IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8727 of 2021

Satyawan Vitthal Khandekar,
Age: 61 years, occu: retired,
R/o. At Post Dhalwas Tq. Mahada,
Dist. Solapur -413206 **…..PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Government Pleader,
High Court Aurangabad

2. The Principal District Judge,
Nanded.

3. The Registrar,
High Court of Judicature of Bombay,
Bench at Aurangabad **….RESPONDENTS**

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Ms. A. N. Ansari, Advocate for the Petitioner
Mr. V. M. Kagne, AGP for respondent No.1-State
Mr. Chandrakant K. Shinde, Advocate for Respondent Nos. 2 and 3

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CORAM : MANISH PITALE AND
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 12.08.2025

PRONOUNCED ON 22.08.2025

JUDGMENT :- Per (Y. G. Khobragade, J):-

1. **Rule**. Rule made returnable forthwith. With the consent of both parties, it is heard finally at the admission stage.

2. By the present petition, the petitioner takes exception to the

order dated 05.03.2020 (wrongly mentioned as 25.02.2020), passed by Respondent No.3, thereby upholding the order dated 11.05.2012 passed by Respondent No.2, the Disciplinary Authority, whereby the petitioner was removed from service with immediate effect, without disqualification for further employment with the State Government.

3. After hearing both sides, a very short legal question that falls for our consideration is whether a petitioner, who has been held guilty by a Competent Court for the offence under Section 309 of IPC, but he was granted the benefit of probation under the Probation of Offenders Act instead of being sentenced, can be awarded the punishment of removal from service without disqualification from future government employment under Rule 13(i) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

4. The learned counsel appearing for the petitioner canvassed in vehemence that, by judgment and order dated 06.12.2012, delivered in Regular Criminal Case No.58 of 2010, the learned Chief Judicial Magistrate convicted the petitioner for offences punishable under Sections 332 and 353 of IPC and sentenced him to suffer two years' rigorous imprisonment under Section 332, and one year's rigorous imprisonment under Section 353, along with fines. However, the petitioner was acquitted of the charges

under Sections 294 and 336 of IPC.

5. Thereafter, in Criminal appeal No.03 of 2012, the learned Sessions Court, by its Judgment dated 19.12.2014, set aside the order of conviction for the offences punishable under Section 332 and 353 of IPC, but convicted the petitioner for the offence under Section 336 of IPC. Therefore, the petitioner filed Criminal Revision Application No.05 of 2015 before this Court. On 03.11.2017, this Court set aside the order of conviction under Section 336 of IPC as well. Thus, the petitioner stood acquitted of the offences under Sections 332, 336 and 353 of IPC in Crime No.28 of 2010. Therefore, Respondent No. 2, the Disciplinary Authority, ought not to have passed the order of removal from service. So also, the Appellate authority erred in affirming the order of Respondent no. 2 without considering the fact that the petitioner was already acquitted in Crime No.28 of 2010 and Crime No.87 of 2010.

6. Per contra, Respondent Nos.2 and 3 filed their reply and resisted the petitioner’s claim. Mr. C. K. Shinde, learned Advocate appearing for Respondent Nos. 2 and 3 vehemently submitted that both the Appellate Authority and the Disciplinary Authority recorded concurrent findings that the petitioner had twice committed offences of a similar nature in two separate incidents. He emphasized that the petitioner was initially

convicted for offences punishable under Sections 332 and 353 of IPC. Subsequently, on 08.04.2010, another F.I.R. No.87 of 2010 was registered against the petitioner for the offence under Section 309 of IPC.

7. The learned counsel for Respondent Nos. 2 and 3 further submitted that on 29.02.2012, the learned Judicial Magistrate First Class, Nanded, passed Judgment in Summary Criminal Case No.428 of 2010, holding the petitioner guilty of the offence under Section 309 of IPC. However, instead of conviction, the petitioner was extended the benefits under the provisions of the Probation of Offenders Act on condition of executing a bond for a period of one year. Therefore, the petitioner is held guilty for the said offence.

8. Mr. Shinde further contended that the finding of guilt amounted to a conviction involving moral turpitude, which was duly considered by the Disciplinary Authority. Consequently, a show cause notice dated 13.03.2012 was served upon the petitioner. After considering the detailed reply submitted by the petitioner, the Disciplinary Authority passed an order on 16.03.2012 removing the petitioner from service, which order was affirmed by the Appellate Authority on 25.02.2020. Therefore, the impugned order is legal and proper and he prayed for the dismissal of the petition.

9. Having regard to the rival submissions canvassed on behalf of both sides, we have gone through the petition paper book. It is matter of record that the petitioner was initially appointed as a Sweeper on 19.10.1991 with the establishment of the Court of Civil Judge, Junior Division, Kinwat, Dist. Nanded. After considering his service record and length of service, he was promoted to the post of Sipai/Peon. Crime No.28 of 2010 was registered against the petitioner on 27.02.2010 for the offences punishable under Sections 294, 332, 336 and 353 of the Indian Penal Code (IPC). After conclusion of the trial, on 06.03.2012, the learned Additional Chief Judicial Magistrate, Bhokar passed judgment and sentenced the petitioner to two years' rigorous imprisonment with a fine of Rs.2,000/- for the offence under Section 332 of IPC, and one year's rigorous imprisonment with a fine of Rs. 1,000/- for the offence under Section 353 of IPC. However, the petitioner was acquitted of the offences under Sections 294 and 336 of IPC.

10. Being aggrieved by the order of conviction, the petitioner instituted Criminal Appeal No.03 of 2012 before the learned Sessions Court, Bhokar. By judgment and order dated 19.12.2014, the learned Additional Sessions Judge, Bhokar set aside the order of conviction under Sections 332 and 353 of IPC. However, the petitioner was convicted for the offence punishable under Section 336 of IPC and sentenced to undergo three months

of simple imprisonment. Therefore, the petitioner filed Criminal Revision Application No.05 of 2015 before this Court. By order dated 03.11.2017, this Court allowed the said Revision Application and set aside the judgment and order dated 19.12.2014 passed by the Sessions Court, acquitting the petitioner for the offence punishable under Section 336 of IPC.

11. However, in the meanwhile, on 08.04.2010, another F.I.R., being Crime No.87 of 2010, was registered against the petitioner with Vazirabad Police Station for the offences punishable under Sections 294, 332, 336 and 353 of IPC. After conclusion of the trial, by judgment and order dated 29.02.2012, the learned Judicial Magistrate First Class, Nanded convicted the petitioner under Section 309 of IPC. However, the petitioner was granted benefit under the Probation of Offenders Act, 1968, instead of being sentenced to imprisonment, upon executing a bond of Rs.7,500/- for maintaining good behaviour for a period of one year.

12. Being aggrieved by the said order, the petitioner preferred a Criminal Appeal along with an Application for condonation of delay. On 01.10.2015, Misc. Criminal Application No.47 of 2012 for condonation of delay was allowed subject to payment of costs of Rs.1,000/-. However, the petitioner failed to comply with the said order. Later, the petitioner filed O.M.C.A. No.69 of 2019 seeking permission to deposit the costs within a

specified period, but the said application came to be rejected on 29.09.2019.

13. Indeed, on 04.03.2010, the petitioner was served with a suspension order under sub-Rule (2) of Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, on the ground that he had been detained in custody from 27.02.2010 for a period exceeding forty-eight hours and had been convicted for an offence under the Indian Penal Code. No doubt, the petitioner was served with a show cause notice on 13.03.2012. He replied to the said notice on 16.03.2012, contending that he had filed an appeal against the order of conviction and the suspension order dated 04.03.2010 had been issued without awaiting the decision of the learned Appellate Court. The petitioner prayed for the award of the lesser punishment of compulsory retirement instead of removal from service, stating that he was the sole earning member of his family and that removal from service would cause his family to suffer from starvation. The Disciplinary Authority, Respondent No.2, passed the impugned order on 11.05.2012 removing the petitioner from service without disqualifying him from future Government Employment.

14. Being aggrieved by the said order of removal from service, the petitioner submitted a Departmental Appeal on 26.07.2012. However, the Appellate Authority dismissed the said appeal on 25.02.2020.

15. It is a matter of record that, vide judgment and order dated 06.03.2012 passed in R.C.C. No.58 of 2010, the petitioner was sentenced to two years' rigorous imprisonment with a fine of Rs. 2,000/- under Section 332 of IPC, and one year's rigorous imprisonment with a fine of Rs. 1,000/- under Section 353 of IPC. However, the petitioner was acquitted of the offences under Sections 294 and 336 of IPC in Crime No.28 of 2010 registered with Bhokar Police Station. The petitioner had challenged his conviction by filing Criminal Appeal No.03 of 2012. It is also a matter of record that, on 19.12.2014, the learned Additional Sessions Judge partly allowed the said appeal and set aside conviction of the petitioner under Sections 332 and 353 of the IPC, but convicted him for the offence under Section 336 of IPC. Needless to say that, on 03.11.2017, this Court, in Criminal Revision Application No.05 of 2015, acquitted the petitioner of the offence punishable under Section 336 of IPC in Crime No.28 of 2010.

16. However, on 08.04.2010, F.I.R. No.87 of 2010 was registered against the petitioner for the offence under Sections 309 of IPC. It is a matter of record that, after conclusion of the trial in Summary Criminal Case, the learned Judicial Magistrate First Class, Nanded, by Judgment and order dated 29.02.2012, found the petitioner guilty for the offence punishable under Section 309 of IPC. However, he was granted the benefit of the probation of Offenders Act, 1958, upon execution of a bond for one

year, instead of being sentenced to imprisonment. The petitioner never challenged the order of conviction; therefore, the conviction continues to remain in force.

17. Rule 13(i) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 provides as under:

"Imposition of penalties on a government servant based on their conviction in a criminal case. Specifically, it states that notwithstanding other rules (Rules 8 to 12), if a disciplinary authority is of the opinion that a penalty is warranted due to the government servant's conduct that led to their criminal conviction, the authority can proceed with imposing the penalty."

18. In the case of ***The Divisional Personnel Officer Southern Railway & Another Vs. T. R. Chellappan, (1976) 3 SCC 190,*** the petitioner was held guilty, but instead of sentencing him, he was released on probation under Section 3 of the Probation of Offenders Act. As a result, he was removed from service due to the misconduct that led to the conviction. In this context, the Hon'ble Supreme Court held that, the factum of guilt on the criminal charge is not wiped out merely by passing an order of releasing the offender on probation under Sections 3, 4 and 6 of the Probation of Offenders Act. The stigma continues and the finding of misconduct resulting in conviction must be treated as conclusive proof.

19. In ***Union of India & Ors. Vs. Bakshiram, (1990) 2 SCC 426,*** the Hon'ble Supreme Court observed in paragraph Nos.11, 12 and 13 as under:

> *"11. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as pe law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12. On this aspect, the High Courts speaks with one voice. The Madras High Court in R. Kumaraswami Aiyar V. Commissioner, Municipal Council, Tiruvannamalai and Embaru, P. V. Chairman, Madras Port Trust, the Andhra Pradesh High Court in A. Satyanarayana Murthy V. Zonal Manager, LIC, the Madhya Pradesh High Court in Om Prakash V. Director Postal Services (Posts and Telegraphs Deptt.) Punjab Circle, Ambala, the Delhi High Court in Director of Postal Services V. Daya Nand have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Court in T. R. Challappan case.*
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> *12. In Trikha Ram V. V. K. Seth, 1987 Supp SCC 39: 1987 SCC (L&S)282: (1987) 4 ATC 208, this Court after referring to Section 12 has altered the punishment of dismissal of the petitioner therein into "removal from sevice", so that it may help him to secure future employment in other establishment.*
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> *13. Section 12 is thus clear that it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been*

dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained."

20. In the case in hand, the petitioner was convicted for the offence punishable under Section 309 of IPC in Crime No.87 of 2010. Although he was granted the benefit of the probation under the probation of Offenders Act and was not sentenced to imprisonment, the stigma of conviction remains. Therefore, Respondent No. 2-the Disciplinary Authority passed the order of removal from service on 11.05.2012, which notably, does not disqualify the petitioner from future Government employment. Respondent No. 3-the Appellate Authority passed the impugned order affirming the decision of Respondent no. 2- the Disciplinary Authority, which does not appear to be perverse, illegal and bad in law.

21. In view of the above discussion, we do not find substantial grounds to interfere with the impugned order. Hence, the present petition deserves to be dismissed. Accordingly, it is dismissed. Rule is discharged.

[Y. G. KHOBRAGADE, J.] **[MANISH PITALE, J.]**

HRJadhav