

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO 1073 OF 2019**

**DISTRICT : PUNE**

Shri Masajee Ganu Kale, )  
Was working as Police Inspector, )  
[Dismissed], R/O Shriram Chandrama Apt) )  
Flat No. 403, S.No. 35/1/2, )  
Baner, Pune 411 045. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032. )  
2. Director General of Police, )  
Maharashtra State Police Head )  
Quarters, S.B.S Marg, )  
Colaba, Mumbai. )...**Respondents**

Mrs Punam Mahajan, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)  
Mrs Medha Gadgil (Member) (A)**

**DATE : 21.03.2022**

**PER : Justice Mridula Bhatkar (Chairperson)**

## **J U D G M E N T**

1. The applicant, a dismissed Police Inspector, prays that his order of dismissal dated 15.4.2019 is to be quashed and set aside and the Respondents be directed to reinstate him in service and grant all consequential service benefits including pensionary benefits.

2. The applicant was working as a Police Inspector, Class-I. However, a criminal case, bearing No. 16641/2012 was lodged against him for the offence punishable under Section 354 and 409 of I.P.C, pursuant to F.I.R filed by a lady Police Constable working at the same Police Station headed by the applicant. The criminal case was tried before the Learned Judicial Magistrate, First Class, Thane. The applicant was convicted for the offence punishable under Section 509 of the I.P.C by judgment and order dated 25.4.2019. He was sentenced to simple imprisonment of two months and fine of Rs. 10,000/-. After his conviction, the Respondent-State issued him show cause notice dated 22.3.2019. The applicant submitted reply to the show cause notice on 29.3.2019. The Respondents did not accept the reply given by the applicant, but dismissed him from service by order dated 15.4.2019, which is the subject matter of this Original Application.

3. Thereafter, this Original Application was filed on 2.11.2019, challenging the said order of dismissal. The applicant otherwise was to retire on 30.6.2019. The Original Application was filed mainly on the ground that when the appeal was filed by the applicant, the conviction of the applicant was stayed by order dated 9.10.2019 and thus the earlier order dated 7.3.2019 by which the conviction and sentence both were suspended, the said order was modified as conviction and sentence both were stayed.

4. Learned counsel for the applicant has submitted that as the conviction was stayed, his dismissal order also should be stayed and he should have been given the interim relief by reinstating him in service. Learned counsel for the applicant has submitted that thereafter further developments have taken place. The applicant had filed Criminal Appeal No. 38/2019 before the District Judge and Addl. Sessions Judge, Thane, and the said appeal was decided on 3.12.2021. Learned counsel for the applicant has produced the copy of the said judgment and order passed by the Ad hoc District Judge-2 and Additional Sessions Judge, Thane, wherein the criminal appeal was allowed and the order of conviction dated 25.2.2019 passed by the Judicial Magistrate, First Class, Thane in Summary Criminal Case No. 16641/2012 was set aside. The applicant was acquitted for the offences punishable under Section 509 of I.P.C. Learned counsel for the applicant has submitted that once the Government servant is acquitted, he should be reinstated in service. In support of her submissions, she relied on para 4 of the Circular dated 12<sup>th</sup> June, 1986, issued by G.A.D.

5. Learned C.P.O for the Respondents, while opposing this Original Application has argued that the Respondents have issued the order of dismissal dated 15.4.2019 which was correct order after his conviction dated 25.2.2019 by the Judicial Magistrate, First Class, Thane in Summary Criminal Case No. 16641/2012. Thus, the order of dismissal cannot be faulted with and cannot be labelled as illegal. She further submitted that the Respondents, in view of the serious charges, has initiated Departmental Enquiry against the applicant and charge sheet was issued on 6.8.2015. The Enquiry Officer was appointed and enquiry report was submitted on 18.7.2016. Learned C.P.O argued that in the enquiry the charges against the applicant were proved and therefore, he was held guilty. He was given show cause notice on

2.4.2018 as to why he should not be compulsorily retired from Government service. Learned C.P.O has submitted that at the relevant time the criminal case was going on before the Learned Judicial Magistrate, First Class. The charges of outraging the modesty of a woman under Section 509 and the charges levelled against the applicant in the departmental enquiry were identical and therefore, the Respondent-State took a conscious decision to keep the enquiry in abeyance. The file was kept dormant on 5.10.2018 as the decision of the Criminal Court was awaited. Learned C.P.O further submitted that the Summary Criminal Case concluded in the conviction of the applicant and thereafter, the order of stay of the sentence and so also the conviction was passed by the Learned Sessions Judge. So this Original Application was filed in November, 2019.

6. Learned C.P.O has also relied on the same Circular dated 12<sup>th</sup> June, 1986, issued by G.A.D and has submitted that the order of setting aside the order of dismissal cannot be passed mechanically by Respondent-State, after acquittal of the accused, but it is subject to verification of the gravity of the charges and the circumstances. Learned C.P.O has submitted that in this matter the opinion of the Law & Judiciary Department is sought to file the appeal and it is pending. Therefore, she has submitted that the Original Application be dismissed on this ground.

7. The Circular dated 12<sup>th</sup> June, 1986, issued by G.A.D is about the proposed action to be taken in the case where Government servant is convicted in the criminal case. If the Government servant is convicted, then order of dismissal is a necessary corollary and that is a settled position of law. If the Government servant is acquitted, then the order of his penalty or dismissal should be set aside.

8. In the present case, the applicant was initially convicted by the Learned Judicial Magistrate, First Class. Though the sentence and so also the conviction both were stayed interregnum in appeal, at this stage when the appeal is finally decided in acquittal, we are of the view that there is no need to comment and deal with the effect of stay of the conviction on the order of dismissal or enquiry.

9. It is true that the order of dismissal dated 15.4.2019 which is challenged in this Original Application was pursuant to the conviction order dated 25.2.2019 passed by the Learned Judicial Magistrate, First Class, Thane in Summary Criminal Case No. 16641/2012. Therefore, the order of dismissal was passed by the Department, pursuant to the Circular dated 12<sup>th</sup> June, 1986. We have to take into account the further developments during the pendency of this Original Application and what is the position as on today. The applicant is acquitted by order dated 3.12.2021 by Ad hoc District Judge-2 and Additional Sessions Judge, Thane. Till today, the Respondent-State has not preferred any appeal before the Hon'ble High Court. There is no order of stay to the order of acquittal by the Hon'ble High Court. Thus, the order of acquittal, as on today holds the field. We rely on the relevant provisions of the Circular dated 12<sup>th</sup> June, 1986.

“4. In cases where neither of the courses mentioned in sub-para (a) and sub-para (c) of para 2, is followed, a formal order should be issue setting aside the previous order imposing the penalty (Standard Form No. III for such order is annexed). In such cases, where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowances will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes, whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowances will be allowed as directed by the competent authority under Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 and

the period treated as duty or non-duty under the said rule as the case may be.”

10. Thus, in view of the acquittal, the applicant is to be reinstated in service. It is to be done notionally as his date of retirement was 30.6.2019. Learned C.P.O has placed the facts in respect of the departmental enquiry conducted against the applicant. However, the departmental enquiry is kept in abeyance. However, it is another issue.

11. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The impugned order of dismissal dated 15.4.2019 passed by the Respondents is hereby quashed and set aside.
- (c) The applicant is to be reinstated in service notionally as on 15.4.2019.
- (d) The applicant is entitled to all pecuniary benefits and other pensionary benefits as per the Maharashtra Civil Services (Pension) Rule, 1982.
- (e) The above order should be complied within 3 months from the date of the order.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 21.03.2022**  
**Dictation taken by : A.K. Nair.**