

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.741/2016.

Ambadas Beniram Kharpuriya,
Aged about 55 yrs.,
Occ-Police Patil, Bhorgad, Tq. Katol,
District Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home Affairs,
Mantralaya, Mumbai-440 032.
- 2) The Divisional Commissioner,
Nagpur.
- 3) The Sub-Divisional Officer,
Katol, Distt. Nagpur.

Respondents

Shri Shashikant Borkar, Ld. Counsel for the applicant.
Shri V.A. Kulkarni, learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

Dated: - 29th March 2017.

Order

Heard Shri Shashikant Borkar, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for the respondents.

2. The applicant was Police Patil of village Bhorgad and his services were renewed for a period of five years w.e.f. 20.2.2011 to

19.3.2016 as per order dated 8.3.2011. The applicant was kept under suspension by the Sub-Divisional Officer, Katol (R.3) vide order dated 7.5.2012 on account of a criminal case pending against him. Vide order dated 6.10.2012, the applicant came to be terminated. This termination order was challenged by the applicant in O.A. No. 235/2014. This Tribunal vide order dated 30.4.2015 in the said O.A. was pleased to allow the O.A and the impugned order of punishment dated 6.1.2012 and 6.1.2013 was quashed and the applicant was reinstated as Police Patil. The respondents were directed to comply with the order of reinstatement within three months. In view of the said judgment and order, the applicant has been reinstated w.e.f. 24.6.2015.

3. The applicant has filed rejoinder and requested respondent No.3 SDO, Katol to grant him back wages from the date of termination till his reinstatement i.e. from 6.12.2012 to 24.6.2015. The learned SDO, Katol was pleased to reject his request vide communication dated 30.4.2016. The applicant filed an appeal before the Divisional Commissioner, Nagpur (R.20), but the said appeal also came to be rejected vide impugned order passed by respondent No.3 and the order dated 19.6.2016 passed by respondent No.2 are impugned in this O.A. The applicant has claimed that the said two

orders be quashed and set aside and the respondents be directed to pay back wages and honorarium to the applicant from 7.5.2012 i.e. from the date of his suspension till 24.6.2015 i.e. the date of reinstatement alongwith interest and costs of Rs. 10,00,000/- (Ten lakhs).

4. Respondent No.2 justified the order, not granting arrears to the applicant. It is stated that while working as Police Patil, the applicant was indulged in criminal activities and criminal prosecution was also launched against him. He was not performing duties properly. As a result, he was kept under suspension. There was no change in the attitude of the applicant. The applicant was acquitted in the criminal case. In the earlier O.A., the applicant never claimed back wages and even this Tribunal has also not made any whisper about the back wages.

5. Respondent No.3 also tried to justify the order of rejection of arrears of back wages and on the contrary submitted that the applicant is not entitled to such back wages.

6. The learned counsel for the applicant placed reliance on the judgment reported in **(2013) 10 SCC 324 in case of Deepali Gundu Surwase V/s Kranti Junior Adhyapak Mahavidyalaya**

(D.ED.) and others. In the said judgment, the Honble Apex Court has observed in para No.22 as under:-

The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintances to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial / quasi-judicial body or court that the action taken by the employer is *ultra vires* the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the

employer wants to deny back wages to the employees or contest his entitlement to get consequential benefits, then it is for him / her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.+

7. The learned counsel for the applicant submits that since suspension and termination of the applicant has been held illegal by this Tribunal and since the applicant has been reinstated as per the order of this Tribunal, it was incumbent upon the respondent authorities to pay honorarium / pay to the applicant from the date of suspension till the date of reinstatement.

8. I have gone through the judgment delivered by this Tribunal in O.A. No. 235/2014 dated 30.4.2015 whereby the applicant was directed to be reinstated. Perusal of the said judgment shows that the applicant came to be terminated without holding a full-fledged enquiry. The Tribunal also considered the fact that the applicant was

acquitted in both the criminal cases which were pending against him and considering the fact that there was no full-fledged enquiry and the enquiry was only preliminary enquiry held by the Ld. SDO, Katol issuing a show cause notice and accepting the reply, such enquiry cannot be termed as %ull-fledged enquiry+and, therefore, the order of termination was quashed and the applicant was directed to be reinstated within three months. It is material to note that in the said enquiry there is no whisper that the applicant shall be paid salary from the date of suspension till the date of his reinstatement. Admittedly, the applicant has not worked as Police Patil during the period of suspension till his reinstatement and therefore, on the principle of %no work no pay+, rejection of honorarium during the said period cannot be said to be illegal. Admittedly, criminal cases were pending against the applicant and enquiry has been quashed on technical aspects. In the case on the learned counsel for the applicant placed reliance i.e. **Deepali Gundu Surwase** (supra), this Tribunal gave a finding that the appellant's suspension and termination was *per se* illegal and while setting aside the award, full back wages on reinstatement was granted. There was observation that the Criminal Court also took cognizance that the applicant was not gainfully employed anywhere and the management had not controverted the same and, therefore, the order of reinstatement will full back wages was granted. In this particular

case, the applicant has failed to make out such case before this Tribunal in O.A. No. 235/2014. Considering this aspect, I do not find any merit in the O.A. Hence, the following order:-

(i) The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)

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