

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.708 OF 2016

DISTRICT : NASHIK

Mr. Surendra G. Ghodake.)
Age : 50 Yrs, Occu.: Service as Police)
Constable, Nashik and R/o. Pendarkar)
Colony, Nashik Road, Dist : Nashik.) **...Applicant**

Versus


1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The Commissioner of Police, Nashik.) **...Respondents**

Mr. J.N. Kamble, Advocate for Applicant.

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

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 24.03.2017



JUDGMENT

1. A Police Constable reinstated after the order of dismissal as a result of composition of the offence before the Hon'ble High Court was given 50% of the Pay and Allowances for the said period from 30.6.1999 to 26.3.2013 by the orders dated 11.8.2014 and 12.5.2016. The Applicant is aggrieved thereby and he seeks full payment.

2. I have perused the record and proceedings and heard Mr. J.N. Kamble, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.

3. The Applicant admittedly came to be convicted by the learned Judicial Magistrate 1st Class, Nashik Road. Under the provisions of Sections 323 and 498-A of the Indian Penal Code and he was sentenced to pay a fine of Rs.200/- under Section 323 of the IPC and was sentenced to suffer imprisonment for six months and to pay fine of Rs.1,000/- with default clause under Section 498-A Indian Penal Code. The Applicant, therefore and thereafter, came to be dismissed from service on 30th June, 1999. His appeal to the Court of Sessions at Nashik was only partially allowed in so far as his conviction and sentence



under Section 323 of IPC was concerned and was confirmed in so far as his conviction and sentence under Section 498-A of the IPC was concerned, with the result, the order of dismissal also continued. The matter was carried by him to the Hon'ble High Court by way of **Criminal Revision Application No.389/2000 (Surendra G. Ghodake Vs. The State of Maharashtra)**. Therein Criminal Application No.151/2011 was made for permission to compound the offence. A copy of the Affidavit of his estranged wife who was Hon'ble High Court's Respondent No.2 is also submitted on record here at Page 35 of the PB. She stated all about the prosecution and the punishment handed out by the Court of the learned Magistrate and the learned Sessions Judge. She then stated that she had filed for maintenance under the provisions of Section 125 of the Code of Criminal Procedure. There, she had decided to settle the matter and agreed to file consent terms before the Hon'ble High Court to compound the offence. This Affidavit was filed on 4th April, 2011 and the Hon'ble High Court was pleased to pass an order on 20th June, 2011. It has been recorded in that order that both sides informed his Lordship that the matter has been amicably settled and before His Lordship, the Respondent's wife made a categorical statement that all her dues had been settled and, "she has no grievance



subsequent". She had also filed an Affidavit along with the consent terms. Relying upon a Judgment of the Hon'ble High Court of Kerala, His Lordship was pleased to invoke the powers under Section 482 of the Cr. P.C. and allowed the parties to compound the offence in terms of Prayer Clauses (a) and (b) which need to be reproduced.

"7. The Applicant therefore, prays that:-

(a) This Hon'ble Court may pass an order compounding the offence punishable under Section 498(A) as well as 323 of I.P.C. registered by the Respondents against the Applicant;

(b) This Hon'ble Court may pass an order for quashing and setting aside the impugned judgment and Order passed by the Ld. J.M.F.C. in Case No.331 of 1996 dated 03.06.1999 and the Ld. Sessions Judge, Nashik dated 24.11.2000 in Criminal Appeal No.35 of 1999."

4. It is, therefore, very clear that the Hon'ble High Court was pleased to allow the composition of the offence and the net result thereof in accordance with the provisions of Section 320(8) of the Code of Criminal

Procedure would be that it, "shall have the effect of an acquittal of the accused with whom the offence has been compounded". This is the plain legal position.

5. A post reinstatement, the issue arose with regard to the period of absence on account of dismissal from 30.6.1999 to 25.3.2013 post order of the Hon'ble High Court. The Applicant brought **OA 1206/2013 (Shri Surendra G. Ghodake Vs. The Director General of Police and one another)**. This Tribunal disposed of that OA with a direction that the Commissioner of Police, Nashik City should expeditiously decide the said issue preferably within a period of two months and to communicate the decision to the Applicant.

6. The decision has been taken by way of the impugned orders and the sum and substance of the reasoning is that the order whereby the Applicant ultimately got free from the criminal liability was not on merit. In the same line, the learned PO also advanced her submissions, relying upon two Judgments – one Judgment of the Hon'ble Supreme Court and one of the Division Bench of the Hon'ble Bombay High Court.

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7. In my opinion, the reasoning that the acquittal was not a clean acquittal flies in the face of the express provisions of Section 320(8) of the Cr.P.C. The effect of a particular manner in which a criminal trial comes to an end will be fully governed by the provisions of the Cr.P.C. and the individual notions of any Officer howsoever high or mighty would have to be subordinated to the clear provisions of law. I have, therefore, got no hesitation in rejecting the reasoning in the impugned order and the submissions of the learned PO in that behalf.

8. Under the provisions of Rule 70(2) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, it will become very clear that it was an error on the part of the authorities below not to have treated the exoneration of the Applicant from the criminal liability as full exoneration, and therefore, thereunder full pay and allowances ought to have been granted. It must be clearly understood that under Rule 70 of the said Rules provide for regulation of Pay and Allowances in the light of the absence from duty when the orders were of dismissal, removal or compulsory retirement and those orders were set aside. Rule 72 deals with the circumstances when the reinstatement is effected of a suspended employee and in



this light, the Hon'ble Supreme Court's Judgment in **Krishnakant Raghunath Vs. The State of Maharashtra and others, dated 28.2.1997** (other aspects of the citation are not clear). That was a matter arising out of Rule 72 and naturally, the effect of the provision like Section 320(8) of the Cr. P.C. was not involved.

9. The learned P.O. also relied upon an unreported Judgment of a Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.7763/2013 (Mohan M. Agashe Vs. Meher Singh (2013) 7 SCC 685** and quoted a few Paragraphs therefrom. Again **Mohan Agashe** as well as **Meher Singh** (supra) arose out of the facts of initial entry and that was the context in which the issue of the effect of acquittal on whether it was clean acquittal or by virtue of benefit of doubt was considered. One other aspect of the matter was the principle of 'no work no pay'. Now, it is very clear that by the very nature of things, Rule 70 of the said Rules takes care of the situation where the issue arises of treating his leave period and the consequent payment, etc. That is a categorical statutory provision, and therefore, the principle of 'no work no pay' would not arise. The present is an instance of a peculiar fact situation. Similarly, in so far as the issue inter-alia of clean acquittal, etc. was there, again the consequences of a



provision like Section 320 (8) of the GR would be applicable which was not the case there.

10. The learned Advocate for the Applicant relied upon **Sucha Singh Vs. State of Punjab & Ors. : 2014 (3) SLR 145 (Punjab and Haryana)**. It was held by the Hon'ble High Court of Punjab and Haryana that post acquittal in a prosecution arising out of the Prevention of Corruption Act and where no separate DE was instituted, the concerned Government employee would be upon acquittal entitled to full salary and allowances.

11. In view of the foregoing, I am clearly of the view that the impugned orders are unsustainable and governed by the provisions of Rule 70(2) of the said Rules, the Applicant would be entitled to full pay and allowances for the period from 30th June, 1999 to 25.03.2013.

12. The orders herein impugned stand hereby quashed and set aside and Respondents are directed to grant to the Applicant, full salary and allowances for the period just referred to and make sure that the pay and allowances in full is paid to him within six weeks from today and in case half amount has already been paid, the Respondents shall pay to the Applicant the balance. The



Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
24.03.2017

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Mumbai

Date : 24.03.2017

Dictation taken by :

S.K. Wamanse.

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