

(2015) 07 BOM CK 0156

In the Bombay High Court

Case No : Writ Petition No. 3060 of 1999 and Civil Application No. 6239 of 2015

Abdul Rashid Abdul Latif Musalman

APPELLANT

Vs

Zilla Parishad, Jalgaon and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 12
Constitution of India, 1950 — Article 311(2)(b)
Penal Code, 1860 (IPC) — Section 147, 149, 307, 323, 324
Probation of Offenders Act, 1958 — Section 12, 3, 4, 6, 9

Citation : (2015) 6 ALLMR 149 : (2015) 6 BomCR 408 : (2016) 148 FLR 250 :
(2015) 6 MhLj 248

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Deshmukh Anand I., for the Appellant; Vijay Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.V. Ghuge, J—This petition has been admitted by this Court by order dated 26.8.2002.

2. I had heard the learned Advocates on 9.7.2015. Their contentions were recorded as under:--

"1. The petitioner is a 76 years old "Former Assistant Teacher". He was convicted by the judgment and order dated 30/12/1977 by the Additional Sessions Judge, Jalgaon for having committed offences u/s. 147, 149, 307 and 323 of the IPC. His Criminal Appeal No. 19/1978 was decided by this Court on 11/03/1981. The appeal was partly allowed and the conviction of the petitioner u/s. 147 of the IPC was confirmed. Conviction u/s. 149 with Section 307 of the IPC was set aside and he was convicted u/s. 149 r/w 324 of the IPC. Similarly his conviction u/s. 323 of the IPC was also confirmed along with Section 149 of the IPC r/w Section 323 of the IPC.

2. The petitioner submits that by the said judgment dated 11/03/1981, the petitioner was given the benefit of the provisions of the Probation of Offenders Act, 1958 (For short, the Act) and was released on executing a bond of Rs. 1,000/- with one surety for the like amount on the condition that he would appear and receive the sentence when called upon during the period of 2 years from the date of execution of the bond.

3. It is not in dispute that the petitioner was suspended by order dated 13/05/1976 in the light of the grave and serious offence registered against him. On account of his conviction, he was terminated from employment by order dated 08/06/1988. The petitioner was 39 years old in 1981. As an Assistant Teacher, his age of retirement is 58 years.

4. The petitioner has prayed for all service benefits in the light of the judgment of this Court dated 11/03/1981, by which he was given the benefit of the Act.

5. Learned Advocate for the petitioner submits that the principle of "No work - No wages" would apply depriving the petitioner of back wages. However, he was suspended on 13/05/1976. Till his termination dated 08/06/1988, he was paid suspension allowance @ Rs. 1/- per month. He was drawing Rs. 75/- salary per month on the date of his suspension. He, therefore, makes a grievance that such suspension allowance is unknown to Law and the petitioner would stand to gain the suspension allowance for this entire period.

6. Learned AGP has prayed for a short accommodation in order to find out as regards the provision under which the petitioner was paid suspension allowance of Rs. 1/- per month. He also desires to take instructions in the light of the contention of the petitioner that he is not to suffer dis-qualification attached to a conviction for an offence, u/s. 12 of The Act on account of the benefits given to him by the judgment dated 11/03/1981.

7. Stand over to 16/07/2015 as part heard."

3. It is submitted by the petitioner that his termination is on account of his conviction and therefore, it needs to be concluded that by the benefit afforded to the petitioner under Section 12 of the Probation of Offenders Act, he incurs no dis-qualification. He, therefore, stands reinstated in service and is, therefore, entitled to the benefits consequential to reinstatement.

4. It is further submitted, in the alternative, that the respondent may consider the case of the petitioner for grant of pensionary benefits since the petitioner has already attained the age of superannuation.

5. Shri Deshmukh placed reliance upon the judgment of the learned Division Bench of this Court in the matter of Champalal Paliwal, (Dead through Lrs.), Ashok Paliwal, (Dead through L.Rs.)Anita Ashok Paliwal; Mayur Ashok Paliwal; Mahima Ashok Paliwal; and Ranu Ashok Paliwal, Smt. Lilabai Paliwal and Others Vs. The Additional Commissioner, Nagpur Division, Nagpur and The Chief Executive officer, Zilla Parishad, Nagpur, (2012) 6 ALLMR 547 : (2013) 136 FLR

455 : (2012) 6 MhLj 545 , to support his contention that merely because he was convicted, he could not be terminated as he has been given the benefit of the Probation of Offenders Act.

6. The petitioner further relies upon the judgment of the learned Division Bench of this Court in the case of Anna Deoram Londhe deceased through his L.Rs. Smt. Indirabai Londhe Vs. State of Maharashtra, (1998) 4 ALLMR 24 : (1998) 4 BomCR 772 : (1999) 81 FLR 304 : (1998) 3 MhLj 435 . He seeks to indicate from the said judgment as well as in the judgment of Champalal (supra), that the pensionary benefits could be made available to the petitioner and such a direction be issued by this Court to the respondent.

7. Shri Sharma, learned Advocate appearing on behalf of the respondent No. 1 employer draws my attention to the affidavit-in-reply placed on record. He indicates from paragraph Nos. 8 to 11 that the petitioner has not been auto-terminated only because of his conviction. He was charge sheeted as per the Rules and after the conclusion of the enquiry and by following the due procedure of hearing the petitioner, an order of dismissal dated 8.6.1988 has been issued by way of punishment.

8. He then points out from Rule 68(2) of Chapter V, dealing with suspension, dismissal and removal from service, under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1981 that where a Government employee is convicted by a Court of Criminal jurisdiction, he shall be placed under suspension and shall be paid a nominal Re. 1/- per month as suspension allowance, till he is reinstated or till he is removed from employment. He further submits that this Rule is still applicable and has not been set aside by any Court.

9. Shri Sharma has then placed reliance upon the judgment of the Apex Court in the case of Union of India and others Vs. Bakshi Ram, AIR 1990 SC 987 : (1990) CriLJ 1013 : (1990) 60 FLR 571 : (1990) 1 JT 339 : (1990) LabIC 806 : (1990) 1 LLJ 498 : (1990) 1 SCALE 321 : (1990) 2 SCC 426 : (1990) 1 SCR 760 and in the case of Smt. Rukma and others Vs. Jala and others, AIR 1997 SC 3907 : (1997) CriLJ 4641 : (1997) 3 Crimes 173 : (1997) 7 JT 319 : (1997) 5 SCALE 435 : (1997) 11 SCC 579 : (1997) AIRSCW 3835 : (1997) 7 Supreme 299 . He has, therefore, submitted that the issue as to whether the effect of the benefit of Section 12 of the Probation of Offenders Act would wipe out the effect of disciplinary action, is no longer res integra.

10. While responding to the request of the petitioner, which is in the form of an alternative prayer, he submits that if the petitioner makes a representation to the management for pensionary benefits, in the light of his reliance placed on the judgments of this Court in the cases of Champalal and Anna Deoram (supra), the management would consider the said representation by forwarding it to the Government and cause a decision thereon within a period of four months.

11. I have considered the submissions of the learned Advocates for the respective sides.

12. Section 12 of the Probation of Offenders Act, 1958 reads as under:--

"Section 12 - Removal of disqualification attaching to conviction.

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law :

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence."

13. The issue is as to whether the removal of disqualification, which is an attachment to the conviction, can be nullified in service jurisprudence. It is trite law that even if an employee is acquitted of the charge of having committed criminal offences, by the Court of Criminal jurisdiction, the employer can proceed to conduct a departmental enquiry and on the basis of preponderance on the principles of probabilities, could arrive at a conclusion holding the delinquent guilty. In catena of judgments, the Apex Court has held that the probative value of evidence in criminal proceedings cannot be equated with the evidence recorded in departmental proceeding. Departmental proceedings are conceptually distinct and different from a criminal trial and an employer may arrive at a finding of holding the delinquent guilty if the charges are proved in the enquiry.

14. The reliance placed by the petitioner on the judgment of this Court in the case of Champalal (supra), may not be of any assistance since in the said case, the delinquent was not subjected to a domestic enquiry before awarding the punishment of removal from service. This Court, therefore, held that, "Perusal of the punishment order dated 13.12.1991 shows that the deceased Driver was mechanically punished not for account of his conduct/circumstances but only because of his conviction. The authorities over looked the fact that it is the conduct which is punishable departmentally and not the conviction which needs to be taken cognizance of."

15. In the case of Anna Deoram (supra), the representation made by the convicted employee for pensionary benefits was not considered by the Government and in those circumstances, this Court concluded that the petitioner was entitled to arrears of compassionate pension.

16. The Apex Court in the case of Union of India (supra), has concluded that the stigma of conviction is not wiped out on the release of the concerned delinquent under the Probation of Offenders Act. The Apex Court considered the ambit of Section 12 of the said Act and has arrived at it's conclusions in paragraph Nos. 8 to 13, which read as under:--

"8. It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Sections 3,4 and 9 of the Probation of Offenders Act, Fazal Ali, J., in The

Divisional Personnel Officer, Southern Railway and Anr. etc. v. T.R. Challappan etc., speaking for the Court observed:

These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order or release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the Statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4, or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction.

As to the scope of Section 12, learned Judge went on (at 596):

It was suggested that Section 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification, attached to a conviction of an offence under such law. This argument, in our opinion, is based on a gross misreading of the provisions of Section 12 of the Act, the words "attaching to a conviction of an offence under such law" refer to two contingencies: (i) that there must be a disqualification resulting from a conviction and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It is also manifest the disqualification is essentially different in its connotation from the word "misconduct".

9. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of Section 3 or 4 of the Act does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; (See Article 311(2)(b) of

the Constitution and Tulsiram Patel case:.

10. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12. On this aspect, the High Court speak with one voice. The Madras High Court in *Akella Satyanarayana Murthy Vs. Zonal Manager, Life Insurance Corporation of India, Madras*, AIR 1969 AP 371 : (1969) CriLJ 1218 ., the Punjab & Haryana High Court in *Om Prakash v. The Director Postal Services (Post and Telegraphs Deptt.) Punjab Circle, Ambala and Ors.,.* The Delhi High Court in *Director of Postal Services and Anr. v. Daya Nand*, have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Courting T.R. Challappan"s case.

11. In *Trikha Ram Vs. V.K. Seth and Another*, AIR 1988 SC 285 : (1988) LabIC 383 : (1987) 1 SCC 39 Supp : (1987) SCC 39 Supp this Court after referring to Section 12 has altered the punishment of dismissal of the petitioner therein into "removal from service", so that it may help him to secure future employment in other establishment.

12. Section 12 is thus clear and it only directs that the offender "shall, not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.

13. In the result the appeal is allowed. The impugned order of the High Court is set aside. However, we alter the penalty of dismissal from service into "removal from service" as it was done in *Trikha Ram*"s case."

17. In similar circumstances, the Apex Court in the case of *Additional DIG Police (supra)*, dealt with the removal of disqualification under Section 12 of the said Act and concluded that the employer was at liberty to pass an order de hors the provision. Reliance was placed upon the *Union of India v. Bakshi Ram* case (supra). It was thus held in paragraph Nos. 4 and 5 as under:--

"4. It is settled law that Section 12 of the Probation of Offenders Act, 1958 does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to

exonerate the person from departmental punishment. It was clarified; the section only directed that the offender shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Such law in the context is other law providing for disqualification on account of conviction. This Court, therefore, held that merely because a sentence of imprisonment has been substituted by an order passed under Section 12 of the Probation of Offenders Act, 1958, the effect of the conviction is not obliterated altogether and it would be open to the authorities to take departmental proceedings on the basis thereof (see *Union of India and others Vs. Bakshi Ram*, AIR 1990 SC 987 : (1990) CriLJ 1013 : (1990) 60 FLR 571 : (1990) 1 JT 339 : (1990) LabIC 806 : (1990) 1 LLJ 498 : (1990) 1 SCALE 321 : (1990) 2 SCC 426 : (1990) 1 SCR 760 . Therefore, the observation of the appellate court on the interpretation of Section 12 is not correct.

5. But the learned Single Judge as well as the Division Bench while setting aside the order of punishment observed that the authorities/department will not be precluded from taking appropriate disciplinary action against the delinquent. Since we have clarified the law on the subject, the only thing left for the authorities would be to consider the effect of the modification in the order of sentence from imprisonment to probation and pass a fresh order whether under Section 12 of the CRPF Act or de hors that provision. We do not think it necessary to interfere as we have indicated the scope of the fresh order to be passed by the authorities. We dispose of this appeal accordingly with no order as to costs."

18. It is, therefore, apparent that the law as it stands today does not preclude an employer from resorting to departmental proceedings. Section 12 of the Act is not intended to exonerate an employee from departmental punishment. The disqualification excluded under Section 12 is considered by the Apex Court in the above cited two judgments.

19. In the light of the above, I do not find that the impugned judgment deserves to be termed as perverse or erroneous. The petition, therefore, fails.

20. Nevertheless, the petitioner is at liberty to make a representation to the respondent No. 1 in the light of the judgment of this Court in the case of *Anna Deoram* (supra). In the event such a representation is made within a period of eight weeks from today, the first respondent shall deal with the same and shall refer it to an appropriate department for decision which shall be arrived at within a period of sixteen weeks from the date of receipt. The decision of the department shall, then, be conveyed to the petitioner on his address mentioned in the representation. If the decision is adverse to the petitioner he shall be at liberty to take recourse to remedies available in law.

21. Rule is discharged. No order as to costs.

22. Civil Application stands disposed off.