

(2014) 03 BOM CK 0179

In the Bombay High Court

Case No : Writ Petition No. 4772 of 2013

Daulat Narhari Munde

APPELLANT

Vs

The Chief Executive Officer, Zilla Parishad, Beed

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2014) 5 BomCR 681

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

Bench : Single Bench

Advocate : Santosh S. Jadhavar, Advocate for the Appellant; P.D. Suryawanshi, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J.—Heard respective counsel.

2. Rule. Rule made returnable forthwith and by consent of parties, heard finally.

3. Contentions of the petitioner are as follows:-

(a) A complaint dated 17.11.2004 alleging offenses against him under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 was filed.

(b) Special Case No. 4 of 2005 was instituted and the said case resulted into the acquittal of the petitioner on 24.3.2009.

(c) In the meanwhile, disciplinary proceedings were commenced against the petitioner.

(d) The Enquiry Committee submitted its report dated 8.3.2006 concluding that it cannot arrive at a conclusion since the charge levelled against the petitioner is being gone into by the competent Court having criminal jurisdiction.

(e) After acquittal, an appeal, in the form of Criminal Application No. 2171 of 2009 was filed before this Court, which also came to be dismissed on 7.8.2009.

(f) The petitioner, then, moved an application dated 29.1.2010 seeking service benefits owing to his acquittal.

(g) As a reaction to the said application, the respondent issued a show cause notice dated 7.12.2010.

(h) The petitioner replied the same on 15.12.2010.

(i) The impugned order dated 13.7.2011 was accordingly passed by the department, awarding a punishment of permanent stoppage of one annual increment and treating the suspension period as a part of the punishment.

(j) Being aggrieved with the order, the petitioner preferred Appeal No. 38 of 2012, which was rejected by the impugned order dated 18.2.2013.

4. Shri Suryawanshi, learned Advocate for the respondent submits that acquittal in a criminal trial cannot have any impact on the disciplinary proceedings against the employee. The employer is not precluded from taking disciplinary action despite the said employee having been acquitted in criminal trial. It is further contended that permanent stoppage of only one annual increment has been awarded as a minor punishment to the petitioner. Such punishment, therefore, could not be said to be disproportionate to the gravity and seriousness of the misconduct. The respondent has applied its mind to the case and exercised its discretionary powers and has decided to award a minor punishment to the petitioner, so as to caution him and ensure that similar mis-conduct is not committed in future. He, therefore, has vehemently prayed for the dismissal of the Writ Petition.

5. So far as principles of law are concerned, I am in agreement with the submission of Shri Suryawanshi. However, said submissions could have been sustained provided the respondent/employer would have completed the enquiry or would have further continued the enquiry even after acquittal and proceeded to complete it. If the enquiry officer would have arrived at a conclusion that the petitioner is guilty of the charges levelled upon him, the respondent would have been within its rights in awarding punishment to the petitioner notwithstanding his acquittal in a criminal trial.

6. In the instant case, the Enquiry Committee chose to close the enquiry and submit a report dated 8.3.2006, which is inconclusive. Since the Committee has abdicated its right to conclude the enquiry and arrive at a conclusion, it cannot be said that the enquiry was conducted and concluded and the charge levelled against the petitioner, was therefore, proved. As such no charge in the disciplinary proceedings has been proved against the petitioner. In absence of an enquiry and naturally, therefore, in absence of any charge having been proved against the petitioner, the show cause notice dated 17.12.2012 proposing punishment was void ab initio. Needless to state, subsequent action at the instance of the respondent is without any foundation of law.

7. In the light of the above, the petition deserves to be allowed and the

impugned orders cannot be sustained.

8. The Writ Petition is, therefore, allowed. The impugned show cause notice dated 7.12.2010, order of the disciplinary authority dated 13.7.2011 and the impugned judgment in appeal dated 18.2.2013 are quashed and set aside. The petitioner is entitled to the benefits as set out in prayer clause (B) of the petition. Rule made absolute. No order as to costs.