
(2021) 11 BOM CK 0132

In the Bombay High Court

Case No : Writ Petition No.4452 Of 2020

Rahul S/O Sayajirao Inkar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Maharashtra Zilla Parishad District Services (Conduct) Rules, 1967 — Rule 72
Prevention Of Corruption Act, 1988 — Section 7, 13(i)(d), 13(2)

Citation : (2021) 11 BOM CK 0132

Hon'ble Judges : Nitin B. Suryawanshi, J

Bench : Single Bench

Advocate : Amol N. Kakade, V. S. Chaudhari, S. S. Dambe

Final Decision : Dismissed

Judgement

Nitin B. Suryawanshi, J

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. This petition challenges order dated 30th June, 2018 passed by respondent No. 3 in Appeal No. 91 of 2018, thereby imposing punishment of stoppage of one increment with permanent effect and treating the suspension period as suspension period.

3. The petitioner was working on the post of Head Master of C. P. S. Kanya School, Shirur, Taluka - Shirur (Ka), District - Beed, run by Zilla Parishad, Beed. On 21st November, 2012, an offence punishable under sections 7, 13 (i) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short "the said Act") was registered against the petitioner. The petitioner was arrested on the same day and was remanded to police custody. The petitioner was thereafter released on bail on 23rd November, 2012. Respondent No.3, vide order dated 5th December, 2012, put the petitioner under suspension with effect from 21st November, 2012. A notice of inquiry was issued to the petitioner on 7th February,

2014 along with charges. According to the petitioner, the charges levelled against the petitioner in the departmental inquiry were identical to the charges in the criminal case, so also papers of investigation were relied upon by the disciplinary authority in support of the charges levelled against the petitioner.

4. Departmental inquiry was conducted against the petitioner between 2014 and 2018. The inquiry officer held that the charges levelled against the petitioner are partly proved. The disciplinary authority, by the impugned order, imposed punishment of stoppage of one increment with permanent effect on next annual increments and directed to treat the suspension period of the petitioner between 21st November, 2012 and 8th November, 2016 as suspension period. The petitioner unsuccessfully challenged the punishment order, by preferring appeal before the Additional Divisional Commissioner, Aurangabad. The impugned punishment order is assailed in the present writ petition.

5. Heard Mr. Amol Kakade, learned advocate for the petitioner, Mrs. V. S. Chaudhari, learned Assistant Government Pleader for respondents No. 1 and 2 and Mr. S. S. Dambe, learned advocate for respondents No. 3 and 4. Perused the record.

6. Learned advocate for the petitioner strenuously submitted that the petitioner is acquitted in criminal case i.e. Special (ACB) Case No. 4 of 2013, vide judgment dated 24th August, 2017 and in that view of the matter, the petitioner should have been exonerated in the departmental inquiry, since charges levelled in the criminal case are similar to the charges levelled in the departmental proceedings. He submitted that the disciplinary authority has erred in imposing the punishment on the petitioner.

7. He further submitted that in view of the acquittal of the petitioner from the criminal case, the disciplinary authority ought to have exonerated him from all the charges. He further submitted that the petitioner was suspended for a prolonged period and the decision in the departmental inquiry was given belatedly. The delay cannot be attributed to the petitioner and by relying on some decisions of the Apex Court, he submitted that continuation of the suspension beyond ninety days is not permissible and in view of the honourable acquittal of the petitioner, suspension period of the petitioner should have been regularized and ought to have been treated as duty period. He, therefore, submitted that the writ petition may be allowed, by setting aside the impugned order.

8. In support of his submissions, learned advocate for the petitioner placed reliance on following judgments of the Supreme Court -

I. "O. P. Gupta V/s Union of India and Others", MANU/SC/0670/1987

II. "Capt. M. Paul Anthony V/s Bharat Gold Mines Ltd." AIR 1999 SC 1416 : 1999 AIR SCW 1098

III. "Hindustan Petroleum Corporation Ltd and Others V/s Sarvesh Berry" MANU/

SC/1048/2004

IV. "Ajay Kumar Choudhary V/s Union of India" AIR 2015 SC 2389

V. "Prem Nath Bali V/s Registrar, High Court of Delhi and Others" MANU/SC/1461/2015

VI. "G. M. Tank V/s State of Gujrat and Others" MANU/SC.8156/2006

9. Learned Assistant Government Pleader as well as learned advocate for respondents No. 3 and 4, on the other hand, supported the impugned order passed by the disciplinary authority and submitted that the acquittal of the petitioner cannot be termed as honourable acquittal, as claimed by the petitioner. The charges levelled against the petitioner in the departmental proceedings were different than the charges in the criminal case and on the basis of evidence led in the inquiry proceedings, the inquiry officer has rightly come to the conclusion that the charges are partly proved against the petitioner. Therefore, the disciplinary authority is justified in imposing the punishment on the petitioner. According to learned Assistant Government Pleader and learned advocate for respondents No. 3 and 4, in fact, lenient view is taken by the disciplinary authority in imposing the punishment of stopping of only one increment. They, therefore, submitted that no case is made out by the petitioner to cause interference in the impugned order and prayed for dismissal of the writ petition.

10. It is not in dispute that Crime No. 66 of 2012 for the offence punishable under sections 7, 13 (i) (d) read with 13 (2) of the said Act was registered against the petitioner in Neknoor Police Station and the petitioner was arrested in connection with the said crime on the same day and he was in police custody till 23 rd November, 2012.

11. On registration of offence against the petitioner, the petitioner was put under suspension with effect from 21st November, 2012, vide order dated 5th December, 2012. On 7th February, 2014, a chargesheet was served on the petitioner leveling two charges :

(i) that the petitioner was caught red handed while accepting bribe amount of Rs.3000/- and Crime No. 66 of 2012 is registered against the petitioner at Neknoor police station for the offence punishable under sections 7, 13 (i) (d) read with 13 (2) of the said Act. This has caused defamation of the Education Department, which is violative of Maharashtra Zilla Parishad District Services (Conduct) Rules, 1967 (for short "the said rules");

(ii) Petitioner was arrested in connection with crime No. 66 of 2012 registered with Neknoor police station for the offence punishable under section 7, 13 (i) (d) read with 13

(2) of the said Act and he was remanded to police custody till 23rd November, 2012. Being the government servant, it was the duty of the petitioner to

immediately inform the fact of his arrest to the higher office, however, by concealing the same, the petitioner has violated the said Rules.

12. The inquiry officer held that both the charges levelled against the petitioner are partly proved. It is not in dispute that the petitioner was caught red handed while accepting bribe amount of Rs.3000/- in an anti corruption trap. Consequently, an offence at Crime No. 66 of 2012 under sections 7, 13 (i) (d) read with 13 (2) of the said Act was registered against the petitioner at Neknoor police station and he was arrested on 21st November, 2012 and was remanded to police custody till 23rd November, 2012. The first charge that this caused defamation to the Education Department can be said to be proved against the petitioner.

13. So far as second charge against the petitioner is concerned that the petitioner failed to immediately inform the higher authorities about his arrest while in police custody is concerned, the same is held to be partly proved by the inquiry officer and the same is accepted by the disciplinary authority. The petitioner has informed the higher authorities about his arrest in connection with said offence on the next day after his release on bail. It cannot be expected of the petitioner to inform the higher authorities about his arrest while in the police custody. Therefore, finding recorded by the inquiry officer in respect of charge No. 2 is unsustainable. Charge No. 2, therefore, cannot be said to be even partly proved against the petitioner.

14. So far as charge No. 1 is concerned, admittedly, the petitioner was caught red handed in anti corruption trap, while accepting bribe amount of Rs.3000/- and Crime No. 66 of 2012 for the offence punishable under sections 7, 13 (i) (d) read with 13 (2) of the said Act was registered against the petitioner at Neknoor police station and he was arrested on 21st November, 2012 and was remanded to police custody till 23rd November, 2012. The charge appears to be, therefore, proved on record during the course of inquiry against the petitioner that because of the registration of the offence under the said Act against the petitioner and since he was caught red handed while accepting bribe and as he was arrested and remanded to police custody, the same has caused defamation to the Education Department. Charge No. 1 can be said to be proved. It is not clear as to on what basis the Enquiry Officer has held that the said charge to be partly proved.

15. It is not in dispute that because of the arrest of the petitioner on 21st November, 2012 and as he was remanded to police custody till 23rd November, 2012, the petitioner was suspended with effect from 21st November, 2012. Merely because the petitioner is acquitted by the criminal court, the petitioner cannot as of right claim that his suspension period be treated as duty period, irrespective of the fact that suspension of the petitioner was for a prolonged period.

16. The criminal case against the petitioner was decided and the petitioner was

acquitted by the judgment dated 24th August, 2017. It appears that thereafter, the disciplinary authority has passed the impugned punishment order on 30th June, 2018. The criminal court, while acquitting the petitioner, has drawn a conclusion that the trap against the petitioner was unsuccessful and the same was not based on verification of the demand of bribe money and there is no corroboration between the evidence of informer and the panch witnesses. The trial court, therefore, held that it is totally unsafe to rely and accept such case made out on record and the prosecution has utterly failed to prove the case within the purview of sections 7, 13 (d) read with 13 (2) of the said Act.

17. I am unable to agree with the submission of the petitioner that the judgment of the trial court is of honourable acquittal. It is clear from the judgment in the criminal case that the trial court has found it unsafe to rely on the evidence led by the prosecution, which resulted into acquittal of the petitioner.

18. The contention of the petitioner that identical charges were levelled in the departmental inquiry and the criminal case is also unacceptable. In the criminal case, the petitioner was charged for accepting illegal gratification, as he was caught red handed while accepting bribe amount of Rs.3000/-. Whereas, in the departmental inquiry, charge against the petitioner was that as the petitioner was caught red handed while accepting illegal gratification of Rs.3000/- in anti corruption trap and he was arrested and remanded in police custody, the Education Department was defamed. Thus, the charges in the criminal trial and in the departmental inquiry cannot be said to be identical.

19. Acquittal of the petitioner in the criminal case does not automatically entitle him to claim regularization of his suspension period. The disciplinary authority is empowered, after hearing the petitioner, to treat the suspension period of the petitioner as suspension period. Before passing the impugned order, principles of natural justice are followed and it is not the case of the petitioner that he was not heard before passing the impugned order.

20. Admittedly, the prosecution was not lodged at the behest of the disciplinary authority. In that view of the matter also the petitioner cannot, as a matter of course claim that his suspension period should be regularized and be treated as duty period.

21. It is apt to reproduce the observations of the Hon'ble Supreme Court in "Krishnakant Raghunath Bibhavnekar V/s State of Maharashtra and Others" (1997) 3 SCC 636, wherein it is observed thus-

"Legal evidence may be insufficient to bring home the guilt beyond doubt. The act of reinstatement sends ripples among the people in the office / locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public.

If the alleged conduct is the foundation for prosecution, grant of consequential benefits with all back wages etc. cannot be as a matter of course, even if the employee may have been acquitted on appreciation or lack of sufficient evidence. It would be deleterious to the maintenance of discipline if a person who was suspended on valid considerations is given full back wages as a matter of course, on his acquittal. The disciplinary authority has option either to enquire into the misconduct unless the selfsame conduct was subject matter of the charge and on trial the acquittal was not based on benefit of doubt but on a positive finding that the accused did not commit the offence at all. The authority may also, on reinstatement, pass appropriate order including treating suspension period as not spent on duty, after following the principles of natural justice.

Rule 72 gives a discretion to the disciplinary authority. The is not entitled to consequential benefits on his reinstatement after acquittal. He is also not entitled to be treated as on duty from the date of suspension till the date of acquittal, for the purpose of computation of pensionary benefits, etc."

22. In view of aforesaid ratio, there is no merit in the contention of the petitioner that since he is acquitted in the criminal case, the disciplinary authority has erred in imposing punishment on him and his suspension period ought to have been treated as duty period.

23. In the facts and circumstances of the present case and in the light of the ratio laid down by the Supreme Court in "Krishnakant Raghunath Bibhavnekar" (supra), the petitioner is not entitled to claim exoneration in the department inquiry and that his suspension period be treated as duty period on account of his acquittal from the criminal case.

24. So far as the judgments relied upon on behalf of the petitioner are concerned, in "Prem Nath Bali (supra) the Apex Court has considered that the delay in departmental inquiry had taken more than nine years to conclude and there was no justification for undue delay in completion of the departmental inquiry. The appellant's pension was fixed after excluding period of suspension, which was of nine years and twenty six days. In these facts, the Supreme Court directed the respondents to redetermine the pension of the appellant by taking into consideration the suspension period. The facts of this case are different and this ratio do not help the petitioner's case.

In "G. M. Tank" (supra), the appellant therein was honourably acquitted by the competent court. The appellant was charged having illegal accumulation of excess income by way of gratification. The Apex Court found that it was the case of no evidence and there was no iota of evidence against the appellant to hold that he was guilty of having illegally accumulating excess income by way of gratification. It was also found that the facts in evidence of departmental inquiry as well as criminal proceedings were the same. Hence, the Apex Court, set aside the impugned dismissal order of the appellant therein. This ratio also is rendered in the peculiar facts of that case and would not apply to the petitioner's case.

In "O. P. Gupta" (supra), the departmental inquiry against the appellant therein was prolonged for a period of twenty years and the appellant was kept under suspension for eleven years. Such are not the facts in the case in hand.

In "Ajay Kumar" (supra), the Apex Court laid down guidelines that suspension should be continued up to ninety days and its extension is not permissible beyond ninety days, if no charge sheet is filed. If charge sheet is filed, further extension to the suspension has to be by a reasoned order. There is no dispute about said proposition, however, in the present case, the petitioner ought to have questioned the prolonged suspension at appropriate time.

In "Capt. M. Paul Anthony" (supra), the Apex Court set aside the punishment, as the findings in the departmental inquiry were recorded ex-parte and no subsistence allowance was paid to the appellant therein during the suspension period, which was held to be violative of fundamental right to life. The Apex Court upheld the contention of the appellant that due to non payment of subsistence allowance, he was unable to undertake journey to attend the departmental proceedings and, the departmental proceedings against the appellant were, therefore, held vitiated on that ground.

In the present case, it is not the case of the petitioner that he was not paid subsistence allowance due to which he could not attend and defend the departmental inquiry proceedings. The charges in the criminal prosecution and the departmental proceedings were different and cannot be said to be identical, as is claimed by the petitioner. In that view of the matter also, the acquittal of the petitioner from the criminal prosecution would not automatically exonerate him from the disciplinary proceedings.

25. For the aforesaid reasons, there is no merit in the challenge raised in the writ petition and the impugned punishment order cannot be faulted with and the same is required to be sustained.

26. In the result, the writ petition is dismissed. Rule stands discharged. No order as to costs.