

(2017) 10 BOM CK 0113
In the Bombay High Court
Case No : 891 of 2010

Khizer Salim s/o Barkattulla Mirza

APPELLANT

Vs

The State of Maharashtra Through The Secretary, Rural
Development Department, Mantralaya, Mumbai, & Ors.

RESPONDENT

Date of Decision : 06-10-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Indian Penal Code, 1860, Section 147,
Section 307, <a href=1767-32

Citation : (2017) 10 BOM CK 0113

Hon'ble Judges : R.D. Dhanuka, Sunil K.Kotwal

Bench : DIVISON BENCH

Advocate : B.A. Dhenle, S.N. Morampalle, N.L. Jadhav

Judgement

1. This petition is filed under Article 226 of the Constitution of India to quash and set aside the order dated 10.09.2009 passed by respondent No.3 confirming the dismissal order dated 21.06.2002 and seeks an order and direction to the respondents to reinstate the petitioner on the post of Assistant Teacher with continuity of service and back wages alongwith other consequential benefits.

2. Contention of the petitioner is that he was appointed on the post of an Assistant Teacher by Zilla Parishad, Beed on 02.08.1995 and since then he was in service as an Assistant Teacher at Zilla Parishad Secondary School, Neknoor. Before joining his service the petitioner was facing criminal trial in Sessions Case No. 66/1993 for the offences punishable under Sections 147, 148 and 307 read with Section 149 of the Indian Penal Code. The petitioner was convicted on 20.04.1996 in the said proceedings for the offences punishable under Sections 147, 148 and 326 read with Section 149 of the Indian Penal Code and he was sentenced to suffer Rigorous Imprisonment for two years and to pay fine of Rs. 500/.

3. Being aggrieved by the said order, the petitioner preferred Criminal Appeal bearing No. 315 of 1996 which was pending before the High Court of Judicature Bombay, Bench at Aurangabad. The substantive sentence of the petitioner was suspended by the High Court. However, when the Education Officer, Zilla Parishad, Beed came to know about this conviction, on 08.07.1996 he issued show cause notice to the petitioner calling upon his explanation for suppression of his conviction from the Department. The petitioner submitted his explanation on 23.07.1996. He was however placed under suspension by Chief Executive Officer, Zilla Parishad, Beed on 17.10.1996.

4. A Departmental Enquiry was initiated against the petitioner for the charge of suppression of his conviction from the Department as well as for tarnishing the image of Education Department in the Society on account of his conviction for the serious charge in criminal case. Shri G.M. Sawai was appointed as an Enquiry Officer who after holding an enquiry in the matter, held that out of those two charges, only first charge was proved that the petitioner suppressed his conviction in criminal case from the Department and thereby committed misconduct under Rule 3 of the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967 (hereinafter referred as the "Conduct Rules").

5. On 23.01.2002 a show cause notice was served upon the petitioner calling upon his explanation as to why penalty of dismissal should not be imposed against him. On 01.02.2002 the petitioner submitted his explanation. However, on 21.06.2002 the Chief Executive Officer, Zilla Parishad, Beed passed final order and dismissed the petitioner from service. Being aggrieved by the said order, the petitioner preferred appeal before the Additional Commissioner, Aurangabad. The said appeal was dismissed on 17.11.2003. The petitioner did not challenge the order of dismissal.

6. On 18.12.2008 Criminal Appeal No. 315 of 1996 filed by the petitioner against the order of his conviction was allowed and the petitioner was acquitted of the offences with which he was charged. After his acquittal, the petitioner, on 16.03.2009 submitted a representation to the Chief Executive Officer, Zilla Parishad, Beed for his reinstatement on account of his acquittal. His representation was not considered by respondent No.3. The petitioner therefore filed a Criminal Writ Petition No. 3974 of 2009 in this Court. The said Writ Petition was disposed of on 17.08.2009 and direction was issued to the respondent No. 3 to decide the representation of the petitioner seeking reinstatement with all consequential reliefs.

7. On 10.09.2009 the Chief Executive Officer, Zilla Parishad, Beed passed an order and rejected the said representation submitted by the petitioner. The said order is challenged by the petitioner in the present Writ Petition.

8. By filing reply affidavit, respondent Nos. 3 and 4 opposed this petition on the ground that the petitioner was acquitted by giving benefit of doubt and it was not honourable acquittal. On the other hand, in the Departmental Enquiry initiated

against the petitioner the charge was proved that he suppressed his conviction in criminal trial from the Department and thereby contravened Rule 3 of the Conduct Rules. In brief, it is contended by respondent Nos.3 and 4 that the representation submitted by the petitioner was considered by respondent No.3 and it was rejected on merits.

9. Learned Counsel for the petitioner submits that the petitioner was dismissed from service on account of his conviction by Sessions Court, Beed. In appeal preferred by the petitioner before the High Court, the petitioner was acquitted, and therefore, the petitioner has every right to claim reinstatement in service. Learned Counsel for the petitioner submits that respondent No.3 Chief Executive Officer, Zilla Parishad, Beed did not consider the acquittal of petitioner and wrongly rejected the Representation of the petitioner. He placed reliance on the judgment in the case of "Basanti Prasad Versus the Chairman, Bihar Examination Board and others", reported in (AIR 2009 SC 3162).

10. In reply, learned Counsel for respondent Nos.3 and 4 submitted that Rule 3 of the Conduct Rules provides that every Parishad servant shall at all time maintain absolute integrity and devotion to duty. However, by suppressing his conviction from the Education Department, the petitioner had violated Rule 3 of the Conduct Rules and thus he was dismissed from the service. The subsequent acquittal of the petitioner in criminal appeal by High Court is absolutely irrelevant. He has also pointed out that the High Court acquitted the petitioner only by giving benefit of doubt and it was not an honourable acquittal. The Disciplinary Authority has rightly rejected the representation submitted by petitioner.

11. In the case at hand the following events are relevant.

(i) On 21.06.2002 the Chief Executive Officer, Zilla Parishad, Beed passed the order of dismissal of the petitioner.

(ii) On 17.11.2003 Additional Divisional Commissioner, Aurangabad dismissed the appeal preferred by petitioner against the order of his dismissal.

(iii) On 18.12.2008 Criminal Appeal No. 315 of 1996 preferred by petitioner and another coaccused was allowed and the petitioner was acquitted by this Court by giving benefit of doubt.

(iv) On 16.03.2009 petitioner submitted Representation to the Chief Executive Officer, Zilla Parishad, Beed for reinstatement in service.

(v) On 17.08.2009 this Court directed the Chief Executive Officer, Zilla Parishad, Beed to decide the representation of the petitioner within two weeks.

(vi) On 10.09.2009 the representation submitted by petitioner for reinstatement was rejected by Zilla Parishad, Beed.

12. After going through the abovereferred chronological events, it emerges that the petitioner did not challenge the order of dismissal dated 21.06.2002 and the

order dated 17.11.2003 dismissing appeal preferred by the petitioner. Therefore the dismissal order dated 21.06.2002 passed by the Disciplinary Authority as well as the order passed by the Appellate Authority dated 17.11.2003 have attained finality. Even in this Writ Petition the petitioner has not challenged both those orders of dismissal, but has simply challenged the order dated 10.09.2009 by which the representation of the petitioner for reinstatement after his acquittal by High Court is rejected by Disciplinary Authority Chief Executive Officer, Zilla Parishad, Beed. This Court thus need not examine the correctness of the order of dismissal dated 21.06.2002 passed by Disciplinary Authority and the order dated 17.11.2003 passed by the Appellate Authority.

13. Be that as it may, in this Writ Petition the petitioner has not challenged the order of dismissal on the ground of any illegality committed by Enquiry Officer in Departmental Enquiry or on the ground of violation of principle of natural justice. In our view, the Department has given full opportunity to the petitioner which is permissible under Rules and has followed the procedure prescribed under Rule 6 of Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. In our view, in this Writ Petition the order of dismissal of the petitioner dated 21.06.2002 even on merit cannot be disturbed which has already attained finality.

14. Another important aspect is that, in Departmental Enquiry undisputedly two charges were framed against the petitioner, which are as follows:

(1) The petitioner did not inform the Department regarding his conviction order dated 20.04.1996 passed by the Sessions Court, Beed sentencing him to undergo two years Rigorous Imprisonment and to pay fine of Rs. 500/for the criminal offence alleged to be committed by the petitioner.

(2) On account of conviction of the petitioner in criminal case the image of Education Department was tarnished and thereby the petitioner violated Rule 3 of the Conduct Rules.

15. Out of these two charges, Charge No.2 i.e. tarnishing the image of Department due to conviction of the petitioner in criminal case was not established as per the final enquiry report submitted by Enquiry Officer. Only Charge No.1 was proved that the petitioner kept the Department in dark by suppressing the fact of his conviction in criminal case. This report of Enquiry Officer was accepted by Disciplinary Authority and accordingly penalty of dismissal was imposed upon the petitioner. In other words, the petitioner was dismissed from the service only because he suppressed his conviction in criminal case from the Department. Therefore, the conviction of the petitioner or his acquittal in Criminal Appeal No. 315 of 1996 as per the order of High Court, is not at all relevant for claiming reinstatement in service by the petitioner. In other words, the order passed by the Chief Executive Officer, Zilla Parishad, Beed rejecting the representation of the petitioner for reinstatement in service cannot be treated as an illegal order, only because he did not consider the acquittal of

petitioner in criminal appeal as the same was not an honourable acquittal. On this ground alone this Writ Petition fails.

16. The ratio of the case of Basanti PrasadversusChairman, Bihar School Examination Board (cited supra) is not applicable in the case at hand, because in the case before the Apex Court, services of the husband of the petitioner were not dismissed as a result of Departmental Proceedings, but he was dismissed in view of the conviction by criminal Court. Considering that circumstance the Apex Court held that on the conviction having been set aside by superior forum, the dismissal ought to have been set aside. Facts before the Apex Court in the said matter being different are distinguishable in the facts of this case.

17. In so far as the judgment in the case of "Baban Shriram Wafare Versus Zilla Parishad", [2002 (3) Bom.C.R. 212] relied upon by the petitioner is concerned, in that case after conviction of the petitioner, he was dismissed under Rule 9 (i) of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, without following the regular procedure of Departmental Enquiry under Rule 6 prescribed for imposing major penalties and based only on his conviction in criminal case. The said employee therefore was reinstated in service, after his acquittal by the Appellate Court.

18. In this case, the petitioner was dismissed from service as a result of Departmental Proceedings, only after following regular procedure under Rule 6 of Discipline and Appeal Rules. The ratio of the Authority in the case of Baban Wafare Versus Zilla Parishad" (supra) is thus not applicable in the case at hand and is clearly distinguishable.

19. After perusing the judgment passed by this Court in Criminal Appeal No. 315 of 1996, it is clear that it was not an honourable acquittal of the accused/petitioner. Benefit of doubt was given to the petitioner in view of the prosecution being failed to prove that the petitioner and other coaccused were aggressor and the prosecution had failed to prove the genesis of the offence and also because the injuries on the person of the accused were not explained by the prosecution. Respondent No.3 refused to reinstate the petitioner on the ground that his acquittal was not an honourable acquittal and it would not affect the previous order of dismissal passed by the Disciplinary Authority. These reasons assigned by Disciplinary Authority for rejecting representation of the petitioner are absolutely correct and not being perverse, this Writ Petition deserves to be dismissed.

20. Learned Advocate for the petitioner in alternate submitted that the penalty of dismissal imposed by Disciplinary Authority is disproportionate and on that count this Court shall interfere with the punishment. However, in the case of "Chief Executive Officer, Krishna District Cooperative Central Bank Limited Versus K. Hanumanta Rao", reported in [2017 (4) Mh.L.J. 484], the Apex Court observed that,

"It is trite that Courts, while exercising their power of judicial review over such

matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority / employer is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, that the Court steps in and interferes".

21. While examining whether the penalty of dismissal awarded by Disciplinary Authority is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, in our view the petitioner being a Teacher was expected to disclose the employer about his conviction in a criminal case.

22. The Supreme Court in the case of (Avinash Nagra vs. Navodaya Vidyalaya Samiti) 13 reported in 1996 DGLS 1526 (soft): 1997 (2) S.C.C. 534, had an occasion to explain the importance of the character and conduct of a teacher in the following words:

"Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the words to their students but do not inculcate truth and purity amongst them, they will have betrayed them".

In the same paragraph, it is further observed thus:

"Dr. S. Radhakrishnan has stated that we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is andhakaraniridhata gurur itya bhidhiyate. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru? Swami Vivekananda had stated that the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis".

23. In the same judgment, the Supreme Court considered as to why in our Indian society, teachers are placed on the pedestal below the parents, and observed thus:

"It is in this backdrop, therefore, that the Indian society has elevated the teacher as Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha. As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and

intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of Page 1840 learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents".

24. In another judgment delivered by the Supreme Court in the case of Manager, Nirmala Senior Secondary School, Port Blair v. N.I. Khan, reported in [2003 DGLS 244 (Soft)] regarding the importance of the character of a teacher, the Supreme Court has observed thus:

"An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important".

The above referred principles declared by the Apex Court clearly apply to the facts of this case.

25. In the case at hand the petitioner was the Assistant Teacher who was expected to be an honest and an ideal person in the Society. The image of a Teacher in the Society must be absolutely clean and free from every doubt. However, from the facts on record it becomes clear that the petitioner was involved in a serious crime like causing grievous hurt by deadly weapon. He however could get acquittal because the benefit of doubt was extended in his favour for the reasons stated above. Therefore, by no stretch of imagination it can be said that the image of petitioner in the Society is ideal and free from any doubt for the students who would be continuously in his contact for the purpose of education, if he is reinstated. Suppression of his conviction from Department was wilful and thus he was not fit for the post of Teacher. In our view, it was thus just and proper decision of the Disciplinary Authority not to reinstate a Teacher who is dishonest and carries such dubious character. No infirmity can be found with the decision taken by respondent No.3 while rejecting the representation of the petitioner for reinstatement. In these circumstances, it cannot be said that the penalty imposed upon the petitioner was shockingly disproportionate.

26. In our view, this petition being devoid of merit deserves to be dismissed.

27. We, therefore, pass the following order. ORDER

- a) Writ Petition No 891 of 2010 is dismissed.
- b) Rule is discharged.
- c) No order as to costs.