

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 806/2015 (D.B.)

Nishikant S/o Subhashchandra Tiwari,
Aged about 44 years,
Occ. Service (at present dismissed from service)
9, Ladikar Layout, Manewada Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department having its office at
Mantralaya, Mumbai-400 032.
- 2) Deputy Commissioner of Police,
(Head Quarters), Nagpur City,
Nagpur.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri P.N. Warjurkar, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 8th January, 2020.

Date of Pronouncement of Judgment : 13th January, 2020.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 13th day of January, 2020)

Heard Shri S.P. Palshikar, learned counsel for the applicants and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicant joined service as Police Constable in the year 1994. In the year 2000, he was transferred to Lakadganj Police

Station, Nagpur. In the year 2003, Crime No.3249/2003 was registered against one ASI and the present applicant under Sections 7,12,13 (1) (d) & 13 (b) of the Prevention of Corruption Act. The applicant was placed under suspension and thereafter the charge sheet was filed in the Special Court, Nagpur. After the trial, the Special Court convicted the applicant and other co-accused. The applicant was convicted for offence punishable under Section 12 of Prevention of Corruption Act on 18/2/2008. As the applicant was convicted by the Special Court, on 4/8/2008 the applicant was dismissed from the service. The applicant preferred Appeal No.98/2008 before the Hon'ble High Court, Bench at Nagpur and Hon'ble High Court allowed the appeal on 8/1/2015 and acquitted the applicant and other co-appellant.

3. The applicant submitted representation on 22/6/2015 and requested the respondents to reinstate him in service, but it was rejected by the respondent no.2 vide order dated 14/12/2015, consequently the applicant filed this O.A.

4. It is case of the applicant that on 29/2/2016, the Joint Commissioner of Police, Nagpur passed order and reinstated the applicant in service, but while doing so the period of suspension and dismissal were treated as such and the applicant was reinstated subject to the right of the respondents to initiate the disciplinary inquiry

against the applicant. It is contention of the applicant that now he is reinstated in service, but vide order dated 29/2/2016 continuity in service is not given to him and his buckle number is also changed. It is apprehension of the applicant that the respondents have decided not to conduct the disciplinary inquiry against him, therefore, it was incumbent on the respondents to pay him the full salary of the suspension period, dismissal period and treat his service as continuous. It is submitted that if this relief is not given to the applicant, then he will suffer irreparable loss.

5. The respondents have filed their reply and justified their action. It is submission of the respondents that the acquittal of the applicant is not honourable; therefore, the applicant has no right to claim salary for the period of suspension and period of dismissal. It is also contended that as the applicant did not work during period of dismissal, therefore, he has no right to claim the salary for that period on the principle 'no work, no pay'. Thus it is submitted that the O.A. is devoid of any substance and it is liable to be dismissed with cost.

6. We have perused the order dated 29/2/2016. When this order was passed, it was decided by the then Joint Commissioner, Nagpur to treat the period of suspension as suspension and to treat the period of dismissal as dismissal. In view of this, it seems that instead of keeping open these issues for consideration after result of

the disciplinary inquiry the Authority had already closed these issues, therefore, this approach of the respondents was contrary to law.

7. The legal position is that a Government servant, who is convicted by the Trial Court and later on acquitted by the Appellate Court, is entitled to claim back wages if the departmental inquiry is not conducted by the Department. As per the legal provisions, even though the applicant was acquitted in appeal by the Hon'ble High Court, it was open to the respondents to initiate the departmental inquiry, but it was not done. The learned P.O. has produced the letter dated 6/1/2020 forwarded by the Deputy Police Commissioner, Head Quarters, Police Commissionerate, Nagpur. In this letter, it is informed that preliminary inquiry initiated against the applicant was closed, consequently, there would be no disciplinary inquiry against the applicant. After reading this letter, it seems that two buckle numbers of the applicant are mentioned. The present buckle number is 5717 and old buckle number is 391. After reading the letter, it is cleared that the respondents have now decided not to initiate the disciplinary inquiry. In view of this, what was the reason to change the buckle number of the applicant is not explained. Similarly, as decision is taken by the respondents not to initiate the disciplinary inquiry against the applicant, it was necessary for the respondents to decide the nature of the period of suspension and period of dismissal. As

disciplinary inquiry as not conducted therefore, there is no material available with the respondents to justify that the applicant was rightly suspended from the service and his dismissal was also just.

8. The learned counsel for the applicant submitted that in this situation, in view of the law laid down in Civil Appeal No.3339/2019 arising out of SLP (Civil) No.100/2016 decided on 1/4/2019 by the Hon'ble Apex Court the applicant is entitled for the wages, for the period of suspension and also for the period of his dismissal and till his reinstatement in service.

9. We have gone through this Judgment and in para-7 of the Judgment, the Hon'ble Apex Court has observed as under –

“7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the Respondents took four years to reinstate him by

revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.”

10. The Hon'ble Apex Court held that in the matter before it, as the disciplinary inquiry was dropped, therefore, the Government servant was entitled for the full back wages. Once the applicant is acquitted by the Hon'ble High Court and decision is taken by the respondents not to conduct disciplinary inquiry, the consequence is that the action of the respondents treating period of suspension and period of dismissal as such is absolutely illegal. We, therefore, hold that the applicant is entitled for the full back wages as he was prevented by the respondents from joining duty even after his acquittal by the Hon'ble High Court.

11. In view of this, we pass the following order –

ORDER

The O.A. is allowed. The respondents do pay the full salary of the suspension period to the applicant (after deducting the subsistence allowance already paid) and the salary of the period of dismissal and the salary till his reinstatement in service. The applicant is also entitled to his old buckle number and continuity in service since his initial appointment. The respondents to comply this order within a period of three months. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 13/01/2020.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 13/01/2020.

Uploaded on : 13/01/2020.

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