IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12326 OF 2017

Eknath Shankar Kamble
Age 63 years, Occu – Retired,
A/p. Jat, More Colony,
Taluka – Jat, District Sangli. … Petitioner

versus

1. Chief Executive Officer,
Zilla Parishad, Sangli.

2. The Upper Commissioner,
Divisional Commissioner Office,
Development Establishment Branch,
Vidhanbavan, Council Hall, Pune Div.
Pune – 1.

3. State of Maharashtra,
Copy to be served on Govt. Pleaders Office,
(A.S.), High Court, Bombay. … Respondents

Mr. Padmanabh D. Pise, for Petitioner.
Mr. Sumedh Modak i/by Mr. Vijay Killedar for Respondent No.1.
Mrs. V.S.Nimbalkar, AgP for Respondent Nos.2 and 3.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 25 APRIL 2023
PRONOUNCED ON : 8 JUNE 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, the Petition is heard finally.

2. This Petition under Article 227 of the Constitution of India, assails the

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legality, propriety and correctness of the judgment and order dated 15 March 2017 passed by the learned Member, Industrial Court at Sangli, in Complaint (ULP) No.163 of 2014, whereby the learned Member, Industrial Court, was persuaded to dismiss the Complaint.

3. Shorn of superfluities, the background facts can be stated as under :

3.1 On 17 July 1978, the Petitioner was appointed as a Tracer with the Zilla Parishad, Sangli. On 18 October 2001, while the Petitioner was posted at Panchayat Samiti, Jat, the Petitioner came to be apprehended by Anti-Corruption Bureau with the allegation that the Petitioner had demanded and accepted an amount of Rs.500/- as illegal gratification. The Petitioner was placed under suspension with effect from 18 October 2001. He was prosecuted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 in Special Criminal Case No.4 of 2002.

3.2 During the pendency of the trial in Special Criminal Case No.4 of 2002, the Respondent No.1 vide notice dated 17 October 2005, proposed to compulsorily retire the Petitioner from service with effect from 15 January 2006. A complaint of unfair labour practice, being Complaint (ULP) No.1 of 2006, preferred by the Petitioner thereagainst came to be dismissed on 2 September 2009.

3.3 In the meanwhile, the Petitioner was acquitted in Special Criminal Case No.4 of 2002 by the learned Special Judge, Sangli by a judgment and order dated 28

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April 2009.

3.4 Post acquittal, the Petitioner approached Respondent No.1 for full retiral benefits. A notice was issued to the Petitioner under Rule 72(5) of the Maharashtra Civil Services (Joining Time, Foreign Service, Payments during Suspension, Dismissal and Removal) Rules, 1981 (the Suspension Rules, 1981). The Petitioner gave an explanation on 27 October 2009. Respondent No.1 by an order dated 11 January 2010, directed that the suspension period from 18 October 2001 to 16 January 2006, be treated as suspension period.

3.5 The Petitioner preferred an appeal before the Divisional Commissioner. By an order dated 19 December 2012, the Additional Divisional Commissioner, Pune, dismissed the appeal and confirmed the order passed by the Chief Executive Officer, Zilla Parishad, Sangli.

3.6 The Petitioner, thus, approached the Industrial Court with a Complaint of unfair labour practice under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971). It was alleged, inter alia, that the Respondent No.1 indulged in unfair labour practice by not treating the suspension period as the period spent on duty despite acquittal of the Petitioner in Special Criminal Case No.4 of 2002 and not granting the retiral benefits on the premise that the Petitioner retired from service on 16 January 2006.

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3.7 By the impugned judgment and order 15 March 2017, the learned Member, Industrial Court, was persuaded to dismiss the Complaint opining that the Petitioner was acquitted of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 in Special Criminal Case No.4 of 2002 by extending the benefit of doubt and it was not a case of honourable acquittal or complete exoneration. The learned Member was of the view that the Respondent No.1 arrived at a justifiable finding that the suspension of the Petitioner was not wholly unjustified as the Petitioner had not given any satisfactory explanation regarding the acceptance of an amount of Rs.500/- by way of illegal gratification and the acquittal was also on technical ground.

4. I have heard Mr. Pise, learned Counsel for the Petitioner and Mr. Modak, learned Counsel for the Respondent No.1 and Mrs. Nimbalkar, learned AGP for Respondent Nos.2 and 3. I have also perused the material on record, including the judgment and order delivered by the learned Special Judge in Special Case No.4 of 2002.

5. Mr. Pise, learned Counsel for the Petitioner submitted that the learned Member, Industrial Court, lost sight of the fact that no disciplinary inquiry was instituted against the Petitioner. It was thus not a case that the disciplinary authority had arrived at an independent finding about the alleged misconduct *de hors* the acquittal of the Petitioner in criminal case on the same set of facts. In this view of the

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matter, according to Mr. Pise, the Petitioner could not have been deprived of the benefit of treating the period of suspension as the period spent on duty post acquittal in the criminal case. Mr. Pise would urge with a degree of vehemence that the employer, appellate authority as well as the Industrial Court fell in error in arriving at a finding that the Petitioner's acquittal was by extending the benefit. It was strenuously urged that if the judgment delivered by the learned Special Judge is read as a whole, it becomes abundantly clear that the Petitioner was acquitted on merits in as much as the learned Judge recorded a finding that the twin factors of demand and acceptance were not proved. In such circumstances, the authorities were not justified in declining to treat the period of suspension as the period spent on duty, submitted Mr Pise.

6. To lend support to the aforesaid submissions, Mr. Pise placed reliance on the judgment of this Court in the case of **Commissioner, Amravati Municipal Corporation V/s. B.S.Sawai**[1] and the order passed by this Court in **Manohar Shankar Dhoke V/s. The Chief Executive Officer and Anr.**[2]

7. Per contra, Mr. Modak, learned Counsel for the Respondent No.1, would submit that the Respondent No.1 was justified in ordering that the period of suspension be treated as such. In the backdrop of the nature of the accusation against the Petitioner, the suspension cannot be termed as wholly unjustifiable. The action of Respondent No.1 was, according to Mr. Modak, in conformity with the provisions

1 2020 0 Supreme (Bom) 220

2 WP 172 of 2018 (Nagpur Bench)

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contained in Rule 72 of the Suspension Rules, 1981. Taking the Court through the observations in the judgment of the Special Court in Special Case No.4 of 2002, Mr. Modak would urge that, at more than one place, the learned Special Judge made it clear that the guilt of the accused (Petitioner) could not be established beyond reasonable doubt. It, therefore, cannot be urged that the accused has been honourably acquitted, entitling him to full back wages and retiral benefits.

8. Mr. Modak submitted that it is fairly well-recognized that in the event of acquittal by extending benefit of doubt, an employee is not entitled to be automatically either reinstated or paid full benefits where superannuated. To bolster up this submission, the learned Counsel for Respondent No.1 placed reliance on two Division Bench judgments of this Court in the cases of **Ravindra Prasad Munneshwar Prasad V/s. Union of India an Ors.**[3] and **Sanjay Kumar Rai V/s. Union of India and Ors.**[4]

9. The learned AGP, on her part, supported the impugned judgment and order and the orders passed by the authorities below.

10. The aforesaid submissions now fall for consideration.

11. The factual backdrop is rather incontrovertible. The Petitioner was placed under suspension after he was apprehended by the Anti Corruption Bureau while allegedly accepting bribe of Rs.500/-, on 18 October 2001. During the pendency of Special Case No.4 of 2022, the Petitioner came to be compulsorily retired

3 2022 SCC Online Bom 682
4 2016 SCC Online Bom 5288

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with effect from 5 January 2006. Eventually, the Petitioner came to be acquitted of all the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 by a judgment and order dated 28 April 2009. A show cause notice was given to the Petitioner on 2 September 2009. An explanation was furnished by the Petitioner on 27 October 2009. By an order dated 11 January 2010, the Respondent No.1 directed that the suspension period i.e. 18 October 2001 to 16 January 2006 be treated as such. Is it justifiable ?

12. The nature of the alleged misconduct is of salience. In the case at hand, the allegation against the Petitioner was that the Petitioner demanded and accepted an amount of Rs.500/- by way of illegal gratification for forwarding a proposal of the Complainant in Special Case No.4 of 2002 to Zilla Parishad, Sangli, for enhancement in the rent of the house premises which was taken on lease by the Zilla Parishad to run a school therein.

13. It is trite, in respect of one and the same act of misconduct, a disciplinary proceeding and a prosecution can proceed simultaneously. However, if the disciplinary proceeding and prosecution are based on an identical and similar set of facts and the charge in the criminal case against the delinquent is of grave nature, which involves complicated questions of law and facts, it is considered desirable not to proceed with the disciplinary proceeding till the conclusion of the criminal case. It is also equally well recognized that the acquittal of an employee in a prosecution does

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not ipso facto either terminate the disciplinary proceeding or preclude the disciplinary authority from initiating the disciplinary proceeding. Undoubtedly, these questions are, by their very nature, rooted in facts and cannot be confined in a straight jacket.

14. In the facts of the case at hand, indisputably, no independent disciplinary proceeding was initiated against the Petitioner and the Petitioner was compulsorily retired from service by invoking the power to retire an employee in public interest. After the acquittal of the Petitioner in Special Case No.4 of 2002, the question of treating the suspension period as such or the period spent on duty, thus, cropped up for consideration.

15. Rule 72 of the Suspension Rules, 1981 governs the treatment to be meted out to an employee, who has been ordered to be reinstated, in the matter of suspension period. Relevant parts of Rule 72 read as under :

> "72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty – (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order -
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and
>
> (b) whether or not the said period shall be treated as a period spent on duty.
>
> (3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall,

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subject to the provisions of sub-rule (8), be paid the fully pay and allowances to which he would have been entitled, had he not been suspended;

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, 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.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note – The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

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(a) extraordinary leave in excess of three months in the case of a temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant."

16. Sub-rule (3) of Rule 72 empowers the authority competent to order reinstatement of a Government servant, to direct that he be paid salary and allowances to which he would have been entitled had he not been suspended where the authority is of the opinion that the suspension was wholly unjustified. A conjoint reading of the provisions contained in sub-rules (3), (5) and (7) of Rule 72 (extracted above), would indicate that the competent authority is vested with power to determine whether the suspended employee, post reinstatement, is entitled to full pay and allowances having regard to the question as to whether the suspension was justifiable or not. The words 'wholly unjustified' envisage a negative test in the sense that if the authority is of the view that in the backdrop of the nature of the accusation, or the imputation of misconduct, the suspension was justified. If the authority records a finding that, in the facts of the given case, despite the acquittal of the Government servant, the suspension was not wholly unjustified, the Government servant is not entitled to the dispensation of the suspension period being treated as the period spent on duty and, thus, all the consequential benefits.

17. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Krishnakant Raghunath Bibhavnekar V/s. State of**

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Maharashtra an Ors.[5] wherein the Supreme Court had an occasion to consider the import and application of Rule 72 in the backdrop of a claim for treating the suspension period as the period spent on duty on the strength of acquittal of the Appellant therein of a charge of the offence punishable under Section 409 of the Indian Penal Code. Explaining the purpose of the prosecution of a public servant and the courses which are open to the disciplinary authority in the event the prosecution ends in acquittal, the Supreme Court observed as under :

> "4.........The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts, conduct of a public servant has to be an open book: corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or fool proof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts, would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to the prosecution of him for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges: whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records,

5 (1997) 3 SCC 636

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> though culminated into acquittal, is entitled to be reinstated with consequential benefits? In our considered view, this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty, (and on payment of subsistence allowance etc.) Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The Appellant is also not entitled to any other consequential benefits as enumerated in paras 5 and 6 of the additional Affidavit."
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> (emphasis supplied)

18. The Supreme Court has enunciated in clear and explicit terms that even where a public servant is acquitted in a criminal case, the consequential benefit with all backwages cannot be automatic and as a matter of course. It will be deleterious to the

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maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. It was open to the disciplinary authority to either initiate disciplinary proceeding or pass an order to determine the period of suspension as such or the period spent on duty. The exercise of the latter course, in a large measure, hinges upon the nature of the acquittal. Is the acquittal clean and honourable, in the sense that the employee is completely exonerated ? Is the employee acquitted by extending benefit of doubt or on account of technical or procedural flaws in the prosecution case ?

19. If the answer to the first question is in the affirmative, the very substratum of the allegation against the employee is dismantled, thereby rendering the suspension itself unjustifiable. In that event, it would be iniquitous to deny the benefit which would have otherwise flown to the employee but for suspension. Conversely, where the acquittal is on account of the failure of the prosecution to bring home the charge to the employee beyond reasonable doubt or on technical ground, the imputation which warranted suspension of an employee does not get wiped out.

20. In the matter of the reinstatement of an employee or treating the suspension period post acquittal of the employee in a criminal case, this distinction between the nature of the acquittals is well recognized. A profitable reference can be made to a judgment of the Supreme Court in the case of **Deputy Inspector General**

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of Police and Anr. V/s. S. Samuthiram[6] wherein the Supreme Court expounded the import of the term 'honourable acquittal'. The observations in paragraphs 24 and 26 are instructive and, hence, extracted below :

> "24. The meaning of the expression 'honourable acquittal' came up for consideration before this Court in RBI V/s. Bhopal Singh Panchal[7]. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.
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> 26. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be

6 (2013) 1 SCC 598
7 (1994) 1 SCC 541

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cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so." (emphasis supplied)

21. In a recent pronouncement in the case of **Union of India and Ors. V/s. Methu Meda**[8] the Supreme Court reiterated that the expression 'honourable acquittal', 'acquitted of blame' and 'fully acquitted' are unknown to the Code of Criminal Procedure. Explaining the import of the term 'honourable acquittal' the Supreme Court observed, thus :

> "12. In view of the above, if the acquittal is directed by the court on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of accused as just, it be treated as honourable acquittal. In other words, if prosecution could not prove the guilt for other reasons and not 'honourably' acquitted by the Court, it be treated other than 'honourable', and proceedings may follow.
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> 13. The expression 'honourable acquittal' has been considered in the case of S. Samuthiram (supra) after considering the judgments of RBI V/s. Bhopal Singh Panchal (supra), and R.P.Kapur[9], Raghava Rajgopalchari[10]; this Court observed that the standard of proof required for holding a person

8 (2022) 1 SCC 1
9 AIR 1964 SC 787
10 1967 SCC Online SC 1

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> guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance and probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so."

22. The aforesaid pronouncement in the case of **Union of India and Ors. V/s. Methu Meda (supra),** was followed by the Division Bench of this Court in the case of **Ravindra Prasad Munneshwar Prasad (supra),** on which reliance was placed by the learned Counsel for the Respondent No.1.

23. On the aforesaid touchstone, reverting to the facts of the case, recourse to the judgment delivered by the learned Special Judge in Special Case No.4 of 2002 becomes indispensable. The learned Special Judge was of the view that there was no consistency in the deposition of the Complainant and the trap witness. The evidence of the complainant and trap witness regarding the demand of bribe was untrustworthy. It did not inspire confidence. It was further noted that the Complainant in the said case, was also aware that the Petitioner-accused was not concerned with forwarding of the proposal for approval to the Zilla Parishad. Nor the Head Master of the School had referred the Complainant to the Petitioner. It was, thus, concluded that the

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prosecution could not succeed in establishing the guilt of the accused beyond reasonable doubt.

24. To ascertain as to whether the acquittal of the Petitioner was a clean acquittal or was he acquitted by extending the benefit of doubt, it may be necessary to extract the observations of the learned Special Judge in paragraphs 23 to 26 of the Judgment dated 28 April 2009. They read as under :

> "23. It is further submitted that ACB Officer Surve himself has carried out the investigation. In this regard, he has attracted my attention to the following observations made in the case **Tryambak Binnar V. State of Maharashtra** reported in 2002 Cri.L.J. 3059 (Bombay High Court) :
>
> *"Another aspect of the matter is in such a situation the entire investigation is conducted by the same Inspector who arranged the trap and lodged the FIR. Normally, investigation is not to be conducted by the person who lodges a complaint because he is interested in the success of his complaint."*
>
> and submitted that Survey, who is complainant in this case, has carried out the investigation. However, in view of aforesaid observation, complainant Surve cannot be an investigating officer and, therefore, considering this lacuna, benefit goes to the accused.
>
> 24. I am convinced that there is inconsistency in the evidence of complainant and panch witness. It is important to note that complainant himself was aware that accused was not concerned with the sending the proposal to Z.P.Sangli for fixing the rent. The acceptance of bribe and its recovery is not proved by the prosecution beyond doubt. I have already pointed out that the evidence of complainant and panch witness regarding the demand of bribe by the accused found to be untrustworthy and not inspiring confidence, therefore, mere recovery of powdered currency note from the accused, it cannot be considered as a circumstance pointing the guilt of the accused."
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> 25. It is seen that Govindraj, the then Chief Executive Officer has issued a

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> sanction (Exhibit 33) has admitted that accused being a draftsman, has to prepare a map, sketches in which he is supposed to show area. It is important to note that Sanctioning Authority has admitted that in the month of October 2001, accused prepared the statement and the map and rent was determined at the rate of Rs.900/- p.m. and the same was submitted to Kothi Engineer. It is not proved that accused was concerned with the sending the proposal; on the contrary, he has no authority to do the work, for which bribe was alleged to be demanded.
>
> 26. It is also to be noted that the proposal was given by the complainant Devkar to the school and Head Master of school sent the proposal for sanctioning the rent. Complainant has admitted that he was not deputed by Head Master to make inquiry with the accused. On the contrary, it appears that there was a correspondence between the school and the panchayat samiti. It is true that complainant Devkar was a beneficiary; but when a proposal was not sent by him and when the house was given to the school on lease, I hold that since prosecution has not proved the charges against the accused beyond reasonable doubt. Therefore, both the points are replied in the negative."

25. Undoubtedly, the observations in paragraph 23 advert to a lacuna in the prosecution case on account of the fact that the officer who was a formal complainant himself entered into investigation. The said reason is plainly a technical ground, of which the learned Special Judge was persuaded to give benefit to the Petitioner-accused. However, the observations in the succeeding three paragraphs are of critical salience.

26. It is true, the nature of imputation is of material significance. Where the alleged misconduct is of demand and acceptance of an illegal gratification, different considerations come into play. In such a situation, the acquittal of an employee does

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not ipso facto lead to grant of all the service benefits. Under Rule 72, the Competent Authority is empowered to determine whether the suspension was wholly unjustified. The nature of acquittal, thus, assumes importance.

27. The reasons which weighed with the learned Special Judge in acquitting the Petitioner, extracted above, indicate that the learned Special Judge found that, firstly, the Petitioner was not entrusted with the task of forwarding proposal to the Zilla Parishad; secondly, the Head of the School had not referred the Complainant to the Petitioner; thirdly, the evidence of the complainant and the trap witness regarding the demand of illegal gratification was untrustworthy and did not inspire confidence. Fourthly, the acceptance of bribe and recovery of tainted currency notes were not proved by the prosecution beyond doubt.

28. In the backdrop of the aforesaid reasons, it would be difficult to accede to the submission on behalf of the Respondents that the observations in the judgment of the learned Special Judge that the prosecution failed to establish the guilt of the accused beyond reasonable doubt, are of decisive nature. The nature of the acquittal is required to be appreciated in the light of the entire reasoning. Use of expression 'not proved beyond reasonable doubt' cannot be the sole barometer. The said expression also denotes the standard of proof on the touchstone of which the evidence is appraised. It may not, therefore, be justifiable to hold that the acquittal can in no case be honourable or clean where the criminal court uses the expression 'not proved

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beyond reasonable doubt' or that the accused is entitled to 'benefit of doubt'.

29. In the case at hand, on a proper analysis, an inference becomes inescapable that the learned Special Judge found that the prosecution failed to prove the guilt of the accused - on all ingredients like opportunity, demand and acceptance. The observations by the learned Special Judge that mere recovery of tainted currency notes from the accused cannot be considered as a circumstance pointing to the guilt of the accused, in my view, cannot be read in isolation and disjuncted from the preceding observations in paragraph 24.

30. In the case of **Commissioner, Amravati Municipal Corporation V/s. B.S.Sawai** (supra), a learned Single Judge repelled the challenge on the ground that the employee therein was not honourably acquitted. It was inter alia observed as under :

> "11. The learned Advocate for the Corporation takes exception to the observations made by the Industrial Tribunal in the impugned award that the employee was honourably acquitted. I find that though the said contention is correct, the fact that the employee was acquitted for the offences alleged to have been committed by him on account of lack of evidence, would not change the situation. His acquittal would remain an acquittal until the Petitioner can point out any provision of law that a person who is acquitted on account of benefit of doubt, would be disentitled from service benefits or reinstatement in service.
>
> 12. Considering the above, the Industrial Court has rightly concluded that the suspension period of the employee deserves to be converted into regular employment."

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31. In the case of **Manohar Shankar Dhoke V/s. The Chief Executive Officer and Anr.** (supra), another learned Single Judge adverted to the fact that in the judgment of acquittal, the criminal Court had recorded that benefit of doubt should be given to the Petitioner therein and yet, persuaded to hold that a stray observation in the judgment cannot be construed to mean that the acquittal of the Petitioner was not a clean acquittal, but was on account of benefit of doubt. The observations in paragraphs 6 and 7 read as under :

> "6. No doubt, in the instant matter, the judgment of acquittal of the petitioner dated 16.11.2013 in para 17 records that the benefit of doubt should be given to the petitioner, however, such an observation is made on the basis of the fact that the evidence tendered by the prosecution contains material omissions, due to which the issues as framed were answered in negative and the petitioner was acquitted of the charges, as framed against him. This would clearly indicate that the prosecution failed to bring home the guilt of the accused by necessary and cogent evidence, as required by law. That being the position, a stray observation in the judgment dated 16.11.2013 cannot be construed to mean that the acquittal of the petitioner was not a clean acquittal, but was on account of any benefit of doubt.
>
> 7. That apart, there is another factor which has not been considered. It is an admitted position that the petitioner was also subjected to a departmental enquiry on account of his facing a prosecution in Criminal Case No.280 of 2012, in which, the Petitioner was placed under suspension on 20.3.2012 and the departmental enquiry continued, which resulted in his being exonerated, leading to his reinstatement on 29.4.2014. Thus, if the misconduct of the petitioner was of the nature which would require punishment to be imposed upon him, it could have been done under the departmental enquiry. The

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> exoneration of the petitioner in the departmental enquiry clearly adds to the benefit of the petitioner. In case of Krishinikant Bibhavnekar (supra), the issue of initiation and exoneration of the delinquent in a departmental enquiry was not under consideration, which is why it has been indicated that the initiation of a departmental enquiry was one of the course which could have been adopted."

32. I am conscious that the decision in the case of **B.S.Sawai (supra)**, was rendered in a different fact situation, wherein the employee was prosecuted for an offence punishable under Section 302 of the Indian Penal Code In the case of **Manohar Shankar Dhoke (supra)**, in addition to acquittal in the criminal case, the employee therein was also exonerated in a disciplinary inquiry and that constituted an additional circumstance. However, the fact remains that mere use of the expression 'benefit of doubt' in the judgment of criminal court, by itself, would not deprive the employee from claiming that the acquittal was 'honourable' or 'clean'. If in the totality of the circumstances, the court comes to the conclusion that the acquittal of an employee is after consideration of the entire material and recording categorical finding that the guilt is not proved, the fact that the criminal court had also used an expression 'benefit of doubt' in the judgment would not constitute an impediment in inferring 'honourable acquittal'.

33. The matter can be looked at from another perspective. Admittedly, no disciplinary proceeding was instituted against the Petitioner. Indisputably, the

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Petitioner was retired in public interest by an order dated 15 October 2005 with effect from 16 January 2006 under Rule 10(4)(b) of the Pension Rules, 1982. Retirement in public interest cannot be said to be wholly unconnected with the circumstances which led to the suspension of the Petitioner. It is true, retirement in public interest was not by way of penalty. But the totality of the circumstances cannot be lost sight of. The Petitioner came to be acquitted from the prosecution. No disciplinary action was initiated against the Petitioner. Yet the Petitioner stood retired in public interest three years prior to the normal superannuation.

34. In the circumstances, in my view, the learned Member, Industrial Court committed an error in dismissing the Complaint.

35. In the totality of the circumstances, in my considered view, the period of suspension deserves to be treated as the period spent on duty for the purpose of retiral benefits. The said period is required to be counted towards qualifying service under Rule 43 of the Maharashtra Civil Services (Pension), 1982 and the pension deserves to be refixed after taking into account the salary which the Petitioner would have notionally drawn on 16 January 2006, the date he was retired in public interest upon the suspension period being treated as the period spent on duty. The Petitioner shall, however, be not entitled to pay and allowances for the said period, save and except the subsistence allowance which has been paid to the Petitioner.

36. Resultantly, the Petition deserves to be partly allowed.

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37. Hence, the following order :

ORDER

(i) The Petition stands partly allowed.

(ii) The impugned order dated 15 March 2017 passed by the learned Member, Industrial Court as well as the order dated 11 January 2010 passed by the Respondent No.1 and order dated 19 December 2012 in Appeal passed by Respondent No.2 stand quashed and set aside.

(iii) The suspension period commencing from 18 October 2001 to 16 January 2006 shall be treated as the period spent on duty for the purpose of retiral benefits only.

(iv) The said period be counted towards qualifying service under Rule 43 of the Maharashtra Civil Services (Pension) Rules, 1982, and the pension be refixed after taking into account the salary which the Petitioner would have notionally drawn on 16 January 2006, the date he was retired in public interest.

(vi) The Petitioner shall, however, be not entitled to pay and allowances for the said period

(vii) Rule made absolute to the aforesaid extent.

(viii) In the circumstances of the case, there shall be no order as to costs.

(N.J.JAMADAR, J.)

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