

(2018) 06 BOM CK 0079
In the Bombay High Court
Case No : WRIT PETITION No.5372 OF 2016

ROSHANI DAULATRAOJI WAGHMARE	Vs	APPELLANT
THE ZILLA PARISHAD GONDIA THR. EXECUTIVE OFFICER		RESPONDENT

Date of Decision : 21-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 498A, 506
Constitution of India, 1950 — Article 14, 21

Citation : (2018) 06 BOM CK 0079

Hon'ble Judges : S.B. SHUKRE, J

Bench : Single Bench

Advocate : Rohit Joshi, A.Y. Kapgate, S.M. Ukey

Final Decision : Allowed

Judgement

1. Heard.
2. Rule.Rule made returnable forthwith.
3. Heard finally by consent.
4. This is a case in which two similarly situated employees have been treated differently in an arbitrary manner.
5. There were two accused in Regular Criminal Case No.36/2011 before the Judicial Magistrate, First Class, Deori, District Gondia, namely, one Kishor Motilal Meshram, as an accused No.1 and Ku. Roshani Daulatrao Waghmare, petitioner as an accused No.2.
6. In this case both the accused Nos.1 and 2 were prosecuted for offences punishable under Section 498AA and 506(2) read with Section 34 of the Indian Penal Code.On merits of the case, learned Magistrate found that the prosecution could not prove the charge so made against both the accused

beyond reasonable doubt and therefore by the order passed on 13.2.2014, the learned Magistrate acquitted both the accused.

7. Prior to this acquittal of both the accused as aforesaid, there was a trial held for the same offences and both the accused were found guilty and

convicted of the same offences. This conviction was maintained by the appellate Court but in revision filed before this Court, the concurrent findings of

guilt and conviction of both the accused were upset by this Court and the matter was remanded back to the trial Court for holding the trial for the said

offences afresh. Accordingly, after remand, the trial, vide Regular Criminal Case No.36/2011, was held and as stated earlier, the trial culminated in

acquittal both the accused. It is pertinent to mention here that the order of remand passed by this Court in revision application was of the date of

13.11.2006.

8. Both these accused persons, were Assistant Teachers in a school run by the respondent No.1. In consequence of conviction given to both these

accused in previous trial which was confirmed by the appellate Court, both these accused persons were terminated from service by the respondent

No.1. But, as the convictions were set aside by the High Court in the revision application on 13.11.2006 and a re-trial was ordered, the accused No.1

Kishore Motilal Meshram chose to make a representation to the respondent No.1 for his reinstatement in service. This representation was made on

3rd September, 2010. At that point of time, the trial Court after remand, had not disposed of the criminal case. This petitioner, accused No.2, however

did not make any representation to the respondent No.1 for seeking reinstatement just as the co-accused Kishore Meshram had made.

9. The order of acquittal was passed by the trial Court after remand on 13.2.2014. So, it was expected that the representation dated 3rd September,

2010 filed by the co-accused Kishore Meshram was kept pending till final decision of the criminal case. But, that was not to be and he was directed to

be reinstated in service by respondent No.1 w.e.f. 14.10.2011, much before the order of acquittal was passed by the Criminal Court. One does not

understand as to what the Department would have done just in case there was a reversal of fortunes for the co-accused Kishore Meshram. Be that as

it may, the fact remains that the co-accused Kishore Meshram was reinstated in service from 14.10.2011 and there is no dispute about the fact that

he was equally situated as the present petitioner.

10. Now, the question would be as to whether this petitioner would also be entitled to claim and receive similar benefits as Kishore Meshram or

not. The question would have to be answered as in the affirmative for the reason that both Kishore Meshram and this petitioner were terminated from

service solely on the ground of their conviction in a criminal case, which was initiated not by the Department or at the behest of the Department but

because of some activities carried out by these persons outside the Department. In such a case, after verdict of acquittal came, it would have been

necessary for the Department to treat both the similarly situated accused persons equally or otherwise there would have been a violation of the

principle of rule of law and equality as enunciated by Articles 14 and 21 of the Constitution of India.

11. In the case of Union of India and others vs. Jaipal Singh, reported in 2004(3) Mh.L.J. 793, the Hon'ble Apex Court has carved out two categories

of cases so as to fix the responsibility of the Department regarding payment of backwages from a particular date. The first category consists of the

cases which are initiated by or at the behest of the Department and in this category of cases, whenever the verdict of acquittal is rendered by a

criminal Court, the Hon'ble Apex Court has held that different principle would rule for it would have to be seen as to whether Department was

justified in issuing the termination order or not. The second category comprises criminal cases which are initiated because of some action done by the

employees outside the scope of their duty and in a private manner, for which the Department is not responsible. In this category of the cases, the

Hon'ble Apex Court has held that the Department cannot in any manner be found fault with for having kept the employee out of service and, therefore,

Department would not be liable to pay the backwages. So, the basic principle is that the Department would be liable to pay or would not be liable to

pay the backwages depending upon the absence or presence of the fault on the part of the Department.

12. Having regard to this law, it would have to be examined as to whether there was any fault on the part of the Department and if it was, as to from

what date the fault could be found out. As stated earlier, if the Department thought it fit to reinstate in service a similarly situated accused person from

14.10.2011, there was no reason for the Department to have deprived the petitioner, also a similarly situated Assistant Teacher, of the same

benefit. Rather, the petitioner was made to run from pillar to post and to issue Advocate's notice for initiating contempt proceedings and it was only

after receipt of such a threat that the Department issued order of reinstatement to the petitioner in response to which the petitioner joined her post

w.e.f. 8.7.2015. Learned counsel for the Department submits that the petitioner was asked to join her service by letter issued on 4.6.2015, but she did

not. The argument cannot be accepted for the reason that this letter was conditional and it made the reinstatement in service of the petitioner

subject to her fulfilling certain conditions, which criterion was not applied while reinstating in service the co-accused Kishore Meshram w.e.f.

14.10.2011. So the fact that is established on record is that this petitioner was unreasonably and arbitrarily treated differently from the similarly

situated co-employee and co-accused Kishore Meshram and as such from the date on which the benefit was given to Meshram till the time the

petitioner joined her service, the petitioner would have to be held as entitled to receive all the benefits including backwages that her similarly situated

co-employee have been granted by the Department. So, denial of similar benefits from the same date is a fault of the Department and the petitioner

for the fault of the Department cannot be made to suffer. 13. Shri Rohit Joshi, learned counsel for the petitioner relying upon the case Baban Shriram

Wafare Vs. Zilla Parishad, Ahmednagar, decided by the Division Bench of this Court 2002(3) Mh.L.J 390 submits that in this case, which involved

prosecution of the employee for an offence punishable under Section 302 I.P.C., the Division Bench of this Court directed the Department to reinstate

in service the employee along with the backwages after a verdict of acquittal was recorded by the trial Court, notwithstanding no fault on the part of

the Department. However, considering the law laid down by the Hon'ble Apex Court in the case of Jaipal Singh (supra) which casts a duty upon the

Court to act only upon the principle of fault liability, I do not think that this Court can consider any application of the decision of this Court in Baban

(supra) to the facts of the case. Accordingly, the case of Baban would render no assistance to the petitioner in the present case.

14. In the result, the petition deserves to be allowed and it is allowed accordingly.

15. The respondent Nos.1 and 2 are directed to pay the backwages in the scale as applicable to the post of Assistant Teacher to the petitioner w.e.f.

14.2.2011 till 7.7.2015 within three months from the date of order.

16. If no full salary is being paid to the petitioner by the respondent Nos.1 and 2, it would be in order now that full salary in the scale of Assistant

Teacher is paid to the petitioner w.e.f. 8.7.2015 and the difference of the backwages on this count, if any, also be paid within three months from the date of order.

17. The order be complied with by respondent Nos.1 and 2 within three months from the date of order.

18. Rule is made absolute in the above terms. No costs.