

(2007) 11 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 1287 of 2006

Suresh Dadarao Suryawanshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389, 389(1)
Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 10, 5, 8, 9
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 130, 130(1), 130(2), 26, 26(1)
Prevention of Corruption Act, 1988 — Section 12, 13(1), 13(2), 7

Citation : (2008) 1 ALLMR 830 : (2008) 1 BomCR 100 : (2008) 3 MhLj 389

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : V.J. Dixit holding for B.V. Virdhe, for the Appellant; Umakant Patil, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Naresh H. Patil, J.—Rule. Rule made returnable forthwith. With consent of the parties, the matter is taken up for final disposal.

2. The petitioner challenges the judgment and order dt. 24-12-2004 passed by the Maharashtra Administrative Tribunal in Original Application No. 749/2002.

3. The petitioner was employed as a constable since the year 1962-1963. While the petitioner was working as a police head constable at Latur, in the year 1992 an offence was registered against the petitioner as CR No. 74/92 under the provisions of Section 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short the Act of 1988). The petitioner was charge sheeted for the said offence in Special Case No. 4/92. The Special Judge convicted and sentenced the petitioner by judgment and order dt. 9-6-2000. The petitioner was sentenced to suffer imprisonment for six months and fine of Rs. 500/-for the offence punishable u/s 7 of the Act of 1988 and sentence for 1 year with fine of

Rs. 500/- for the offences punishable u/s 13(1)(d) and 13(2) of the Act of 1988.

4. Being dis-satisfied with the judgment and order of conviction and sentence, the petitioner preferred criminal appeal before the High Court bearing Appeal No. 255/2000. The appeal was admitted by the learned Single Judge of this Court. The learned Single Judge of this Court passed order on 23-6-2000 in the criminal appeal which reads as under:

Heard Shri A.H. Kapadia, learned Counsel for the appellant. Admit. Call for R & P.

The appellant has been convicted by special Judge, Latur Under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption act. The Criminal appeal filed by the appellant is already admitted. The appellant was on bail during pendency of the trial. The fine amount is already deposited.

Taking into consideration these aspects of the matter, the appellant be released on bail on his executing P.R. Bond of Rs. 10,000/-with one solvent surety in the like amount. Bail in the Trial Court. The order of sentence is suspended till final disposal of the Criminal Appeal.

5. The petitioner contends that respondent no. issued a show cause notice on 6-7-2000 calling upon him to show cause as to why he should not be dismissed from service in view of the order of conviction. The petitioner replied said notice and pointed out to the respondent No. 3 that his appeal was admitted by the High Court and the sentence was suspended. The petitioner was suspended by respondent No. 3 with effect from 3-10-2000. He continued to be under suspension till his superannuation i.e. till 30-6-2001. The petitioners grievance is that in view of Rule 130 of the of the Maharashtra Civil Services (Pension) Rules, 1982 (for short the Rules of 1982), the petitioner ought to have been granted provisional pension. In spite of making several requests and representations to the authorities concerned, the petitioner was not granted provisional pension. Due to inaction on the part of the respondents, the petitioner approached the Maharashtra Administrative Tribunal. The petitioners contentions were negative and the tribunal rejected the application filed by the petitioner.

6. Shri Dixit, learned senior counsel appearing for the petitioner submitted that neither the petitioner was paid family pension nor provisional pension under the Rules of 1982. Learned Counsel by placing reliance on the provisions of Rule 27 of the Rules of 1982 submitted that in case of a Government servant who retires on attaining the age of superannuation and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-rule 2, provisional pension as provided under Rule 130 shall be sanctioned. In other words, the submission of the learned senior counsel is that as petitioners appeal filed against the judgment and order of conviction and sentence passed by the trial court is pending in the High Court, it should be construed that appeal being continuation of the proceedings initiated in the trial court the petitioner is entitled to be paid provisional pension. In the submissions of the learned Counsel, the order of suspension of sentence passed by the High

Court would mean that conviction and sentence imposed by the trial court is not in operation. The analogy of pendency of a civil appeal was tried to be applied to pendency of a criminal appeal against order of conviction and sentence by the petitioner. It was further submitted that the petitioner will have to wait for a long time to get his criminal appeal decided finally. Therefore, considering his age, provisional pension is required to be granted to the petitioner. Even if, the petitioner fails in the proceedings of the criminal appeal and his conviction and sentence is maintained then by resorting to provisions of Rule 130, the Government can adjust the payment of provisional pension from the retirement benefits granted to the petitioner by resorting to provisions of Rule 130(2).

7. For appreciating the case of the petitioner, we find it necessary to refer to provisions of Rule 26, Rule 27(4) and Rule 130 of the Rules of 1982. Rule 26 of the Rules of 1982 reads as under:

26. Pension subject to good conduct. (1) Future good conduct shall be an implied condition of every grant of pension. Government may, by order in writing, withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:

Provided that where a part of pension withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum pension as fixed by Government.

(2) Where a pensioner is convicted of a serious crime by a court of Law, action under Sub-rule (1) shall be taken in the light of judgment of the Court relating to such conviction.

(3) In a case not falling under Sub-rule (2), if Government considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under Sub-rule (1), follow the procedure as laid down in Rules 8 and 9 of the Maharashtra Civil Services (Discipline and appeal) Rules, 1979, for imposing a major penalty.

(4) The Maharashtra Public Service Commission shall be consulted before an order under Sub-rule (1) is passed in respect of officers holding posts within their purview.

Rule 27(4) of the Rules of 1982 reads as under:

27. Right of Government to withhold or withdraw pension.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-rule (2), a provisional pension as provided in Rule 130 shall be sanctioned.

Rule 130 of the Rules of 1982 reads as under:

130. Provisional pension where departmental or judicial proceedings may be pending:

(1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in Sub-rule (4) of Rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the audit Officer and such provisional pension shall be continued up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for imposing any of the minor penalties specified in Sub-clauses (i), (ii) and (iv) of Clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant.]

(2) Payment of provisional pension made under Sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

8. Learned Counsel for the petitioner submitted that under Rule 27(4) of the Rules of 1982, pendency of the appeal would amount to pendency of a judicial proceeding instituted against the petitioner. We are not in agreement with the submissions advanced in that behalf. In the present case, charge sheet was filed against the petitioner for serious offence and he was convicted and sentenced for the said charges. The petitioner is a convict of a serious offence of corruption attracting punishment under the provisions of the Act of 1988. We place reliance on observations of the Apex court in case reported in : AIR2001SC3435 B.R. Kapur v. State of Tamil Nadu and Anr. In paragraph No. 34, the Apex court observed as under:

34. u/s 389 an appellate court may order that the execution of the sentence or order appealed against be suspended...". It is not within the power of the appellate court to suspend the sentence; it can only suspend the execution of the sentence pending the disposal of appeal. The suspension of the execution of the sentence does not alter or affect the fact that the offender has been convicted of

a grave offence and has attracted the sentence of imprisonment of not less than two years. The suspension of the execution of the sentences, therefore, does not remove the disqualification against the second respondent. The suspension of the sentence, as the Madras High Court erroneously called it, was in fact only the suspension of the execution of the sentences pending the disposal of the appeals filed by the second respondent.

9. The appellate court has power to suspend order of sentence under the provisions of Section 389 of Cr.P.C. Order of suspension would mean that execution of sentence is suspended by the appellate forum. By merely suspending the sentence, the guilt of the accused who is convicted for the penal offences is not waived. The offender is to be held as convict more particularly in the matters relating to offences under the Prevention of Corruption Act, 1988.

10. Provisions of Rule 26 of the Rules of 1982 state that where a person is convicted of a serious crime by the court of law, the action could be taken under Rule 26(1) which means that pension could be withheld or withdrawn if a pensioner is convicted of a serious crime or is found guilty of grave misconduct. Certainly, the petitioner herein was convicted for a serious crime. Therefore, by considering the provisions of Rule 26(1), Rule 26(2) and Rule 26(4) of the Rules of 1982, it could be held that the petitioner who was convicted for serious charges by criminal court would not be entitled to claim provisional pension by resorting to the provisions of Rule 130 of the Rules of 1982 on the plea that his appeal against conviction of sentence was admitted by this Court and the sentence was suspended.

11. Corruption in society is spreading like cancer. The disease not only affects one individual but paralyses the social fabric and pollutes the society. The disease has tendency to demoralise the honest, efficient and sincere persons. The crime is a social offence and therefore, it has to be viewed with all its seriousness and gravity.

12. In a recent reported judgment in the case of State of Punjab v. Deepak Mattu reported in 2007 AIR SCW 6056 the Apex court relied upon reported judgment in the case of K.C. Sareen Vs. C.B.I., Chandigarh, . Paragraphs No. 11 and 12 of the judgment in the case of KC Sarin (supra) are necessary to be considered and thought over.

11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the

appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic policy. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court.

The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fall out would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level.

It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

13. For the reasons stated above, we are not inclined to grant the prayer made by the petitioner. We do not find any serious error in the view adopted by the tribunal. The petitioner has failed to make out any case in exercise of writ jurisdiction of this Court. The petition is dismissed. Rule