

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 2470 OF 2018

1. The State of Maharashtra)
through)
Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai.)
2. The Commissioner of Police,)
Nashik.)...Petitioners
) (Original respondents)

VERSUS

Shri Surendra G. Ghodake)
Service as Police Constable, Nashik and)
R/o. Pendarkar Colony, Nashik Road,)
Dist. Nashik.)... Respondent
) (Original Applicant)

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Ms. Nisha M. Mehra, AGP for Petitioner - State.
Mr. Omkar Kulkarni, for Respondent.

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**CORAM : S. V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 8th MARCH, 2023.

JUDGMENT : (PER - SANDEEP V. MARNE, J.)

1. Rule. Rule is made returnable forthwith. By consent of parties,
Petition is heard finally.

2. The State of Maharashtra has filed this petition setting up a challenge to the judgment and order dated 24th March, 2017 passed by the Maharashtra Administrative Tribunal (**Tribunal**) in Original Application No.708 of 2016. The Tribunal has allowed the original application filed by respondent for payment of full salary and allowances during the period from 30th June 1999 to 26th March 2013, during which he was under dismissal owing to his conviction in the criminal case. The State Government had sanctioned 50% of pay and allowances for the period from 30th June 1999 to 26th March 2013 and to the extent of denial of balance 50% of pay and allowances, Original Application No.708 of 2016 was instituted by respondent, which has been allowed by the judgment and order impugned in the present petition.

3. Brief facts of the case are that respondent was working on the post of Constable at Nashik Road. His wife lodged complaint against him alleging offences under Sections 498A and 323 of the Indian Penal Code leading to registration of Criminal Case No.321 of 1996 in the court of Judicial Magistrate First Class, Nashik Road. On account of his criminal prosecution, respondent was placed under suspension on 27th February 1997, which was revoked on 19th April 1999. Upon completion of trial, respondent was convicted vide judgment and order dated 3rd June 1999

and was directed to undergo imprisonment for six months and fine of Rs.1000/-.

4. On account of his conviction, petitioners passed order dated 30th June 1999 dismissing Respondent from service. Respondent filed criminal appeal No.35 of 1999 in the court of Sessions Judge, Nashik challenging his conviction, which came to be dismissed upholding the conviction and sentence. Respondent preferred Criminal Revision Application No.389 of 2000 in this court challenging his conviction, during pendency of which, the disputes between the respondent and his wife were amicably resolved. Criminal Application No.151 of 2011 was filed by respondent seeking compounding of offences by filing consent terms. By Order dated 20th June 2011 this court allowed the application and after granting leave for compounding of offences, the orders of the JMFC and the Sessions Judge came to be set aside.

5. Upon his acquittal, Respondent filed application seeking his reinstatement. By order dated 5th January 2013, his application was rejected. Respondent thereafter approached the Government seeking reinstatement vide application dated 16th January, 2013. Petitioner was reinstated on 26 March 2013. Original Application No.1206 of 2013 was filed by respondent before the Tribunal for treatment of period from 30th

June, 1999 to 26th March, 2013 as duty. Recording the statement on behalf of the State Government that decision would be taken about treatment of that period, the Original Application was disposed of by order dated 15th April, 2014 directing the petitioners to take a decision. A show cause notice dated 6th June 2014 was issued to the respondent proposing to pay only 50% salary and allowances during the period from 30th June 1999 to 26th March, 2013. It appears that after receipt of his reply, petitioners decided to pay only 50% salary and allowances to respondent during the period from 30th June 1999 to 26th March, 2013.

6. Aggrieved by the decision of paying only 50% backwages, Respondent approached the Tribunal by filing original application No.708 of 2016. By judgment and order dated 24th March 2017, the Tribunal has proceeded to allow the Original Application directing petitioners to pay the balance 50% salary and allowances during the period from 30th June 1999 to 26th March 2013. Aggrieved by that judgment and order, petitioners have filed the present petition.

7. Appearing for petitioner-State Government, Ms. Mehra the learned AGP would submit that the tribunal has failed to appreciate that respondent has not been honourably acquitted in the criminal trial. That his conviction is set aside essentially on account of compromise reached with complainant

wife. That his dismissal was owing to conviction arising out of his private affairs not connected with duty and that therefore the State Government cannot be saddled with the burden of paying full salary and allowances to him. That reliance of the tribunal on Rule 70 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal of Employees) Rules, 1981 (**Rules of 1981**) is erroneous as the said rule does not contemplate payment of full salary and allowances upon reinstatement of convicted employee.

8. *Per contra*, Mr. Kulkarni, the learned counsel appearing for the respondent would oppose the petition and support the order passed by the Tribunal. He would submit that no departmental enquiry was conducted against the respondent who was dismissed from services only on account of his conviction in the criminal case. That upon acquittal, respondent is entitled to full backwages. That Rule 70 of the Rules of 1981 provided for payment of full salary and allowances upon order of dismissal being set aside. That the tribunal has rightly appreciated the facts and circumstances of the case as well as various precedents while allowing the original application. That there is no error in the order passed by the tribunal warranting interference by this court in exercise of writ jurisdiction.

9. Rival contentions of the parties now fall for our consideration.

10. Respondent was dismissed from services on account of his conviction in the criminal case. Appeal filed against conviction was rejected thereby upholding his conviction and sentence. Upon his conviction, respondent came to be dismissed from service.

11. It is at the stage of pendency of Criminal Revision Application before this court that a compromise took place between Respondent and complainant-wife leading to filing of consent terms. For the sake of convenience, the consent terms are reproduced:-

CONSENT TERMS

“1. The Applicant and Respondent No.2 have settled the matrimonial dispute amongst them and arrived at this consent terms with their free will without any coercion or pressure.

2. The Respondent No.2 hereby agreed for compounding an offence punishable u/s. 498A, 323 of I.P.C. which she registered against him with the permission of this Hon'ble Court.

3. The Respondent No.2 is not having any issue against the applicant since she settled the dispute in the District Court, Nashik and executed an Affidavit cum declaration with the applicant. Therefore the Respondent No.2 consenting for quashing and setting aside the Judgment and order passed by the learned Sessions Judge, Nashik dtd. 24.11.2000, against the Applicant.”

12. This court, after considering consent terms filed by the parties and willingness of the wife to withdraw the allegations against the respondent, granted leave for compounding of offences punishable under Sections 498A and 323 of the Indian Penal Code. This court accordingly set aside the

conviction order of the JMFC as well as judgment and order passed by the Sessions Judge upholding the conviction and sentence. Thus, it is not a case where respondent has been acquitted on merits by this court. His acquittal is essentially on account of compromise entered into with his wife.

13. The law with regard to entitlement for payment of salary and allowances during period of dismissal of a convicted employee is well settled. Payment of salary is not automatic upon reinstatement after reversal of order of conviction. In **SBI v. Mohd. Abdul Rahim**, (2013) 11 SCC 67 the employee therein suffered conviction for offence under Section 498-A of IPC. Denying back wages consequent to reinstatement after acquittal in appeal, the Apex Court held:

11. In *Banshi Dhar* [(2007) 1 SCC 324 this Court answered the question against the employee by holding that grant of back wages is not automatic and such an entitlement has to be judged in the context of the totality of the facts of a given case. It is on such consideration that back wages were declined. In the present case, it will not even be necessary for the Court to perform the said exercise and delve into the surrounding facts and circumstances for the purpose of adjudication of the entitlement of the respondent to back wages in view of the provisions of Section 10(1)(b)(i) of the Act. The said provisions impose a clear bar on a banking company from employing or continuing to employ a person who has been convicted by a criminal court of an offence involving moral turpitude. No discussion as to the meaning of the expression "moral turpitude" is necessary having regard to the nature of the offences alleged against the respondent, namely, under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. No doubt, the respondent was not in custody during the period for which he has been denied back wages inasmuch as the sentence im-

posed on him was suspended during the pendency of the appeal. But what cannot be lost sight of is that the conviction of the respondent continued to remain on record until it was reversed by the appellate court on 22-2-2002. During the aforesaid period there was, therefore, a prohibition in law on the appellant Bank from employing him. If the respondent could not have remained employed with the appellant Bank during the said period on account of the provisions of the Act, it is difficult to visualise as to how he would be entitled to payment of salary during that period. His subsequent acquittal though obliterates his conviction, does not operate retrospectively to wipe out the legal consequences of the conviction under the Act. The entitlement of the respondent to back wages has to be judged on the aforesaid basis. His reinstatement, undoubtedly, became due following his acquittal and the same has been granted by the appellant Bank.

14. In **Baldev Singh v. Union of India**, (2005) 8 SCC 747, the Apex Court held:

7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in *Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board* [(1996) 11 SCC 603 : 1997 SCC (L&S) 491] .

15. In **Union of India v. Jaipal Singh**, (2004) 1 SCC 121 the employee was convicted of offence under section 302 of IPC connected with his private affairs and was dismissed from service. Upon acquittal by appellate

court, the High Court directed his reinstatement with full back wages. Reversing the direction of High Court for payment of full back wages, the Apex Court held:

4. ----- **If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service.** Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.

(emphasis ours)

16. In the present case, respondent is not acquitted on merits. His acquittal is attributable to compromise with his wife. Petitioner-State therefore cannot be saddled with the liability to pay salary and allowances during the period when respondent remained under dismissal. He

incapacitated himself from performing duties owing to his conviction. It is also pertinent to note that respondent's conviction was upheld even by the appellate court. This further prolonged the period of his dismissal. In such circumstances it is highly debatable whether any back wages were payable to Respondent. Nonetheless the State Government decided to pay 50% salary and allowances to him during the intervening period. However, to expect payment of 100% salary and allowances during that period would be highly undesirable. Respondent had involved himself in a criminal case arising out of his private affairs unconnected with performance of his duties. He kept himself away from his duties on account of his conviction. In such circumstances there is no question of payment of full salary and allowances to the respondent.

17. Reliance of the tribunal on Rule 70 of the Rules of 1981 does not cut any ice as Rule 70 does not envisage automatic payment of 100% back wages. Rule 70(4) is relevant which reads thus.

“70(4) In cases other than those covered by sub rule(2) [including case where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirement of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held] the Government servant shall subject to the provisions of sub-rules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been

dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice : Provided that any payment under this sub-rule to a Government servant [other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)] shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority, or immediately preceding the date of retirement on superannuation of such Government Servant, as the case may be.”

Thus even under Rule, the competent authority is vested with discretion to determine the quantum of back wages upon the penalty of dismissal or removal being reversed.

18. Petitioner is already sanctioned 50% back wages for long period of 15 long years even though he did not perform duties during that period. Such 50% back wages in our view are more than sufficient considering the facts and circumstances of the case. The Tribunal has committed an error in granting 100% back wages.

19. In the result, we find the order passed by the tribunal indefensible. It is liable to be set aside. Accordingly, the writ petition is allowed. The judgment and order dated 20th March 2017 passed by the Maharashtra

Administrative Tribunal in Original Application No.708 of 2016 is set aside. In case total amount representing 50% back wages has not yet been paid to Respondent, the same shall be paid to him within 2 months. Rule is made absolute.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ