

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.474 OF 2021**

**DISTRICT : MUMBAI**

Shri Vijay Bapu Kamble. )  
Aged about 51 Yrs., Police Sub-Inspector, )  
Azad Maidan Police Station, Mumbai and )  
Residing at 102, A Wing, New Police )  
Officers Quarters, Behind Ghatkopar )  
Police Station, Ghatkopar (W), )  
Mumbai – 400 086. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 400 032. )
2. Commissioner of Police, Mumbai. )  
Having his office at Crawford )  
Market, Fort, Mumbai. )
3. Joint Commissioner of Police )  
(Law & Order), Crawford Market, )  
Fort, Mumbai. )...**Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 03.02.2022**

**JUDGMENT**

1. The challenge is to the order dated 25.03.2021 passed by Respondent No.3 – Joint Commissioner of Police thereby treating the period from 31.12.2005 to 16.09.2009 as suspension period for all purposes in terms of Rule 72(5) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as ‘Rules of 1981’ for brevity).

2. Shortly stated facts giving rise to this application are as under :-

Indeed, this is third round of litigation. Initially, the Applicant has filed O.A.No.805/2019 being aggrieved by order dated 06.07.2019 thereby granting pay and allowances to the extent of 50% restricting to 3 years only for out of service period and for grant of pay and allowances of suspension period. The said O.A. was dismissed on merit by order dated 16.06.2020. Thereafter, the Applicant has filed Review Application No.07 of 2020. The said Review was decided on merit by order dated 03.11.2020 and it came to be allowed partly. The claim of the Applicant for 100% pay and allowances for out of duty period as rejected by the Department was maintained. However, insofar as treatment to suspension period from 31.12.2005 to 16.09.2009 is concerned, it was found that no prior notice was given before passing such order as contemplated under Rule 72 of ‘Rules of 1981’ and to that extent, directions were given to the Department to consider the said issue after giving notice to the Applicant and shall pass appropriate order in accordance to Rules. Thereafter, Department issued show cause notice to the Applicant which was replied by the Applicant. The Respondent No.3 thereafter passed order dated 25.03.2021 thereby rejecting his claim to treat the suspension period as duty period for all purposes. The Respondent No.3 treated the suspension period ‘as such’ for all purposes, which is challenged in the present O.A.

3. To appreciate the contentions raised in the O.A, it would be appropriate to state the facts briefly. The Applicant was serving as PSI and attached to Dharavi Police Station. The criminal offence under Section 302 of Indian Penal Code vide Crime No.365/2005 was registered against him on the allegation of murder of wife Alka and he came to be arrested on 31.12.2005. Consequent to it, he came to be suspended by order dated 03.01.2006. After investigation, he was tried in Sessions Case No.220/2006 and was convicted to imprisonment for life and fine of Rs.1000/- and default R.I. for 6 months by Judgment dated 13.04.2007. Consequent to conviction, the Applicant came to be dismissed from service by order dated 16.09.2009 and the period of suspension from 31.12.2005 till dismissal was treated as suspension.

4. Being aggrieved by order of conviction, the Applicant filed Criminal Appeal No.416/2007 which was allowed by Hon'ble High Court on 01.09.2014 and Applicant came to be acquitted with the finding that prosecution has failed to establish the offence beyond reasonable doubt. In view of acquittal, the Applicant was reinstated in service by order dated 08.09.2015.

5. Later, Departmental Enquiry was initiated by charge-sheet dated 24.06.2016 for the said incident committing murder of wife and misleading the Department. In D.E, punishment of reduction to lower time scale for one year was imposed by order dated 22.11.2017. The Applicant challenged the punishment by filing appeal before the Government which was allowed by order dated 03.07.2018 partly thereby punishment was modified into punishment of strict warning. Thereafter, show cause notice was issued to the Applicant as to why out of duty period should not be treated as out of service period to which Applicant submitted his reply. The disciplinary authority, however, by order dated 06.07.2009 treated the period of suspension As such and granted 50% pay and allowances for out of service period restricting the monetary

benefits to three years, which was challenged in first round of litigation i.e. in O.A.No.805/2019.

6. It is on the above background, in this third round of litigation, the Applicant has challenged the order dated 25.03.2021 whereby his suspension period is treated as suspension period 'as such' for all purposes.

7. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned order *inter-alia* contending that only because Applicant is acquitted on account of benefit of doubt, he cannot be deprived of full pay and allowances of the suspension period. He emphasized that the Judgment of Hon'ble High Court acquitting the Applicant is required to be read as a whole and once there is acquittal on merit, it amounts to exoneration from all charges and clean chit to the Applicant. According to him, the phraseology acquitting the accused on benefit of doubt is generally used by the Court, but that itself would not disentitle the Applicant for treating suspension period as duty period. He further submits that in show cause notice dated 14.12.2020 (Page No.291 of Paper Book), the Department ought to have mentioned that on account of acquittal on benefit of doubt, why his suspension period should not be treated as suspension period for all purposes and in that event only, the Applicant would have answered the notice in appropriate manner. According to him, in absence of it, the issuance of notice is mere formality. As regard punishment of strict warning in D.E, he submits that it is minor punishment and should not come in the way of Applicant for treating suspension period as duty period.

8. Per contra, learned Presenting Officer sought to justify the impugned order *inter-alia* contending that even if Applicant is acquitted in appeal, it was of benefit of doubt and secondly, in D.E, the Applicant was subjected to punishment, which justify the suspension.

9. Rule 72 of 'Rules of 1981' provides procedure where a Government servant is reinstated in service which inter-alia provides that competent authority to order reinstatement required to consider the issue and shall make specific order regarding pay and allowances for the period of suspension ending with reinstatement and as to whether or in said period shall be treated as a period spent on duty. In this behalf, Rule 72(3), (4) and (5) is material, which is as under:-

**“3.** Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the terminate of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, 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 and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant 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 failing under sub-rule (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-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (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 Government servant 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.

10. As such, where competent authority is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to provision of Sub-rule 8 be entitled to full pay and allowances to which he would have been entitled had he not been suspended. In other words, negative test has to be applied to find out as to whether suspension was justified or otherwise. If suspension was not wholly unjustified, the

competent authority is required to issue notice before passing further order about pay and allowances of the suspension period, as mandatory in Sub-rule 5 of Rule 72 of 'Rules of 1981'.

11. Thus, in terms of aforesaid Rule, the competent authority has to apply negative test for holding the person to be entitled to all benefits of the period of suspension. The Applicant was suspended on account of registration of serious crime of murder of his wife and in criminal case, he was convicted. The perusal of Judgment of Hon'ble High Court reveals that Applicant was given the benefit of doubt since the theory of last seen together was not fully established. It was a case based upon circumstantial evidence which required to be proved by establishing chain of circumstances, so as to exclude every hypothesis of the innocence of the accused. The Hon'ble High Court sum-up the conclusion in Para Nos.16 and 20, which is as under :-

*“16. Thus, the prosecution must prove each and every circumstances on which it proposes to rely and the circumstances so proved should be of a conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so proved should form a complete chain which should exclude every hypothesis of the innocence of the accused and should unerringly point to the guilt of the accused. In other words, the circumstances should be capable of only one inference and that is that the accused and the accused alone has committed the crime.”*

*20. Since the prosecution has failed in forging a chain which is so complete as to exclude every hypothesis of the innocence of the accused and which is capable of unerringly pointing to the guilt of the accused, the falsity of the defence cannot be taken into consideration as an additional circumstance for proving the offence since the prosecution has not established the offence against the appellant beyond reasonable doubt. The appellant, in our opinion, therefore, would be entitled to be given the benefit of doubt.”*

12. It is thus explicit that the Applicant was given benefit of doubt and came to be acquitted. Needless to mention, acquittal would only wipe out the stigma of conviction but it will not obliterate legal consequences retrospectively. One need to see the situation as on date of suspension and what transpired later in judicial proceedings or departmental proceedings, so as to find out whether suspension was wholly unjustified or otherwise. In the present case, even if Applicant came to be acquitted, it is difficult to accept that suspension was wholly unjustified. There is no such clear exoneration to the Applicant from the charges leveled against him.

13. As stated above, for same incident and misleading the department, D.E. was initiated under the provisions of Maharashtra Police (Punishment and Appeal) Rules, 1956 and initially, punishment of reduction to lower time scale was imposed, which was modified into punishment of strict warning in appeal. Suffice to say, the charges leveled in D.E. held proved and Applicant was subjected to punishment. In such situation, it cannot be said that suspension was wholly unjustified.

14. In this behalf, reference can be made to **(1997) 3 SCC 636 [Krishnakant R. Bibhavnekar Vs. State of Maharashtra & Ors.]** wherein Hon'ble Supreme Court in the matter of treatment to suspension period after acquittal in criminal case held as under :-

*“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 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 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 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 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, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paras 5 and 6 of the additional affidavit.”*

15. Similarly, reference of decision of Hon’ble High Court **(2003)4 Mh.L.J. 606 [Vasant K. Kamble Vs. State of Maharashtra]** is inevitable, wherein it has been held as under :-

*“In our opinion, therefore, acquittal of the Petitioner by Criminal Court did not ipso-facto entitle him to the benefit of salary under Rule 72. What was required to be seen was where in the opinion of the Competent Authority, the action of suspension of the Petitioner was “wholly unjustified”. In other words, the negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.”*



In aforesaid case, the Petitioner Vasant Kamble was suspended in view of registration of crime for forgery. In criminal case, he was acquitted. No DE was initiated against him. The period of suspension was treated 'as such'. Before Hon'ble High Court, the contention was raised that in view of acquittal in criminal case, the Petitioner is entitled to all benefits of suspension period. However, Hon'ble High Court rejected the defence stating that acquittal *ipso-facto* does not entitle him to the benefit of salary under Rule 72 of 'Rules of 1981'. As such, in view of this precedent, the claim of the Applicant claiming pay and allowances for suspension period is devoid of merit. Apart, in the present case, in DE, the Applicant is held guilty meaning thereby suspension was not unjustified.

16. The submission advanced by the learned Advocate for the Applicant that issuance of notice was only formality and Applicant should have been given specific notice that in view of acquittal on benefit of doubt, he is not entitled to pay and allowances for suspension period is totally unacceptable. All that, Rule 72(5) requires issuance of show cause notice before passing order about the treatment to suspension period. Indeed, if authorities make such reference in show cause notice, it would be again subject to criticism that the authority has already predetermined the issue. Be that as it may, I do not see any illegality or irregularity in issuance of notice as tried to be canvassed by learned Advocate for the Applicant.

17. Likewise, the submission advanced by the learned Advocate for the Applicant that the incident of alleged murder was pertaining to personal life of the Applicant and has nothing to do with his duties as Police Personnel or public servant, and therefore, suspension period has to be treated as duty period for all purposes, is totally fallacious. A Government servant is required to maintain integrity in his life and any such act of committing murder would bring disrepute to the administration. Therefore, it would be deleterious to the maintenance of

discipline to give full back-wages for suspension period despite he is held guilty in DE.

18. The totality of aforesaid discussion leads me to sum-up that in facts and circumstances of the case, it is not at all possible to accept that the suspension of the Applicant was wholly unjustified. On the other hand, the suspension seems to be justified. I, therefore, see no illegalities in the impugned order and challenge to the same is without any merit. Hence, the following order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 03.02.2022

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2022\February, 2022\O.A.474.21.w.2.2022.Suspension Period.doc

Uploaded on