MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION No. 743 of 2022 (S.B.)

Shri Vinaykumar S/o Abasheb Juare,
Age 50 years, Occ. Service,
R/o Sitabuldi, Armori, District Gadchiroli.

Applicant.

Versus

1) The State of Maharashtra,
through Secretary, Agriculture and Husbandry,
Fisheries, Matralaya, Mumbai-32.

2) The Appellate Authority and Commissioner,
Agriculture, Maharashtra State, Pune-01.

3) The Divisional Joint Director of Agriculture,
Nagpur Division, Nagpur.

Respondents.

Shri L.G. Sagdeo, Advocate for the applicant.
Shri H.K. Pande, P.O. for respondents.

Coram :- **Hon'ble Shri Justice M.G. Giratkar,**
Vice Chairman.

Dated :- 11/01/2024.

J U D G M E N T

Heard Shri Parth L. Sagdeo, learned counsel holding for Shri L.G. Sagdeo, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant is serving in the Agricultural Department at Korchi, District Gadchiroli. On 25.10.2004, the applicant noticed that

the cash box in the office was broken and the cash was stolen. He therefore informed immediately to his Superior Officer on phone. On instructions a report came to be lodged in Police Station, Armori. Initially offence of theft was registered against unknown person, but during the investigation the applicant was arrested and he was charge sheeted before the J.M.F.C., Armori. The applicant was suspended and departmental enquiry was initiated. The suspension order was revoked and the applicant was reinstated. In the departmental enquiry, the applicant is held responsible for the theft of the amount of office. The applicant was convicted by the JMFC, Armori. The appeal was preferred before the Sessions Judge, Gadchiroli in Criminal Appeal no.8/2014. The Sessions Judge, Gadchiroli has recorded its findings that the applicant has not committed any crime or offence of theft. The prosecution has failed to prove that the amount was stolen by the applicant. On the other hand, it was disclosed in the evidence that the disputed amount was stolen that by thieves and therefore there was no any evidence proved against the applicant. Hence, accused / applicant was acquitted by the Sessions Judge.

3. Without considering the Judgment of the Sessions Judge, the respondents have imposed the punishment in the departmental enquiry of stoppage of three increments and recovery of Rs.2,71,500/- from the applicant. Thereafter, the applicant has approached to the

Appellate Authority. The Appellate Authority passed the order on 29-10-2021/ 23-12-2021 and partly allowed the appeal and modified the punishment order. It is reproduced below –

निर्णय

अपील अंशतः मान्य करण्यात येत आहे.

संबंधित अपिलार्थी यांना दि. २८/०१/२०२१ च्या आदेशान्वये प्रदान केलेल्या शिक्षेचा पुनर्विचार करून शिक्षेत खालीलप्रमाणे बदल करणेत येत आहे.

श्री. विनयकुमार आबासाहेब जुआरे, तत्का. लिपीक कार्यालय तालुका कृषि अधिकारी, आरमोरी जि. गडचिरोली सध्या लिपीक, तालुका कृषि अधिकारी कार्यालय, कोरची, जि. गडचिरोली यांच्यावर निश्चित होणारी वसुली रक्कम रू. २,७१,५००/- इतकी रक्कम त्यांच्या नियमित वेतनातुन दरमहा ५४३०/- प्रमाणे ५० हप्त्यात वसुल करावे, व सहकारी संस्थांच्या रकमेवर येणारे व्याज देखील त्यांच्याकडून वसुल करावे. तसेच महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ माग तीन नियम ५ (१) (चार) नुसार पुढील एक वेतनवाढ कायमस्वरूपी रोखण्यात यावी. अशी शिक्षा देण्यात येत आहे.

4. Being aggrieved by the order of Appellate Authority, the applicant has approached to this Tribunal for the following reliefs –

"(10) Relief Sought:

(A) Quash and set aside the orders dated 23.12.2021 and 28.01.2021 passed by respondent nos. 2 and 3 respectively,

(B) Direct the respondent nos. 2 and 3 to pay the salaries and increments as per rules by restoring the position as on the date of his suspension.

(C) Direct the respondent nos. 2 and 3 to grant promotions to the applicant as per rules by restoring the position as on the date of his suspension.

(D) Grant any other relief as may be deemed fit and proper in the facts and grounds by this Hon'ble Tribunal.

(11) Interim Relief prayed if any :

(A) Grant stay to the operation of the orders passed by the respondent nos. 2 and 3 till the disposal of instant proceedings before this Hon'ble Tribunal.

(B) Restrain the Officers of the department from deducting the amount from the salary of applicant by carrying out the effect of the orders passed by the respondent nos. 2 and 3."

5. The respondents have filed reply. It is submitted that the applicant has committed theft of Rs.2,71,500/-. In the departmental enquiry, charges against the applicant are proved and therefore punishment is rightly awarded by the respondents. The Appellate Authority has modified the punishment and therefore the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for applicant has pointed out the Judgment of Sessions Judge, Gadchiroli in Criminal Appeal No.08/2014, decided on 05/02/2020. The applicant was convicted by the JMFC, Armori. In the appeal, the Sessions Judge, Gadchiroli has recorded findings in para-36,37 and 38. Those findings are reproduced below –

"(36) If the totality of the evidence available on record is taken into consideration, then it will find that most part of evidence disclose that disputed amount was stolen by thieves and audit report (xerox copy) is not found to be reliable document. Contents and truthfulness of such document are also not proved according to law. In such scenario, it cannot be observed that prosecution has proved their case on the point that accused Vinay Kumar has committed misappropriation of

amount in dispute and thereby committed offence of criminal breach of trust beyond reasonable doubt. Similarly, there is no satisfactory evidence available on record to establish the guilt that accused Vinay Kumar had given false information about committing theft of amount in dispute from his office. In view of this, accused Vinay Kumar was liable to be acquitted above.

(37) The learned trial Court has not considered above material aspects while determining dispute and also ignored vital admissions recorded by prosecution witnesses regarding fact that disputed amount was stollen by thieves. He also failed to consider that audit report, which is basic substratum of case has not been proved on record according to the law. Consequently, the learned trial Court went in wrong direction and thereby recorded erroneous findings in impugned judgment. Therefore, I have no hesitation in holding that impugned judgment is not just, legal and proper one. Findings recorded therein are erroneous one. Therefore, same is liable to be set aside.

(38) Considering entire gamut of evidence transpired on record, I hold that appellant succeeds in appeal. Same is liable to be allowed. In view of this, accused Vinay Kumar is liable to be acquitted. In the result, following order is passed.

ORDER

(1) The appeal is allowed in following terms :-

A] Impugned judgment and order passed about sentencing accused Vinay Kumar Abasaheb Juware by learned Chief Judicial Magistrate, Gadchiroli in Regular Criminal Case No.24/2010 on 1.2.2014 is hereby set aside. Consequently, accused Vinay Kumar Juware is hereby acquitted of the offences punishable under Section 409, 203 of Indian Penal Code.

B] Fine amount deposited by accused no.1 Vinay Kumar be refunded to him after appeal period is over.

C] Seized property be disposed off in the manner as directed by learned trial Court in its operative order.

D] His bail bonds stands cancelled.

E] He shall furnish their PR bond of Rs.15,000/- with one surety in like amount as per Section 437-A of Cr.P.C.

F] Inform to the learned trial court. Record and proceeding be sent to the learned trial court.

G] Judgment is dictated and delivered in open court.

2] Proceeding be closed."

7. By recording the findings by the Sessions Judge, the applicant is acquitted. The Sessions Judge has recorded the specific findings holding that there is no evidence to show that the applicant has committed theft of the disputed / stolen amount of the office and therefore the applicant was acquitted by the Sessions Judge.

8. The learned P.O. has submitted that it is not honourably acquittal. Specific findings are recorded by the Sessions Judge. In para 36 and 37 shows that there was no any evidence to show that the applicant has committed theft of the amount as alleged by the respondents / office. Hence, it is an acquittal not only on the ground of benefit of doubt, but for want of evidence. When the finding is recorded that there was no evidence to show that the applicant has committed theft of the amount, then it is very clear that there was no evidence and therefore it is a clear acquittal by the Sessions Judge.

9. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Ramlal Vs. State of Rajasthan & Ors***. The Hon'ble Supreme Court has recorded its findings in para-13,24,27,30,31 and 32 which are reproduced below-

> *"(13) However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes 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, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)].*
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> *(24) What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 - original mark sheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 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 21.04.1974 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 (Supra).]*

(27) We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).

(30) In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.

(31) Accordingly, we set aside the judgment of the D.B. Special Appeal (Writ) No.484/2011 dated 05.09.2018. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits. As far as backwages are concerned, we are inclined to award the appellant 50% of the backwages. The directions be complied with within a period of four weeks from today.

32. The appeal is allowed in the above terms. No order as to costs.”

10. The Hon’ble Supreme Court has held in the above cited Judgment that once the applicant / accused is acquitted in the criminal case based on the similar charges, the departmental enquiry is to be quashed and set aside. The different findings cannot be awarded in the departmental enquiry.

11. The charges against the applicant were similar as like in the criminal case. Hence, in view of the Judgment of the Hon’ble

Supreme Court in the case of ***Ramlal Vs. State of Rajasthan & Ors***., the applicant is entitled to get the benefit as granted by the Sessions Judge. The applicant is already acquitted by the Sessions Judge on the ground there was no evidence against the applicant to show that he has committed theft, whereas, in the departmental enquiry, the applicant is held responsible for the same. Hence, In view of the Judgment of the Hon'ble Supreme Court, the impugned punishment order is liable to be quashed and set aside. Hence, the following order–

ORDER

(i) The O.A. is allowed.

(ii) The impugned orders dated 23/12/2021 and 28/01/2021 passed by respondent nos.2 and 3 are hereby quashed and set aside.

(iii) The respondents are directed to pay withheld amount of increments.

(iv) The respondents are directed to refund the amount, if any, recovered from the applicant.

(v) No order as to costs.

Dated :- 11/01/2024.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam
Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/01/2024.