departmental enquiry sanctioned against him was required to be abandoned on account of technical difficulty of filing of appeal by ACB before this Court. The Municipal Commissioner has accordingly decided to convert the period of suspension into different kinds of leave.

15. Upon acquittal of a suspended employee, though reinstatement is guaranteed, payment of full salary cannot be an automatic consequence. It depends on facts and circumstances of each case. In cases involving criminal prosecution in respect of private affairs of the employee, who is arrested and was required to be suspended, his acquittal cannot entail financial burden for the employer to pay him full salary and allowances during period of suspension. Also, in cases where the arrest and detention results in suspension in bribery cases, the employer cannot be saddled with the financial burden of paying full salary and allowances since the suspended employee embroils himself in the prosecution. On the other hand, in cases where the prosecution is lodged by the employer, say for offenses of fabrication of official records or for misappropriation of public funds, and the employee is kept under suspension, the acquittal in such case may entitle the employee to receive full salary and allowances since the employer is responsible for his prosecution. Thus, entitlement of a suspended employee to receive

full salary during period of suspension upon acquittal depends on facts and circumstances of each case.

16. In *Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra & Ors.*² the Apex Court has held that grant of all consequential benefits of backwages cannot be as a matter of course upon acquittal of the employee. The Apex Court has held as under:

... The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Penal Code, 1860. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. **In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period**

² [1997] 2 SCR 591

as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits...

(emphasis added)

17. Thus, as held by the Apex Court in ***Krishnakant Raghunath Bibhavnekar*** (supra), payment of all consequential benefits upon acquittal cannot be as a matter of course. It is held that two courses are open to the Disciplinary Authority. Firstly, it may enquire into the misconduct even after acquittal or secondly, the Authority can pass an order deciding not to treat suspension period as spent on duty, particularly for the purpose of payment of salary and allowances, in accordance with the Rules.

18. In recent decision in ***Ram Lal vs. State of Rajasthan & Ors.***,³ a FIR was registered against the appellant and simultaneously chargesheet in the departmental enquiry was also issued. The enquiry officer held the charges to be proved, and the disciplinary authority dismissed the appellant from service. In the criminal trial, the Trial Court convicted the appellant and sentenced him to undergo imprisonment for three years with fine. However, the District Court later acquitted the Appellant. After acquittal, the Appellant represented for his reinstatement and also filed Writ Petition for setting aside the dismissal order. Since Single and Division Benches of the High Court dismissed the Petition and Appeal, the appellant therein filed appeal before the

³ (2024) 1 SCC 175

Apex Court before whom two questions arose for consideration as under:

8. The following two questions arise for consideration:

8.1. (a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified?

8.2. (b) On the facts of the case, what is the effect of the acquittal, ordered by the Appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry?

19. So far as the first issue of validity of dismissal is concerned, the Hon'ble Apex Court ruled in favour of the Petitioner and held that no punishment was warranted in the departmental enquiry against him. So far as the second issue of effect of acquittal in the criminal proceedings is concerned, the Apex Court held in paragraphs 27, 28 and 29 as under:

27. What is important to notice is that the Appellate Judge has clearly recorded that in the document Ext. P-3 — original marksheet of the 8th standard, the date of birth was clearly shown as 21-4-1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21-4-1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge (see *S. Samuthiram* [*State of T.N. v. S. Samuthiram*, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]).

28. Expressions like “benefit of doubt” and “honourably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety.

The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” — in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” (see *Vijayee Singh v. State of U.P.* [*Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190 : 1990 SCC (Cri) 378]).

(emphasis added)

20. The judgment of the Apex Court in ***Ram Lal*** is often misquoted as if it is an authority on the issue that in every case involving acquittal, payment of full salary and allowances must be automatic. The findings recorded by the Apex Court in Para 28 of the judgment (which are emphasized above) are often cited as if the acquittal order must be accepted by the competent authority as it is without searching for words like ‘honorable acquittal’, for the purpose of payment of full salary and allowances. In our view however, the judgment of the Apex Court in ***Ram Lal*** (supra) is rendered in the peculiar facts of that case. What was questioned before the Hon’ble Apex Court was essentially the dismissal order passed in departmental proceedings. The Apex Court considered the effect of acquittal in the criminal trial on finding recorded in departmental enquiry in the light of its judgment in ***G. M. Tank vs. State of Gujarat***⁴. However, the Hon’ble Apex Court assessed the evidence on record independently and arrived at the conclusion that the Appellant therein had committed only an inadvertent error in overwriting the application form and that there was no correction or

⁴ 2006 (5) SCC 446

manipulation in the date of birth reflected in the marksheet. The Hon'ble Apex Court therefore set aside the order of dismissal and directed reinstatement of the Appellant with only 50% backwages.

21. It is well settled position of law that judgment is an authority for what it decides and not what can be logically deduced therefrom. [SEE: *Commissioner of Customs (Port) vs. Toyota Kirloskar Motor (P) Ltd.*⁵, *Secunderabad Club v. CIT*⁶]. Therefore, the judgment in *Ram Lal* (supra) cannot be read in support of an abstract principle that in every case where there is acquittal, employee must be paid full salary and allowances in respect of the suspension period. On the other hand, the judgment in *Krishnakant Raghunath Bibhavnekar* (supra) is an authority on the issue at hand which holds that payment of full salary and allowances cannot be automatic consequence of acquittal in the criminal trial. The Disciplinary Authority can consider the circumstances of the case and take a decision whether to sanction full or partial salary and allowances during the period of suspension.

22. In *Dnyaneshwar Kashinath Shingane Vs. State of Maharashtra and others*⁷, the judgment authored by one of us (*S. V. Marne J.*), a similar issue has been dealt with. Following the ratio of judgment in *Krishnakant Raghunath Bibhavnekar* and of this Court in *Sandhya v. State of Maharashtra*⁸, this Court held as under:

10. In the present case, Petitioner remained under suspension for a long period from 20.03.2013 to 13.04.2017. By order dated 28.10.2014 subsistence

⁵ (2007) 5 SCC 371

⁶ 2023 SCC Online SC 1004

⁷ MANU/MH/3975/2022 (High Court, Bench at Aurangabad)

⁸ (2020) 1 Mah LJ 935

allowance payable to him was increased to @ 75% of his pay and allowances. Petitioner has thus received 75% of the pay and allowances during the period of his suspension from 20.03.2013 to 13.04.2017. The only issue is about the balance 25% pay and allowances as well as the benefit of pay fixation. The suspension period is already treated as qualifying service for the purpose of pension.

11. The issue of treatment of period of suspension and payment of pay and allowances during intervening period has been dealt with by the Apex Court in its judgment in ***Krishnakant Raghunath Bibhavnekar v. State of Maharashtra***, (1997) 3 SCC 636 in which the Hon'ble Supreme Court has held as under :

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12. As per the ratio laid down by the Hon'ble Supreme Court, it is necessary to go through the order of acquittal for the purpose of determining whether the employee can be paid full pay and allowances during the period of his suspension. Accordingly, I have gone through the judgment of the acquittal dated 22.10.2016. Perusal of the judgment shows that the petitioner was accused of attempting to kill his wife Dipika on 18.03.2013 by pouring kerosene on her person. He was also accused of having illicit relations with another lady named Surekha Lalman More with whom he was alleged to have solemnized another marriage. No doubt, the petitioner has been acquitted in the criminal case. However, the acquittal is on account of his wife Dipika not supporting the prosecution's case. This was possibly on account of subsequent divorce between the couple and a compromise between them. Since Dipika did not support the prosecution case, the Sessions Court was left with no option but to acquit the petitioner. This is thus not a case of honorable acquittal. In my opinion, therefore the petitioner would not be entitled to full pay and allowances during the period of his suspension.

13. The issue of liability to pay backwages to employee embroiled in criminal case in his/her private capacity is dealt with by this Court in ***Sandhya v. State of Maharashtra, (2020) 1 Mah LJ 935*** in which it is held as under:

“10. The petitioner was convicted in the criminal trial on 30-11-2004 and on that basis, her services were terminated by the order dated 10-5-2005. Prior thereto she was placed under suspension in view of the fact that she was arrested on 18-9-1999 and was in police custody till 24-9-1999. From 10-5-2005 till 25-4-2018 she was not in a position to render her services as the order of conviction was not set aside till that date. It is only after 25-4-2018 when the order of conviction was set aside that the petitioner was in a position to render services. The prosecution of the petitioner was not on account of any act committed during the course of employment with the department. In other words, for an act committed when she was a citizen the petitioner came to be prosecuted. The department was in no manner involved but it was

deprived of taking services of the petitioner for the aforesaid period. Since the department was not at fault, it cannot be called upon to pay the petitioner backwages for the entire period when it could not take services from the petitioner. In this regard, it is necessary to refer to the decision in *Union of India v. Jaipal Singh*, 2004 (3) Mh.L.J. (S.C.) 793 : (2004) 1 SCC 121. The services of the employee therein came to be terminated on account of his involvement and subsequent conviction for an offence punishable under section 302 of the Penal Code, 1860. On his acquittal, the employer was directed to reinstate the said employee in service with full backwages and other consequential benefits. This order passed by the High Court was challenged by the employer before the Hon'ble Supreme Court. In that context the following observations in paragraph 4 were made which are found to be relevant:

4. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different consideration may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent.”

In *Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar*, (1996) 11 SCC 603, an employee who was dismissed from service on account of his conviction under section 302 of the Penal Code, 1860 was directed to be reinstated in service after his acquittal in appeal. He was denied backwages on the ground that he had disabled himself from rendering service on account of his conviction and incarceration in jail.

11. From the aforesaid it becomes clear that if the employee as a citizen gets involved in a criminal case and the department is not responsible in any manner then the employer cannot be called upon to pay the employee for the period for which it could not avail the services of the employee. A similar situation arises in the present case. The involvement of the petitioner in the criminal case had nothing to do with her employment as an Assistant Teacher. She was prosecuted as a citizen and hence for the period for which the conviction continued, the department could not have engaged her services. It is only on her acquittal that it was possible for the employer to take her services. Hence, the petitioner would be entitled for backwages from 25-4-2018 when Criminal Appeal No.764/2004 was allowed and the petitioner came to be acquitted. She was not liable to be kept out of

service thereafter. It is thus held that the petitioner is not entitled for backwages from 10-5-2005 to 24-4-2018.”

14. The principles enunciated in Krishnakant Raghunath Bibhavnekar (supra) and Sandhya (supra) are fully attracted in the present case. Therefore, mere acquittal of Petitioner would not automatically entitle him to full pay and allowances during the period of suspension.

15. There is yet another factor which is required to be borne in mind. Petitioner was accused of committing a serious crime and remained under custody for a long period of 66 days. If the prayer of Petitioner is accepted, he will have to be paid full pay and allowances even during the period during which he remained under custody. This cannot be countenanced in law. I am therefore of the opinion that the decisions taken by the Chief Executive Officer, Zilla Parishad Jalna and Divisional Commissioner, Aurangabad cannot be fault with.

18. Thus the decisions in Bramha Chandra Gupta and Baban Shriram Wafare (supra) cannot be construed to mean that in every case of acquittal, suspension period must be treated as duty for payment of full pay and allowances. As against the two judgments cited by Mr. Ambetkar, the judgment of the Apex Court in Krishnakant Raghunath Bibhavnekar (supra) is clear and specific. Payment of full pay and allowances is not automatic on acquittal of a government servant.

23. In *Mohan Moreshwar Agashe* (supra), Division Bench of this Court has held that the principle of ‘no work for no pay’ would apply when suspended employee is reinstated after acquittal in the criminal trial. This Court held in paragraphs 7 and 9 to 12 as under:

7. We have heard the learned counsel for parties at length and perused the papers and proceedings in the Writ Petition. We find considerable force in the argument of Ms. Baxi. It is now well settled that the charge of bribery and corruption though punishable as a criminal offence (and which was the subject matter of a criminal case in the present matter), does not mean that it is not a misconduct under the Service Regulations. It is equally a misconduct inasmuch as a public servant is expected to work honestly and diligently. Any conduct which is unbecoming of a public servant and brings his image and reputation, together with that of the organization in disrepute, if committed, then, all the more, the avenue of disciplinary proceedings/Departmental Enquiry is open, irrespective of the outcome of the criminal proceedings. In fact, such proceedings can also be initiated during the pendency of the criminal case. Therefore, on conclusion of the criminal case and the same

resulting in the employee's acquittal, he may be reinstated in service, but that does not mean that he would be entitled to payment of wages and salary for the time he did not work. A public servant cannot as of right, therefore, demand these dues as he has rendered no service nor has he performed any work. Even otherwise, back wages do not follow reinstatement and as a matter of course. Everything depends on facts and circumstances of each case.

9. As can be seen from said Regulation, an employee who is acquitted should be reinstated in service, but would not be eligible for any payment from the date of termination of his service to the date of his reinstatement, on the principle of “**NO WORK NO PAY**”. He would, however, be eligible for restoration of his seniority and other terminal benefits.

10. In view of this clear Regulation, and the validity of which has not been challenged in these proceedings, we are unable to agree with Ms. Samaik's submission that it would be inapplicable to the Petitioner, because his was a case where he was acquitted by the trial Court and was not acquitted in appeal. This Court in the case of *Ramchandra Bapusaheb Desai v. Maharashtra State Electricity Distribution Company Limited, Writ Petition No. 2301 of 2013, decided on 9th January, 2017* [reported in 2017 (3) Mh.LJ. 624] (in paragraph 10 of its decision) has categorically held that a perusal of this Regulation (Regulation 10-A) would indicate as to how in case an employee gets acquitted in appeal or is acquitted otherwise by the trial Court itself, he shall be reinstated in service. He would however not be eligible for any payment from the date of termination of his service to the date of his reinstatement on the principle of ‘No work no pay’. We, therefore, find no substance in the argument of Ms. Samaik that this Regulation would apply only in a case where an employee is first convicted by the trial Court, and thereafter, acquitted in appeal. The principle of “**NO WORK NO PAY**”, would apply not only in cases where an employee is first convicted and thereafter acquitted in appeal, but would also apply in a case of an employee who is acquitted by the trial Court itself. We must mention here that even in the case of *Ramchandra Bapusaheb Desai v. Maharashtra State Electricity Distribution Company Limited, Writ Petition No. 2301 of 2013, decided on 9th January, 2017* [reported in 2017 (3) Mh.LJ. 624] the Petitioner was acquitted by the trial Court itself. Despite this, placing reliance on Regulation 10-A, this Court took the view that the Petitioner therein was not entitled to any payment from the date of termination of his service to the date of his reinstatement. Not only is the said decision binding on us but we are in full agreement with the same.

11. We also do not find any merit in the argument of Ms. Sarnaik that we ought to take a different view because in the facts of the present case, it was a case of a ‘clean acquittal’ or a ‘honourable acquittal’ rather than one that was on ‘reasonable doubt’. Firstly, we do not find any such differentiation in Regulation 10-A. Regulation 10-A clearly stipulates that where an employee is acquitted he should be reinstated in service, but would not be eligible for any

payment from the date of termination of his service to the date of his reinstatement. The Regulation makes no differentiation between an acquittal by virtue of reasonable doubt or what Ms. Samaik would term as an “honourable acquittal” or a “clean acquittal”. In view of the clear and unambiguous language of Regulation 10-A staring the Petitioner in face, and which Regulation has not been challenged before us, then all the more we are unable to agree with Ms. Samaik on this point.

12. This apart, even otherwise in the facts of the present case, we find that this submission is factually incorrect. It is the case of the Petitioner itself (in paragraph 17 of the Petition) that he would be entitled to reinstatement with all the benefits as the prosecution had failed to prove the case “beyond reasonable doubt”. Even on perusal of the decision of trial Court in Special Case No. 6 of 2008 acquitting the Petitioner, we do not find that the same is what Ms. Samaik would term as a “clean acquittal”. From perusal of the said decision, we find that the complainant in fact had turned hostile and did not support the case of the prosecution even though PW 2 supported the case of the prosecution. It is in these circumstances that the trial Court held that the evidence of the complainant and PW 2 would not be sufficient to establish the bribery charges. Therefore, the trial Court at paragraph 22 held that the prosecution had failed to prove the commission of the alleged offences by the accused beyond reasonable doubt. In these circumstances, we are, therefore, unable to agree with Ms. Sarnaik that this was a case of a “clean acquittal”, and therefore Regulation 10-A would not be applicable.

24. In the present case, Petitioner is repeatedly prosecuted on charges of bribery and corruption. No doubt, he is acquitted in both the prosecutions. However, the Municipal Corporation is not responsible for his suspension. The first suspension during 29 November 1986 to 9 May 1990 was owing to Petitioner’s arrest and prosecution for serious charge of demand and acceptance of illegal gratification. Petitioner has got himself embroiled in the criminal prosecution. The criminal prosecution was not at the behest of the Municipal Corporation. After his acquittal, Petitioner was reinstated in service. Unfortunately, he got himself embroiled into another bribery related prosecution in the year 2001 and was finally required to be compulsorily retired after crossing the age of 55 years subject to action under Rule 14(B) of MMC (Pension) Rules.

Considering these circumstances, we are not inclined to interfere in the impugned decision of the Municipal Commissioner to treat suspension period as leaves of various kinds.

25. Since suspension period is already converted into various kinds of leaves, the same would obviously be treated as duty for the purpose of qualifying service for pension. Petitioner has already been paid subsistence allowance in respect of the suspension period. In respect of period of leaves due, he is entitled to be paid salary and allowances, which must have been paid to him. Considering the peculiar facts and circumstances of the present case, the Competent Authority has rightly exercised discretion by making an order for denial of full and salary and allowances during the period of suspension. There is no warrant for interference in the impugned decision.

26. Writ Petition is devoid of merits. It is accordingly **dismissed** without any order as to costs.

(SANDEEP V. MARNE, J.)

(S.M. MODAK, J.)