

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.9 OF 2016

DISTRICT: SOLAPUR

Shri Shaikh Rashid Shaikh Munir)
 Age 60 years, Occ : Retired Govt. Officer,)
 Address : B-608, Karnik Nagar,)
 Solapur 413 605) .. **Applicant**

Versus

1) The State of Maharashtra,)
 Through Secretary (Forest),)
 Revenue and Forest Department,)
 Mantralaya, Mumbai 400 032.)

2) Hon. Minister,)
 Tribal Development Division,)
 Govt. of Maharashtra,)
 Mantralaya, Mumbai 400 032.) ..**Respondents**

Shri C.T. Chandratre, the learned Advocate for the Applicant.

Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 08.07.2016.

PRONOUNCED ON : 22.07.2016.

J U D G M E N T

1. Heard Shri C.T. Chandratre, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

2. In this Original Application notice for final disposal was issued. Affidavit-in-reply is received. By the consent of both the parties O.A. is taken up for final disposal.

3. Facts which need advertence are as follows :

- (a) On 01.05.2015, the F.I.R. was registered against the Applicant for offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complaint was made by Shri Tukaram Manikrao Dhavale, Pensioner who was working in the Forest Department.
- (b) Applicant was arrested furtherance thereto.
- (c) The arrest was continued beyond 48 hours.
- (d) Applicant was suspended on account of detention in prison for more than 48 hours taking recourse of Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 by order dated 07.05.2012, (copy whereof is at page 20, Annexure A-4).
- (e) Paragraph 1 of the said order dated 07.05.2012 reads as follows :-

“ज्याअर्थी श्री.रशिद मुनिर शेख, उपसंचालक, समाजिक वनिकरण विभाग, नांदेड यांचे विरोधात शिवाजीनगर पोलिस स्टेशन येथे गु.र.नं.४०२/२०१२, कलम १९१-१९२, भा.दं.वि. व कलम ३(१)(१) अनुसूचित जाती व अनुसूचित जमाती अत्याचार प्रतिबंध कायद्यान्वये गुन्हा दाखल करण्यात आला आहे. सदर गुन्हात श्री. शेख यांना दिनांक १.५.२०१२ रोजी अटक करून मा.न्यायालयात श्री. शेख यांना दिनांक ४.५.२०१२ पर्यंत पोलीस कोठडी मंजूर केल्याने यांचा कोठडीतील कालावधी ४८ तासापेक्षा जास्त झाला आहे.”

(Quoted from page 20, A-4 of the O.A. paper book.)

- (f) Applicant moved for quashing of the Criminal Proceedings by Criminal Application No.604 of 2012.
- (g) The proceedings were quashed in view of consensus between parties by order dated 17.12.2012 passed in Criminal Application No.2404 of 2012 by Hon'ble High Court Bench at Aurangabad.

4. Applicant moved for revocation of suspension. It was not done. Ultimately Applicant filed O.A.No.984 of 2012 before this Tribunal. It was allowed by order dated 10.01.2013. Copy thereof is on record as Annexure A-6, from page no.26 to 29. This Tribunal recorded in paragraph 6 as follows :-

“6.

*The very suspension order was based on the said criminal case and the same has been quashed. The suspension order cannot stand as the very basis has been quashed. **Under the aforesaid facts and circumstances, suspension order dated 7th May 2012 being Exb.A-1 to the above Original Application stands quashed and set aside and the applicant be reinstated in service within a period of four weeks from the date of receipt of this order.** Original Application stands disposed of accordingly. Misc. Application stands disposed of.”*

(Quoted part of paragraph no.6 from page 29 from copy of order.)

5. After the order passed by this Tribunal the Government by order dated 14.10.2013 ordered the applicant's reinstatement, its 75% back wages during the period of suspension by order, copy whereof is at Annexure A-1, page 9 dated 14.10.2013.

6. Applicant preferred an appeal against the said order. Appeal was not decided. Therefore, Applicant filed another O.A.No.62 of 2015 in which this Hon'ble Tribunal passed order on 06.05.2015 and directed that the Appeal be decided within 4 months.

7. After the order passed in the O.A., the Respondents-State has heard and decided the Applicant's appeal by order dated 02.06.2015, copy whereof is from page 12 to page 16, Annexure A2. Perusal of this order reveals that respective pleas have been copied in 2 ½ pages and the reasons are recorded in one paragraph which reads as follows :-

" अनुमान व निष्कर्ष :-

प्रस्तुत प्रकरणी माझ्यासमोर सादर झालेली कागदपत्रे तसेच अर्जदार यांनी सादर केलेले लेखी निवेदन व प्रत्याक्ष सुनावणीत मांडलेली बाजू विचानात घेण्यात आले श्री. आर.एक. शेख यांनी मा. उच्च न्यायालय, खंडपीठ औरंगाबाद येथे दाखल केलेल्या क्रिमिनल अप्लिकेशन क्र. २६०४/२०१२ प्रकरणी मा. न्यायालयाने दिनांक १७/१२/२०१२ रोजी दिलेल्या निर्णयावरून अर्जदार श्री. शेख यांचा दिनांक ०१/०५/२०१२ (म.पू.) ते १२/०२/२०१३ (म.नं.) या निलंबन कालावधीबाबत निर्णय घेण्यात आलेला आहे. या सर्व बाबी विचानात घेवून अर्जदार यांनी दाखल केलेल्या अपील अर्जाबाबत पुढीलप्रमाणे आदेश देण्यात येत आहे :-"

(Quoted from page 16 of the O.A. paper book)

8. Point raised by the Applicant in Appeal memo have been noted in the order, however those have not been adjudicated or dealt with in appellate order. The gist of the findings recorded in the order in said appeal is that, the suspension was revoked due to the order of quashing passed by the Hon'ble High Court, therefore the Government had revoked the suspension, and order to pay 75% back wages.

9. In the aforesaid background, it became necessary to peruse the order passed by the Hon'ble High Court. On perusal of the orders passed by Hon'ble High Court in Criminal Application No.2604 of 2012 and order passed by this Tribunal in O.A.No.484 of 2012 what emerges is as follows :-

The final order passed by the Hon'ble High Court was the outcome of the initial observations recorded by Hon'ble High Court on 26.11.2012 which is seen incorporated in paragraph 2 of the judgment of Hon'ble High Court.

Relevant text contained in the said order of Hon'ble High Court passed on 26.11.2012 reads as follows :-

"2. *Petitioner as well as respondent no.1 are present. We had recorded in the order passed by us on 26.11.2012 as follows :*

"1. *We had asked the learned Advocate Shri D.Y. Nandedkar for the respondent no.1 that it may happen that the offence may be technically well defined in the compliant, however, it may really not stand ultimately. Since now the complainant has received his pensionary benefits, no purpose of justice would be served if he keeps on nurturing his grudge.*

2. *We had called upon the learned Advocate for the respondent no.1 to find out whether it would suffice if the applicant expresses remorse and that the matter can be set to end." "*

(Quoted from page 29, from the copy of order dated 17.12.2012)

10. Consequent thereupon it appears that the compliant took a stance, that upon accused's expression of remorse, the complainant shall withdraw the compliant and accused should give assurance that he will not initiate any action on account of complainant's, filing FIR. It is evident that what was agreed was a win-win package. Clause (a) and Clause (b) of order paragraph 7 have to be read together.

"7.
.....

(a) The remorse expressed by the petitioner is accepted. This expression of remorse, however, will not be construed or taken to mean that it amounts to any admission, or confession, or any act of negligence, or indiscipline on his part."

(b) The petitioner will not initiated or lodge any case against the complainant / respondent no.1 for having filed the FIR, or would not lodge any claim for compensation, or damages against the complainant."

(Quoted from page 24 & 25 from the copy of order dated 17.12.2012.)

11. This Tribunal recorded and its order by in O.A.No.984 of 2014, of which relevant portion is also quoted hereinbefore in foregoing paragraph no.10 that the suspension order in fact stood quashed.

12. Moreover admittedly the suspension was ordered because of the fact that applicant was detained in jail for more than 48 hours.

The suspension which is ordered on account of detention of a person in prison has to be viewed as a device of protection. This device is not aimed at keeping employee away from job. The employee who was under arrest, absents himself from

duty, therefore the deeming fiction of suspension comes into the play, however, for the purpose of record, an order of suspension has to be passed, and it has to be punctually revoked no sooner the detention comes to an end, unless facts warrant or justify its continuation, else the suspension which is ordered sheerly on account does not find a justification for its continuation, based on a conscious decision.

13. While continuation of suspension has to be done on the basis of conscious decision, delay in taking the conscious decision either to continue the suspension or to revoke it cannot hold or cannot operate to the detriment of the employee on account of delay or neglect on the part of competence authority in taking decision and action.

14. It is not shown that in view of the accusation contained in present case against the applicant seen in the FIR and stand taken by respondents, that the conscious and a well considered decision was taken either initially while deciding to suspend the applicant or thereafter when the decision to continue the suspension was taken.

15. In the result it is evident that the continuation of applicant's suspension is the consequence of neglect in taking a conscious decision and an action based thereon. For such neglect, the applicant cannot be made to suffer by taking shelter of his having expressed the remorse as 'package' of complainants "withdrawing the compliant on applicant's assuring him not to take action against him for compensation etc. simultaneous for expressing the remorse". The act of applicant of expressing was a qualified act, without remorse admitting the acts which constitutes bases of FIR, and this fact is evident from the text of the order of passed by Hon'ble High Court.

16. In the result the order passed by the Hon'ble Minister which is impugned cannot be sustained. It suffers from vice of deciding without reasons and also from non application of mind. Normally, in such situation the matter may have to be remanded to the authority, for reconsideration of the matter. However, sending the applicant again to the Government would mean to send the Applicant from pillar to the post, and this course can be dispense with in order to meet ends of justice.

17. It shall be appropriate not only to quash and set aside the impugned order but also to direct that the period of suspension be treated as period spent on duty. Applicant shall be entitled to all benefits had he not been suspended. Difference amount be paid to applicant under all heads in accordance with law, within three months from the receipt of this order.

18. In the circumstances, parties are directed to bear their own costs.



Sd/-
(A.H. Joshi, J.)
Chairman

prk