

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

CONTEMPT APPLICATION NO. 26 OF 2021

IN

ORIGINAL APPLICATION NO 85 OF 2021

DISTRICT : KOLHAPUR

Shri Suresh Ramchandra Lohar)
Dismissed Police Naik,)
R/o: Plot no. 15/2, Golibar Maidan,)
Kasba Bawda, Kolhapur 416006.)...**Applicant**

Versus

Shri Shailesh Balkawade,)
The Superintendent of Police, Kolhapur.)
Kasba Bawda Road,)
Dist-Kolhapur 416006)...**Respondents**

Shri R.M Kolge, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula R. Bhatkar (Chairperson)

DATE : 12.08.2021

ORDER

1. Heard Shri R.M Kolge, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. In this Contempt Application, the applicant prays that the order dated 1.4.2021 in O.A 85/2021 passed by the Single Bench of this Tribunal is to be implemented.

3. The applicant, a Police Naik, working at Kolhapur was suspended pursuant to registration of Crime under the Prevention of Corruption Act, 1988. He was convicted by the Learned Special Judge, Kolhapur on 22.5.2015. Consequently, he was dismissed from service by order dated 1.9.2015. However, the applicant was acquitted in appeal by the Hon'ble Bombay High Court by judgment and order dated 7.11.2019.

4. After the acquittal, the applicant made various representations dated 12.12.2019, 23.12.2019, 27.2.2020, 5.5.2020 and 22.7.2020 for reinstatement in service. But he was not reinstated in service.

5. Hence, the applicant preferred Original Application No. 85/2021 on 28.1.2021. The said Original Application was disposed of by this Tribunal on 1.4.2021 with following directions:-

“7. O.A is disposed of with direction to Respondent no. 2 to pass appropriate order on the representations made by the applicant and report to above within two week from today.

8. Respondent no. 2 is further directed to pass appropriate orders about suspension period in accordance to law.”

6. The said order was not implemented and hence this Contempt Application and Mr Shailesh Balkawade, S.P, Kolhapur is made Respondent-Contemnor.

7. Mr Shailesh Balkawade, S.P, Kolhapur, by letter dated 5.7.2021, after three months informed the applicant that the office

of the Prosecutor has given instructions to Law & Judiciary Department, Mumbai to challenge the order dated 7.11.2019 of the Hon'ble High Court before the Hon'ble Supreme Court and therefore, he cannot consider his representation for reinstatement in service. Thereafter, the Respondent by letter dated 4.8.2021, informed the office of the learned Chief Presenting Officer that as the applicant is dismissed from service after his conviction and there are instructions to challenge the order dated 7.11.2019 of the Hon'ble Bombay High Court before the Hon'ble Supreme Court, the preliminary enquiry of the applicant is kept in abeyance and this is to be communicated to this Tribunal. Thereafter, on the same day, i.e. on 4.8.2021, the Respondent filed short affidavit in reply as directed by this Tribunal wherein the same thing is repeated that the Tribunal has directed to decide the representation and so accordingly the representation is decided by refusing his request of reinstatement hence there is no contempt. He has tendered unconditional apology for the delay.

8. On perusal of the correspondence between the Respondent and the Home Department and so also the Prosecutor's office, it appears that the Respondent, Superintendent of Police, has not committed any contempt as such but he is in a confused state of mind in respect of the position of law so far as the case is concerned.

9. In fact, by letter dated 19.5.2021, Advocate Shri V.S Shukla, District Public Prosecutor, Kolhapur, has given a correct legal opinion to the Respondent to verify whether any appeal is filed in the Hon'ble Supreme Court or whether he is suspended on some other grounds. If no case is pending against him, then the applicant should be reinstated in service.

10. Hence, it is clarified as follows:-

(a) When the order is passed by the Tribunal or any Court with directions to decide the representation in accordance with law, then it is necessary for the authority concerned or the officer to obtain a written legal opinion from the Law Officer or from the law & Judiciary Department as the case is. Many Government officers officiating the higher post do not hold Degree in law and even if they hold, they are not aware of the present legal situation. Hence, it is must for them to consult a Law Officer or the legal department and seek written opinion well in time from them and then take decision as per the advice given to them.

(b) The officers from the legal department or the Law Officers are expected to know the settled legal position which is in the rules or in the Act. If not so, then there is Judge made law and the legal position is settled by certain land mark pronouncements of the Hon'ble Supreme Court or the Hon'ble High Court. The ratio laid down in those cases is to be read, considered and if it is applicable to the facts of that particular case, it is to be pointed out to the concerned officer. It is the basic duty of the Law Officer from the Legal Department. The opinion should be given in writing, in compliance of such orders to clear ignorance and avoid confusion.

11. In the present case, the applicant has mentioned in para 6.13 about the judgment of the Hon'ble Supreme Court in the case of **Brahma Chandra Gupta Vs. Union of India, AIR 1981 SC 380**. It was necessary on the part of the Law Officer /Presenting Officer to go through the said case of Brahma Chandra Gupta (supra), wherein it is held that the reinstatement after acquittal in appeal is necessary. It was also held that applicant was entitled to full salary on reinstatement. It is further made clear that apart from the case law relied on by the applicant, it is expected from the

Law Officer or the Presenting Officer to find out the relevant case law and give correct legal opinion.

12. In view of the above, the Contempt Application is disposed of with following directions:-

Learned P.O is directed to give written legal opinion to Mr Shailesh Balkawade, Superintendent of Police, Kolhapur, Respondent, in accordance with law on or before 18.8.2021 and Mr Shailesh Balkwade, S.P, Kolhapur, Respondent is bound by the legal opinion and appropriate decision is to be taken on or before 28.8.2021.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 12.08.2021
Dictation taken by : A.K. Nair.