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HIGH COURT OF MADHYA PRADESH : JABALPUR
SINGLE BENCH BEFORE J.K. MAHESHWARI

Writ Petition No.19628/2017

Archana Nagar
Versus
State of Madhya Pradesh & Another

Shri Arjun Singh, Advocate for the petitioner.
Shri Shiv Mohan Lal Saxena, Government Advocate for
respondents.

O R D E R
16/3/2018

This petition has been filed under Article 226/227 of
Constitution of India seeking the following reliefs:-

“1.To issue writ/writs, order/orders of appropriate nature quashing the findings in the last paragraph of the impugned order dated 13.7.2017 wherein the respondent No.2 has denied any further benefits to the services of the petitioner and refused to include the “out of service period” as the duty period (Annexure P/7).

2.To issue writ/writs, order/orders granting all the benefits to the petitioner during her “out of service period” with all consequential benefits alongwith 18% interest per annum.

3.To issue writ/writs, order/orders granting to the petitioner all consequential and financial benefits alongwith 18% interest per annum.

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4.To call for the entire records in relation to the concerned proceedings for the kind perusal of this Hon'ble Court.

5.To grant cost to the petitioner.

6.Any other relief this Hon'ble Court deems fit and proper in the facts and circumstances of the case.”

2. The facts unfolded to file the present petition are that vide order Annexure P/7 dated 13.7.2017, the demand made by the petitioner for grant of consequential benefits from the date of her termination i.e. 13.3.2007 till reinstatement after acquittal as per order dated 6.9.2016 was refused by the Director General of Police, Bhopal on the pretext that she has been acquitted by a Division Bench Judgment of the High Court of Madhya Pradesh dated 7.4.2016 passed in Criminal Appeal No.2325/2006 giving the benefit of doubt.

3. It is not in dispute that the petitioner was tried for the offence under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter shall be referred to as “P.C.Act”) on a complaint made by the complainant Yashwant Singh @ Lallu Singh on 5.9.2003. The 1st Additional Sessions Judge & Special Judge, District Hoshangabad vide judgment dated 20.11.2006 passed in Special Case No.6/2004 convicted the petitioner for the said charges and directed her to undergo the sentence of two years rigorous imprisonment with fine of Rs.5000/- (two counts) with default stipulation of six months of the rigorous imprisonment. Being aggrieved by the

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said judgment dated 20.11.2006, Criminal Appeal No.2325/2006 was filed by the petitioner challenging the impugned judgment of conviction and sentence as directed by the Trial Court. This Court vide judgment dated 7.4.2016 allowed the appeal filed by the petitioner/accused setting aside the finding of conviction for the charge of Section 7 & 13(1)(d) read with Section 13(2) of the P.C.Act and acquitted her accordingly. After acquittal, the petitioner applied for reinstatement before the Director General of Police, Bhopal, who vide order Annexure P/4 dated 6.9.2016 reinstated the petitioner treating the period of termination till reinstatement as "No Work No Pay". The petitioner submitted a representation for payment of the back wages whereupon the Superintendent of Police, District Hoshangabad vide order Annexure P/5 dated 22.3.2017 in exercise of the power conferred under the M.P. Fundamental Rules 54(2) decided her termination period in service directing to pay the salary of the suspension period treating the said period on duty. Thereafter, a representation (Annexure P/6) was submitted by the petitioner before the Additional Director General of Police (Administration), Bhopal on 11.4.2017 for grant of all consequential benefits in terms of Madhya Pradesh Police Regulations No.241 (for brevity "Police Regulations") and the M.P.Fundamental Rules 54(2) and 54(6) (for brevity "Fundamental Rules"), which has been decided by the impugned order Annexure P/7 dated 13.7.2017 denying the benefit of the salary during the termination period because the petitioner was acquitted of the charges giving the benefit of doubt. Being aggrieved by the impugned order Annexure P/7 dated 13.7.2017, this petition has been preferred.

4. Learned counsel for the petitioner referring various paragraphs of the judgment of acquittal dated 7.4.2016 passed by this Court in Criminal Appeal No.2325/2006 contends that it is not a case of acquittal giving benefit of doubt by this Court infact it is a case of clean acquittal of the petitioner, therefore, the finding recorded by the competent authority denying the benefit of back wages on the pretext that the acquittal of the petitioner is not honourable acquittal but it is based on the benefit of doubt is unsustainable. It is urged that if the petitioner has been honourably acquitted by the High Court in view of the provisions of Fundamental Rules 54(2) & 54(6) then she is entitled to get all the consequential benefits that includes the salary during the termination period.

5. To justify the meaning of “acquittal” learned counsel for the petitioner has placed reliance on the judgment of the Hon’ble Supreme Court rendered in the case of **Commissioner of Police, New Delhi & Another Versus Mehar Singh reported in (2013) 7 SCC 685** and submitted that when the Court has acquitted the accused after full consideration of the prosecution case and the prosecution has miserably failed to prove the charges levelled against the accused then it can possibly be said that the accused was “honourably acquitted”. It is urged that similar position is prevalent to the facts of the present case, therefore, the impugned order Annexure P/7 dated 13.7.2017 may be set aside directing to pay all the consequential benefits to the petitioner.

6. The respondent/State has filed their reply contending interalia that after the acquittal by the High Court, the representation of the petitioner was considered and the order of termination was set aside by the competent authority vide order Annexure P/4 dated 6.9.2016. Vide order Annexure P/5 dated 22.3.2017, it was further directed that the petitioner would be entitled to get the salary during the period of suspension and the said period be counted in service for all purposes. After joining, she has been permitted to work at Police Headquarter, Bhopal. On submitting a representation by the petitioner regarding payment of salary, it was rightly rejected by the impugned order Annexure P/7 dated 13.7.2017 because the petitioner has not worked during the said period, therefore, the principle of “No Work No Pay” would be applicable.

7. It is contended by the learned Government Advocate for the respondents that the acquittal of the petitioner is not a clean acquittal while infact she was acquitted giving benefit of doubt by the High Court vide Judgment dated 7.4.2016 passed in Criminal Appeal No.2325/2006, therefore, the impugned order Annexure P/7 dated 13.7.2017 treating the said period as “No Work No Pay” has rightly been passed. It is urged that if an employee, who was found involved in a case under the provisions of the Prevention of Corruption Act and convicted for the said charge though acquitted by the High Court, during the period for which he/she was terminated, would not be entitled to claim all benefits. Under such circumstances, it is prayed that this petition

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filed by the petitioner may be dismissed.

8. After having heard learned counsel for the parties and on perusal of the impugned order Annexure P/7 dated 13.7.2017, it is apparent that in the said order the reference of judgment of the conviction of the petitioner dated 20.11.2006 passed in Special Case No.6/2004 is made and thereafter it is stated that the order of dismissal of the petitioner from service was passed on 13.3.2007 because of her conviction by the Trial Court. It is also stated that on filing the Criminal Appeal No.2325/2006, it was allowed by this Court vide judgment dated 7.4.2016. However, on receiving the application in reference to the provisions of the Police Regulation 241, the order of termination dated 13.3.2007 stood cancelled reinstating the petitioner applying the principle of “No Work No Pay” though the said period was ordered to be counted for all other purposes. The competent authority observed that after perusal of the judgment of the High Court dated 7.4.2016 passed in Criminal Appeal No.2325/2016, it is apparent that the petitioner has been given the benefit of doubt and it is not a case of clean acquittal, therefore, the petitioner would not be entitled to get all the wages during the period of termination. In the said context, the provision of Police Regulation 241 is relevant, which is reproduced as under:-

“241. Cases of acquittal—when a police officer has been tried and acquitted by a criminal court, he must as a rule to be reinstated. He may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment. If, however, the

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acquittal, whether in the court of original jurisdiction or of appeal was based on technical grounds or if the facts established at the trial show that his retention in Government service is undesirable, the Superintendent may take departmental cognizance of his conduct, after obtaining the sanction of the Inspector General.”

9. On perusal of the language of Police Regulation 241, it is apparent that if a police officer has been tried by a criminal court though acquitted either by a court of original jurisdiction or of the appellate jurisdiction then such officer shall not be punished departmentally for which he/she was tried. If he/she is acquitted without establishing the fact during the trial that retention of Government Servant is undesirable, the departmental action is permissible by the authority otherwise looking to his/her conduct that his/her services are undesirable with permission of the Inspector General, the action can be taken.

10. Perusal of the order Annexure P/7 dated 13.7.2017 passed by the Director General of Police, Bhopal would make it clear the conduct of the petitioner looking to the observations of a criminal case was not unbecoming and she was found desirable to continue in the employment, therefore, the order of reinstatement has been passed. The competent authority has denied the benefit to pay & allowances on reinstatement, which is governed by the Fundamental Rules 54(2) whereby it is apparent that in case the authority reinstates a Government

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Servant, who had been dismissed, removed or compulsorily retired, has been fully exonerated then the said Government Servant shall, subject to the provision of Sub Rule (6), be paid the full pay & allowances to which he/she would have been entitled, had he/she not been dismissed, removed, compulsorily retired, suspended prior to such dismissal, removal, compulsory retirement, as the case may be.

11. The word “has been fully exonerated” explained in Fundamental Rule 54(2) has been used in the impugned order and it was observed by the competent authority that giving benefit of doubt, the petitioner has been acquitted by the High Court, therefore, to assess the viability of the finding recorded by the competent authority, the reason of acquittal recorded by the High Court requires consideration.

12. Vide judgment dated 7.4.2016 passed in Criminal Appeal No.2325/2006, this Court has first referred the case of the prosecution and thereafter referred some judgments of the Hon’ble Supreme Court wherein the principle has been underlined as to how the charges of corruption can be proved or not. Thereafter, from third line of Paragraph No.24 onwards, this Court started with the discussion, which reads as under:-

“The first point falls for our consideration is whether accused Archana has demanded illegal gratification from the complainant?”

13. In this regard, this Court has considered the complaint made by the complainant Yashwant Singh @ Lallu

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Singh vide Exhibit P/18 and his statement so also the statement of Gomti Bai and it was concluded that the allegation made in the complaint that he was forcibly allowed to sit at the residence of the petitioner/accused is not reliable. In Paragraph No.24, the allegation levelled that the letter Exhibit P/20 has been taken from the complainant by the accused forcibly to create pressure in lieu of the false implication regarding the allegation of commission of rape with Gomti Bai has been analyzed. In the said context, this Court observed that the tenor of the letter has been thoroughly gone through and looking to the same, hardly it may be a case of consensual sex for which the complainant could not be prosecuted in the Court of law for the charge of rape.

14. In the said context, this Court observed that we have strong doubt that accused Archana (Petitioner herein) would blackmail the complainant threatening him that on the basis of the letter Exhibit P/13, she would register a rape case against him in case of non-payment of bribe. In Paragraph No.29, it was concluded that the evidence of complainant against the petitioner/accused is false. In Paragraph No.33, this Court recorded a finding that various cases have been registered against the complainant in a criminal side having criminal background and observed that we feel unsafe to rely upon his evidence. This Court has further considered the voice recording, which was found by the Trial Court as inaudible and it is having no certification under Section 65B of the Indian Evidence Act and observed that the transcriptions have no evidentiary value. This Court in Paragraph No.32 discussed the evidence of Gomti Bai

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against whom the allegation of rape has been projected by the accused to create pressure on the complainant and found that she had not supported the prosecution story and Gomti Bai has also not corroborated the said allegation in her statement. Thereafter, this Court referring the various other evidence of seizures and other persons, concluded that “we are of the view that it is unsafe to draw a conclusion on the basis of the letter that the accused Archana had demanded illegal gratification from the complainant”. Meaning thereby the said allegation of demand has not been found prove looking to the conduct and his evidence so also the entire material brought on record. Thereafter, the statement of complainant Yashwant Singh @ Lallu Singh and his cross examination have been thoroughly analyzed in Paragraph Nos.36 & 37 in the context of *Rojnamcha Entries* (Exhibits D/7 & D/8) and it was observed that those entries lay bare falsehood of the aforesaid statement of the complainant. Referring the defense taken by the petitioner/accused, it was held by this Court that there existed a strong possibility of false implication of the accused Archana by the complainant Yashwant Singh @ Lallu Singh. This Court In Paragraph No.41 has observed as under:-

“41.In the aforesaid close analysis of evidence on record, we hold that the learned Trial Judge has committed gross errors in law and on facts that the prosecution has proved beyond reasonable doubt the factum of demand of illegal gratification by the accused Archana from the complainant on the basis of his sole oral evidence. Hence, the recovery of tainted money from the possession of

acquitted accused Maluk Chand has no evidentiary value insofar as it relates to accused Archana's case. Consequently, his conviction and sentence recorded by the learned Trial Judge are unsustainable in law and liable to be set aside."

15. In view of the detailed discussion of the judgment of acquittal dated 7.4.2016 passed in Criminal Appeal No.2325/2006, there is no iota of doubt that the acquittal of petitioner/accused is a clean acquittal and it would come within the purview of full exoneration as specified under Fundamental Rule 54(2). In this regard, Paragraph No.25 of the judgment of **Mehar Singh (supra)** relied upon by the petitioner is relevant and it is reproduced as under:-

"25.The expression "honourable acquittal" was considered by this Court in **Inspector General of Police v S.Samuthiram reported in (2013) 1 SCC 598**. In that case, this Court was concerned with a situation whether disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in **RBI vs Bhopal Singh Panchal reported in (1994) 1 SCC 541** where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable

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acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This court observed that the expressions “honourable acquittal”, “acquitted of blame” and “fully exonerated” are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “honourably acquitted”. This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

16. In view of the foregoing discussion, in my considered opinion, the finding recorded by the Director General of Police, Bhopal in the impugned order Annexure P/7 dated 13.7.2017 incidentally stating that the acquittal of the petitioner is on the basis of the benefit of doubt, is unsustainable in law, therefore, the reasons to deny the benefit of payment of the wages do not find to be tenable in the eyes of law, hence the said finding stands set aside quashing the impugned order Annexure P/7 dated 13.7.2017.

17. Now looking to the provisions of the Fundamental Rule 54, the order for reinstatement as well as to pay the full salary & allowances is required to be passed by the competent authority, therefore, by setting aside the impugned order Annexure P/7 dated 13.7.2017, it is hereby directed that the

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competent authority shall reconsider the application of the petitioner and take a final decision in terms of the provisions of Fundamental Rule 54(2) within a reasonable time in view of the observations made hereinabove.

18. Accordingly, this petition succeeds and is hereby **allowed** to the extent indicated hereinabove. The impugned order Annexure P/7 dated 13.7,2017 passed by the Director General of Police, Bhopal stands set aside. The respondent No.2/Director General of Police, Bhopal is directed to reconsider the application of the petitioner for grant of all consequential benefits in terms of the Fundamental Rule 54(2) and to take a final decision thereon within a period of two months from the date of communication of this order. It is made clear here that if the petitioner is found entitled to the benefit, the same shall be extended to her within a further period of one month otherwise appropriate reasoned order may be passed by the competent authority within the time frame. In the facts & circumstances of this case, the parties are directed to bear their own costs.

(J.K. Maheshwari)
Judge