

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 908/2020 (S.B.)

Shri Tulsiram S/o Keshav Kotrange,
Aged about 55 years, Occ. Service,
R/o C/o Police Station Etapalli,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai- 32.
- 2) The Deputy Inspector General of Police,
Gadchiroli Range,
Civil Lines, Nagpur.
- 3) The Superintendent of Police,
Gadchiroli.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 07th Sep., 2023.

Judgment is pronounced on 14th Sep., 2023.

Heard Shri G.G.Bade, Id. counsel for the applicant and Shri
A.M.Khadatkar, Id. P.O. for the Respondents.

2. Undisputed chronology which is also set out in the impugned order is as follows. Crime No. 95/92 was registered against the applicant, who was working as Police Constable, at Aheri Police Station under Sections 306, 498-A, I.P.C.. He was placed under suspension on 10.10.1992. He was reinstated on 03.12.1995. In Session Case No. 38/1995 arising out of Crime No. 95/92 he was convicted and sentenced to suffer rigorous imprisonment for seven years and one year for offences punishable under Sections 304-B and 498-A, I.P.C., respectively by order dated 18.12.2002. Consequent upon this conviction he was dismissed on 18.12.2002. Against his conviction he filed Criminal Appeal No. 9/03 in the Hon'ble Bombay High Court. The appeal was allowed on 01.08.2017 (A-2) and conviction and sentence were set aside. After medical examination in which he was found to be fit, order of his reinstatement was passed on 07.04.2018 and he resumed duty on 09.04.2018. The show cause notice was issued to him stating therein the action which the department proposed to take. On 06.04.2019 the applicant submitted his reply whereupon the impugned order was passed operative part of which reads as under:-

पोशि/१०२० तुळशिराम कोटरंग, यांनी निलंबनात घालविलेला कालावधी दिनांक 10-10-1992 ते दि. 02-12-1995 पर्यंत महाराष्ट्र नागरी सेवा (पदग्रहण अवधी स्वियेत्तर सेवा, निलंबन, बडतर्फी व सेवेतून काढून टाकणे या काळातील प्रदाने) नियम 1981 मधील पोटनियम 72 पोटनियम (3) च्या तरतुदीनुसार सर्व प्रयोजनार्थ कामावर व्यतीत केलेला कालावधी "कर्तव्यकाळ" (On Duty) म्हणून गणण्यात येत आहे

तसेच तुमचे दिनांक १८/१२/२००२ ते दिनांक ०८-०४-२०१८ पर्यंत सेवाबाह्य कालावधी महाराष्ट्र नागरी सेवा (पदग्रहण अवधी स्वियेत्तर सेवा, निलंबन, बडतर्फी व सेवेतून काढून टाकणे या काळातील प्रदाने) नियम 1981 मधील पोटनियम 70 पोटनियम (4) व (5) च्या तरतुदीनुसार तुम्हाला पोलीस दलातून कमी करण्यात आले नसते तर जे पुर्ण वेतन मिळाले असते त्यांच्या 50% टक्के वेतन व त्यावरील अनुज्ञेय असलेले भत्ते सेवेत पुनः स्थापीत करण्यालगत पुर्वी तीन वर्षांच्या कालावधी पुरतीच मर्यादीत राहिल असे भत्ते मंजूर करण्यात येत आहे. तसेच तुमचे सवेतील गैरजर कालावधी सेवानिवृत्ती वेतनाचे प्रयोजनासाठी कर्तव्यकाळ गणण्यात येणार नाही असे आदेश देत आहे.

Hence, this Original Application assailing second half of the operative part of the impugned order.

3. According to respondent no. 1 the impugned order does not call for interference.

4. Case set up by the applicant in his rejoinder is that sub-rules 4 & 5 of Rule 70 of The Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules, 1981 referred to in the impugned order had no application to the facts of the case because the applicant who was dismissed on being convicted was reinstated on being acquitted by the Appellate Court. In support of this submission reliance is placed on **Baban Shriram Wafare Vs. Zilla Parishad, Ahmednagar 2002 (3) Mh.L.J., 390 (Bombay High Court)** wherein it is held:-

A primary teacher dismissed from service on the ground of conviction on a criminal charge is entitled for the consequential benefits on his reappointment on account of acquittal order passed by the Appellate Court. The Appeal Rules, 1964, do not empower the Zilla Parishad to deny him the benefit of continuity in service with consequential

benefits including pay and its fixation, on acquittal in appeal. Rules 70 and 71 of the Rules of 1981 deal with different situations and do not deal with the situation where the Government servant is required to be reinstated on account of his acquittal by the Appellate Court.

In this judgment it is further observed:-

The provisions of Rule 19(a) of the Tamilnadu Civil Services (CCA) Rules came up for interpretation in the case of Deputy Director of Collegiate Education (Administration) Madras v. S. Nagoor Meera, (1995) 3 SCC 377 and the Supreme Court, referring to the provisions of Clause (a) of the second proviso to Article 311(2) of the Constitution, held :

"..... The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal Court."

(emphasis supplied)

In this case following relief was granted :-

In the result, we allow the petition and quash and set aside the order dated 24-07-1986 and 29-11-1988 as well as the order dated 30-04-1989. We hold that the petitioner, on his acquittal by this Court, was entitled for reinstatement in service with continuity and other consequential benefits including pay and its fixation as if he continued in service in the absence of the criminal case registered and decided against him. The respondent Zilla Parishad is therefore, directed to take appropriate steps for revision of the petitioner's pensionary benefits and also payment of arrears if any. This shall be done within a period of two months from today.

5. The issue which falls for determination recently came up for consideration before the **Hon'ble Bombay High Court in State of**

Maharashtra and Another Vs. Surendra G. Ghodake 2023 (5) Mh.L.J.

59 wherein it is held:-

13. The law with regard to entitlement for payment of salary and allowances during period of dismissal of a convicted employee is well settled. Payment of salary is not automatic upon reinstatement after reversal of order of conviction. In SBI v. Mohd. Abdul Rahim, 2012 MhLJ Online (S.C.) 158 = (2013) 11 SCC 67 the employee therein suffered conviction for offence under Section 498-A of IPC. Denying back wages consequent to reinstatement after acquittal in appeal, the Apex Court held:

11. In Banshi Dhar (2007) 1 SCC 324 this Court answered the question against the employee by holding that grant of backwages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a given case. It is on such consideration that backwages were declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression "moral turpitude" is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied backwages in as much as the sentence imposed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22-2-2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant Bank from employing him. If the respondent could not have remained employed with the appellant Bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate retrospectively to wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to backwages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same has been granted by the appellant Bank.

14. In Baldev Singh vs. Union of India, 2005 Mh.L.J. Online (S.C.) 65 = (2005) 8 SCC 747, the Apex Court held:

7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in Ranchhodji Chaturji Thakore vs. Supdt. Engineer, Gujarat Electricity Board (1996) 11 SCC 603 : 1997 SCC (L&S) 491.

15. In Union of India vs. Jaipal Singh, 2004 (3) Mh.L.J. (S.C.) 793==(2004) 1 SCC 121 the employee was convicted of offence under section 302 of IPC connected with his private affairs and was dismissed from service. Upon acquittal by Appellate Court, the High Court directed his reinstatement with full back wages. Reversing the direction of High Court for payment of full back wages, the Apex Court held:

4. ----- If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations 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. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not 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. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.

In this case while granting 100% backwages the Tribunal had relied on Rule 70 of the Rules of 1981. With regard to said rule the High Court observed :-

17. Reliance of the tribunal on Rule 70 of the Rules of 1981 does not cut any ice as Rule 70 does not envisage automatic payment of 100% backwages. Rule 70(4) is relevant which reads thus.

“70(4) In cases other than those covered by sub rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirement of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held the Government servant shall subject to the provisions of sub-rules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, 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 : Provided that any payment under this sub-rule to a Government servant [other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)] shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government Servant, as the case may be.”

Thus even under Rule, the competent authority is vested with discretion to determine the quantum of backwages upon the penalty of dismissal or removal being reversed.

6. While allowing appeal of the applicant and setting aside his conviction the High Court has observed:-

To secure conviction, the prosecution must prove its case beyond reasonable doubt. In my view, looking to the quality of evidences, as are available on record, there is no hesitation in my mind to record a finding that the prosecution has utterly failed to prove its case beyond reasonable doubt. Therefore, the conviction awarded, against the appellant, in my view, cannot be sustained.

These observations will show that the applicant was acquitted because he was found entitled to benefit of reasonable doubt.

7. Having regard to facts of the case and law applicable thereto as discussed above, I have come to the conclusion that the impugned order does not call for interference. **The O.A. is accordingly dismissed with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

Dated :- 14/09/2023.
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

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

Judgment signed on : 14/09/2023.
and pronounced on

Uploaded on : 15/09/2023.