IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14327 OF 2021

Abhimanyu Laxman Kumbhar
Age : 57 years, Occu : Service,
R/o. Pangri, Tq. Barshi, Dist. Solapur .. Petitioner

Versus

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Prakashgad, 4th Floor,
Station Road, Bandra (E) Mumbai 51
through its Managing Director

2. The Managing Director (Competent Authority)
The Maharashtra State Electricity
Distribution Company Ltd.,
Prakashgad, 4th Floor,
Station Road, Bandra (E) Mumbai 51

3. The Executive Engineer,
The Maharashtra State Electricity
Distribution Company Ltd.,
Solapur Road, Near Tajmahal Talkies
Osmanabad. .. Respondents

...

Mr. Syed Azizoddin R, Advocate for the Petitioner
Mr. Avishkar S. Shelke, Advocate for Respondent No.1

...

CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.

RESERVED ON : 19.09.2022
PRONOUNCED ON : 27.09.2022

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

. Rule. Rule is made returnable forthwith. Learned Counsel Mr. Avishkar S. Shelke waives service for respondent no.1. At the

joint request of the parties, the matter is heard finally at the stage of admission.

2. The short issue involved in the present petition is, whether an employer is justified in denying wages to the employee during pendency of appeal against his acquittal on the principle of 'no work no pay'.

3. Petitioner was working as a Junior Technician with Maharashtra State Electricity Distribution Company Ltd (hereinafter referred to as the 'MSEDCL'). He got himself embroiled in criminal prosecution on the charges of demand and acceptance of illegal gratification. Under Regulation 90 of the Maharashtra State Electricity Distribution Company Ltd. Employees' Service Regulations, 2005 (hereinafter referred to as 'the Service Regulations') there is a provision for conduct of a summary enquiry. Such summary inquiry proceedings were initiated by issuing charge-sheet dated 20.09.2008. After receipt of Petitioner's reply, the penalty of removal from service with effect from 22.07.2008 was imposed on him vide order dated 08.12.2008. His appeal against the order of removal was rejected by order dated 13.08.2009.

4. In the Special (ACB) Case No.2 of 2009 instituted

against the petitioner in the Court of Special Judge at Omerga, he came to be acquitted by Judgment and order dated 11.10.2013. His acquittal was challenged by the State Government before this Court by filing Criminal Appeal No.799 of 2014. When the petitioner requested for his reinstatement based on his acquittal, the request was turned down vide communication dated 16.07.2014 on the pretext of pendency of criminal appeal against acquittal. Writ Petition No.7578 of 2014 was filed seeking reinstatement, but the same was withdrawn and disposed of by order dated 26.11.2015 with a liberty to resort to appropriate remedy.

5. It appears that the petitioner filed one more appeal challenging the penalty of removal from service. Since the appeal was not being decided, he filed Writ Petition No.4253 of 2016 and it came up for hearing on 06.10.2017. A statement was made on behalf of the petitioner that he would not claim back-wages till acquittal. This Court disposed of Writ Petition No.4253 of 2016 by order dated 06.10.2017 granting him liberty to file applications / representation under Regulation 106 of the Service Regulations for reinstatement with a further direction to the authority to decide the same.

6. The Chairman and Managing Director of MSEDCL

rejected the petitioner's application / representation by order dated 06.02.2018 *inter alia* holding that the petitioner was not acquitted on merits and that Criminal Appeal against the acquittal was pending. The appellate authority, therefore, rejected the request for reinstatement.

7. Criminal Appeal No.799 of 2014 was thereafter heard by this Court and the same was dismissed vide judgment and order dated 04.04.2019. After dismissal of the criminal appeal, the petitioner was ultimately reinstated in service by order dated 04.09.2019. However in respect of the period from 09.12.2018 till reinstatement, he was held to be not entitled to any financial benefits on the principle of 'no work no pay' in accordance with the Circular No.6573 dated 24.11.1992. The petitioner made representation dated 22.01.2020 against the said decision. By letter dated 31.01.2020 it was once again communicated that he would not be entitled to any financial benefits on the principle of 'no work no pay'. The decision vide communication dated 31.01.2020 is impugned by the petitioner in the present petition.

8. The petitioner has prayed for the benefit of continuity and backwages in view of his reinstatement in service vide order

dated 04.09.2019. During the course of his submissions, Mr. Syed, learned Counsel appearing for the petitioner did attempt to impress upon us that the petitioner would be entitled to backwages from the date of his removal i.e. w.e.f. 08.12.2008. However, his attention was invited to the following statement made during the course of hearing of Writ Petition No.4253 of 2016 on 06.10.2017:-

> *'Mr. Syed, the learned Counsel further submits that, the petitioner would not claim backwages till acquittal.'*

On being confronted with the said statement made in Writ Petition No.4253 of 2016, Mr. Syed fairly conceded to the position that the prayer in the present petition is required to be confined to backwages from the date of acquittal till the date of reinstatement. Accordingly, we proceed to consider the said prayer.

9. Mr. Syed would submit that after acquittal of the petitioner, there was no reason for MSEDCL to continue him under order of removal. He would submit that mere pendency of the appeal against acquittal would not mean continuation of criminal proceedings so as to continue the order of removal. He would submit that upon petitioner's acquittal, his reinstatement was required to be immediately done. In support of his submission, Mr. Syed would rely upon the judgment of the Apex Court in **Bhuvnesh Kumar Dwivedi**

Vs. **Hindalco Industries Ltd**., **AIR 2014 SC 2258**.

10. Per contra, Mr. Shelke, learned Counsel appearing for MSEDCL would submit that the company is justified in denying the wages for the period from the date of removal till the date of reinstatement on the principle of 'no work no pay'. He would rely upon the provisions of Circular dated 24.11.1992 in support of the action of the company. He would submit that since the appeal was filed by the State challenging the order of acquittal, the Company was justified in waiting for outcome of the appeal for reinstatement of the petitioner. Mr. Shelke would further submit that there is no difference between acquittal at the first instance and acquittal on appeal for the purpose of reinstatement of the petitioner. It is only after the final acquittal that the petitioner became entitled to claim the relief of reinstatement. He would further submit that despite filing two writ petitions, the petitioner was not successful in getting a relief of reinstatement from this Court, which thereby meant that the action of the Company in continuing the petitioner under removal during pendency of appeal was justified. He would further submit that the petitioner has not challenged the Circular dated 24.11.1992 and therefore, the provisions of the circular would continue to apply to him. He would submit that the period between acquittal of the

petitioner and his reinstatement is very long and that therefore the respondent Company cannot be saddled with the liability of backwages especially when the petitioner himself was responsible for getting involved in criminal offence alleged against him.

11. In support of his contention, Mr. Shelke relied on the judgment of this Court in **Ramchandra Bapusaheb Desai** *Vs.* **Maharashtra State Electricity Distribution Company Limited,** 2017 DGLS (Bom) 150. He would also rely upon the judgment of this Court in **Sudhakar Shankarrao Chapke** *Vs*. **Maharashtra State Electricity Distribution Company Ltd and another,** Writ Petition No.1846 of 2014 decided on 21.12.2017.

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

13. The penalty of removal from service was imposed on the petitioner merely on the basis of the registration of criminal case against him in exercise of powers conferred under regulation 90 of the Service Regulations which provides for conduct of summary disciplinary proceedings. Undisputedly, regulation 90 has subsequently been struck down by this Court. Be that as it may, we

are not called upon to decide the validity of the removal order dated 08.12.2008. A limited prayer is made in the present petition for grant of continuity of service and backwages. On account of the statement made by the petitioner's counsel in Writ Petition No.4253 of 2016, the issue of backwages from the date of termination till the acquittal no longer survives. Therefore, we are tasked upon to decide the issue of backwages only during the period from the date of acquittal till the date of reinstatement.

14. In our opinion, mere pendency of the appeal against acquittal would not entitle the respondents to continue the penalty of removal from service. The petitioner was removed from service only on account of registration of criminal case against him. Full-fledged and independent disciplinary proceedings were not initiated against him. Therefore, upon his acquittal in the criminal case, the natural corollary was to reinstate him in service. Merely because the State filed appeal against acquittal would not mean that the petitioner would continue to suffer the rigors of pendency of criminal prosecution. Till the judgment of acquittal was reversed in appeal, all the effects of acquittal would continue to apply. We may consider a reverse situation where the government servant is convicted and his sentence is suspended in appeal. It is trite that in such cases the

conviction would continue to operate notwithstanding suspension of the sentence. A convicted person would continue to suffer all the effects of conviction even during pendency of the appeal. Applying same logic, during pendency of appeal against acquittal, the acquitted person would continue to enjoy all the benefits arising out of such acquittal during pendency of the appeal. We, therefore do not find that there existed any valid ground not to reinstate the petitioner during pendency of the appeal against acquittal.

15. At this stage, it would be profitable to consider the case law on the subject. In **Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762**, even though the issue of appeal against acquittal was not involved, the Apex Court was concerned with the issue of effect of acquittal on the rights of employees. The Court held thus:

> '14. --------- As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings **which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof.** ------- The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986.'
>
> *(emphasis & underlining supplied)*

16. We would also consider the views taken by some of

the High Courts on the issue of effect of pendency of appeal against acquittal. Division Bench judgment of Himachal Pradesh High Court in **Surinder Kumar** *Vs*. **State of Himachal Pradesh**, reported in 1985 (3) SLR 254 observed as under:—

> *'The orders of acquittal are indubitably under challenge in the High Court. The preferment of acquittal appeals cannot, however, be regarded as the continuance of the trial. The trials have concluded with the judgment of acquittal (See State v. B.C. Dwivedi, 1983 (2) XXIV GLR 1315). The initial presumption of innocence must, therefore, be regarded as having been doubly reinforced by orders of acquittal passed in favour of the petitioner. Under such circumstances, the continued operation of the order of suspension as from the date of acquittal cannot be regarded as reasonable, fair and just. Merely because the petitioner was, at one point of time, detained in custody for a period exceeding forty-eight hours, he cannot be kept under suspension perpetually, especially when the allegations on the basis of which he was detained and which ultimately became the subject matter of two trials before the criminal Court, are found by a Court of competent jurisdiction to have not been established beyond reasonable doubt.'*

17. In **Union of India** *Vs*. **T. Karunakaran**, 2020 SCC OnLine Ker 17734 a Division Bench of the Kerala High Court followed the decision in **Surinder Kumar** (supra) in addition to few more judgment on same lines and held as under:

> *'5. In Surinder Kumar (supra) a Division Bench of the Himachal Pradesh High Court was concerned with an order of suspension imposed upon an employee following his detention in a criminal case. The court came to*

the conclusion that there is no cause to continue the suspension of an employee when the criminal charges which led to his detention in the first place have been found to be not established. In Balak Singh Takur (surpa) a learned single judge of the Madhya Pradesh High Court has taken the view that the preferment of a criminal revision or appeal against an order of acquittal cannot be treated as a continuation of the trial or the pendency of a judicial proceeding. This finding was with specific reference to the definition of 'Judicial proceeding' in Section 2(i) of the Code of Criminal Procedure. It was held "A person so acquitted of the charges stand at par with a person who is not being charged and was not subjected to a criminal proceeding. The preferment of a criminal revision or an appeal against an acquittal cannot be regarded as a continuance of the trial and cannot be treated to be pendency of judicial proceeding as the initial presumption of innocence gets re-enforced by the orders of acquittal." In S. Rajagopal (supra) a Division Bench of the Madras High Court was considering the issue of regularization of the suspension period following the acquittal, the suspension having been made on account of either having been arrested and kept in custody or otherwise on account of the Criminal proceedings. It was held that the term 'judicial proceedings' in so far as criminal cases are concerned comes to an end when an order of acquittal is passed. In Rajagopal (supra) the Division Bench of the Madras High Court referred to Surinder Kumar (supra); State of West Bengal v. Hari Ramalu; (2000) 3 LLN 638; Chandu Ram v. State of H.P.; 2009 SCC OnLine HP 1303; State of Haryana v. Banwari Lal; 2010 SCC OnLine P&H 183, Chief Commissioner of Land Administration A.P, Hyderabad v. R.S. Ramakrishna Rao; (2010) 2 ALD 773, R.C. Dubey v. M.P. State Electricity Board; 2013 SCC OnLine MP 1004 and held:—

> *'19. Reverting to the case on hand, perusal of the judgment in ACB Case No. 3/2006, dated 31.03.2008, on the file of the Special Judge and Presiding Officer of Fast Track Court, Vadodara, shows that the petitioner was acquitted on merits and that the Court, after considering all the facts, held that there is no cogent and reliable evidence and that the complainant himself was not clear. The Court has further held that averments made by the prosecution cannot be accepted and resultantly, when there was no evidence, the petitioner is entitled to be acquitted.*
>
> *20. While that be the clear finding recorded in the judgment, acquitting the petitioner, under the premise of appeal, being filed and pending, against the order of acquittal, the petitioner cannot be deprived of the regularisation of the suspension period, endlessly. Disposal of the appeal may take a long time. The petitioner is stated to have retired from service. There is no certainty that the State would be satisfied, even if the appeal in the High Court fails. If the State chooses to prefer a further appeal to the Hon'ble Supreme Court, the Department may again contend that the appeal is pending before the Apex Court. Thus, if the arguments of the respondents 2 and 3 have to be accepted, then there is no finality to the judgment of acquittal. In the light of the discussion and decisions considered, the further contention of the learned counsel that Vigilance has not given a clearance, cannot be countenanced.'*

18. In fact, after considering the law enunciated by the Apex Court in **Degala Suryanarayana** (supra), the Department of Personnel & Training of the Government of India has issued Office Memorandum dated 19th January 2017, relevant part of which reads

thus:

'Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training Establishment A-III Desk

North Block, New Delhi Dated: 19th January, 2017

OFFICE MEMORANDUM

Instructions on sealed cover procedure - where Government servant has been acquitted but appeal is contemplated/ pending - clarification regarding.

The undersigned is directed to refer to this Department's O.M. No. 22011/4/91-Estt.A dated 14.09.1992 issued in the light of the Judgement dated 27.08.1991 of the Hon'ble Supreme Court in the case of Union of India *V/s.* K.V. Jankiraman etc. (AIR 1991 SC 2010). References have been received seeking clarification with regard to the course of action in cases where the Government servant is acquitted by trial court but an appeal against the judgment is either contemplated or has been filed. This issue has been examined in the light of various court judgements including *Bank of India and another vs. Degala Suryanarayana,* Appeal (Civil) 3053-54 of 1997, (1999) 5 SCC 762 in consultation with Department of Legal Affairs and it is clarified as following:

i. Where the recommendation of DPC has been kept in sealed cover solely on account of pendency of the criminal case, the sealed cover may be opened in case of acquittal of the Government servant provided it has not been stayed by a superior court.

ii. In the order of promotion a mention may however be made that the promotion is provisional subject to the outcome of appeal that may be filed against, the acquittal of the Government servant. The promotion thus will be without prejudice to the action that may be taken if the judgement of the trial court acquitting the Government servant is set-aside.'

19. Taking note of decisions of Courts on the subject, the Central Government has issued instructions that even if appeal against acquittal is pending, sealed cover is required to be opened and promotion released subject to outcome of such appeal. Thus settled position of law as per decisions of various High Courts appears to be that mere pendency of appeal against acquittal would not continue to attract disqualifications of pendency of criminal trial. This analogy can easily be applied to right of an employee to seek reinstatement during pendency of appeal against acquittal.

20. Having examined the exposition of law on the subject, we now proceed to deal with various submissions of Mr. Shelke. He has contended that the petitioner was entitled to reinstatement only after final acquittal in appeal. We would disagree. If his submission is accepted, the petitioner's acquittal in the first instance would have no meaning and mere filing of appeal against acquittal would operate as stay of the acquittal. Therefore, his submission cannot be countenanced.

21. The next contention of Mr. Shelke is that this Court did not grant the relief of reinstatement to the petitioner in two writ petitions filed after acquittal and that therefore, the action of the

respondent - Company continuing the petitioner under removal during pendency of the appeal should be deemed to be justified. We do not find any merit in his submission. In both the writ petitions filed by the petitioner, he was essentially relegated to the alternate remedies. This Court did not refuse the relief of reinstatement nor dealt with it in any manner in those petitions. Therefore, it cannot be contended by any stretch of imagination that this Court expressly or implied upheld the action of the respondents in continuing the order of removal during pendency of appeal. Therefore, his submission also deserves to be rejected.

22. Next contention of Mr. Shelke is that the petitioner did not challenge Circular dated 24.11.1992 and that therefore he must suffer the consequences arising out of the said circular. He relies upon para 3 (ii) of the Circular, which reads thus:

> '3. In view of the above position following instructions are issued:
>
> i) ……
>
> ii) In case such employee gets acquitted in Appeal in the Appellate Court, he should be reinstated in service. But he shall not be eligible for any payment from the date of termination of his service to the date of his reinstatement in the services, on the principle of 'NO WORK NO PAY'. He will, however, be eligible for restoration of his seniority and other terminal benefits.'

On perusal of the Circular dated 24.11.1992, particularly provisions of para - 3 (i) and (ii) thereof, we find that the only situation which is dealt with by the said circular is where an employee is first convicted and later acquitted in appeal. Para 3 (i) deals with the eventuality of the conviction of an employee and para 3 (ii) deals with the eventuality where the employee who was earlier convicted is acquitted in appeal. The Circular dated 24.11.1992 does not deal with a situation where the employee is acquitted by the trial court and appeal is filed against the acquittal. Therefore, we find that the said Circular dated 24.11.1992 does not have any remote application to the facts and circumstances of the present case and therefore there was no need for petitioner to challenge the same.

23. The last submission of Mr. Shelke is that the period between date of acquittal and the date of reinstatement i.e. from 10.11.2013 till 03.09.2019 is too long and that therefore the respondent Company need not be saddled with the liability to pay backwages for such a long period. We find that the respondent Company itself was responsible for the delay in reinstatement. The respondent - Company ought to have reinstated the petitioner immediately on his acquittal on 10.11.2013. Such reinstatement

could have been made subject to the outcome of the appeal. The respondent Company, however, unjustifiably delayed the reinstatement till decision of the appeal. Even after the appeal was allowed on 04.04.2019, the respondent company took further period of five months in reinstating the petitioner on 04.09.2019. We, therefore, find that the respondent company alone is responsible for prolonging the period during which the backwages are required to be paid.

24. Now, we deal with the judgment relied upon by Mr. Shelke in **Ramchandra Bapusaheb Desai** (supra). The issue involved was about payment of backwages after acquittal in the criminal case. The petitioner in that case was facing criminal trial on account of which he came to be dismissed from service on 27.09.2010. He was acquitted by the trial court on 03.12.2011. Consequently, he was reinstated in service on 21.04.2012. The issue before this Court was about payment of backwages from the date of dismissal till the date of reinstatement. Thus, the issue involved was entirely different. In that case, neither appeal was filed against acquittal nor the reinstatement was delayed during pendency of appeal. Therefore, reliance of Mr. Shelke on this judgment is totally misplaced. In **Sudhakar Shankarrao Chapke** (supra) the petitioner therein was dismissed from service by order dated 08.08.2008 in

exercise of power under regulation 90 on account of registration of criminal prosecution. He was acquitted by the trial court on 05.09.2011. In Writ Petition No.4006 of 2008 previously filed, this Court had directed conditional reinstatement of the petitioner therein as a result of his acquittal, subject to outcome of the appeal. Thus, the judgment in **Sudhakar Shankarrao Chapke,** far from assisting the case of Mr. Shelke, in fact militates against him. In that case, the very same respondent Company was directed to reinstate the Petitioner therein in service upon acquittal by the trial court even during the pendency of the appeal. The judgment thus recognizes the principle that mere pendency of appeal against acquittal would not be a reason for the employer to delay the reinstatement.

25. We are, therefore, of the considered view that the action of the respondent Company in not reinstating the petitioner immediately after his acquittal was clearly unjustified. Under the provisions of the Circular dated 24.11.1992, the petitioner is already entitled for restoration of his seniority and terminal benefits. What remains is the benefit of backwages and pay fixation. Since the action of the respondent is found to be unjustified, we are of the view that the petitioner would be entitled the benefits of both backwages as well as continuity in service. Consequently, we will proceed to pass the following order:

ORDER

(i) The impugned orders dated 04.09.2019 and 31.01.2020, to the extent the respondent - Company seeks to deny backwages after the date of acquittal, are set aside.

(ii) The respondent - Company is directed to pay to the petitioner full salary and allowances from the date of acquittal i.e. 11.10.2013 till the date of reinstatement i.e. till 03.09.2019.

(iii) The petitioner shall not be entitled to backwages from the date of removal from service i.e. 08.12.2008 till his acquittal i.e. till 10.10.2013.

(iv) The petitioner will be entitled to the benefit of continuity of service during the entire period from 08.12.2008 till 03.09.2019. In respect of the period from 08.12.2008 till 10.11.2013 he would be entitled to notional pay fixation by grant of yearly increments. However, in respect of the period from 11.10.2013 till 03.09.2019 he would be entitled to actual pay fixation.

(v) The entire period from 08.12.2008 till 03.09.2019 be treated as duty for all purposes, except for backwages in respect of the period from 08.12.2008 to 10.10.2013.

(vi) Writ Petition is accordingly allowed. Rule is made absolute.

(SANDEEP V. MARNE, J.) **(MANGESH S. PATIL, J.)**

GGP