

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 34 OF 2015

DIST.: NANDED

Shri Balaji S/o Ramdas Patil,
 Age : 30 Years, Occu: Nil,
 R/o. : Block B-2, H. No. 13,
 Snehnagar Police Colony,
 Nanded, Dist. Nanded.

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APPLICANT

VERSUS

1. The State of Maharashtra,
 Through its Principal Secretary,
 Home Department,
 Mantralaya, Mumbai-32.
2. The Director General of Police,
 M.S., Mumbai.
3. The Special Inspector General
 Of Police, Nanded Range,
 Nanded.
4. The Superintended of Police,
 Hingoli District, Hingoli.

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RESPONDENTS

APPEARANCE : Shri A.S. Deshmukh, learned Advocate
 for the Applicant.

: Shri V.R. Bhumkar, Learned Presenting
 Officer for Respondents.

CORAM : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 18.08.2017.

ORDER**[Per- Hon'ble Shri B.P. Patil, Member (J)]**

1. The applicant has challenged the communication dated 8.7.2014 issued by the respondent no. 1 informing that his application for withdrawing resignation tendered by him and to reinstate him in the service has been rejected and prayed to direct the respondents to reinstate him in the service on the post of Police Constable by quashing the impugned communication dated 8.7.2014.

2. The applicant belongs to reserve category i.e. NT-C category. He has passed B.A. examination. He is sports person. In the year 2007, he had filed application for the post of Police Constable on the establishment of respondent no. 4 under Sports Persons' category. After completion of selection process, on 21.09.2007 the respondent no. 4 issued appointment letter in his favour on the post of Police Constable, though, he applied for the said post by claiming benefit of Sports reservation and he had been granted requisite relaxation in height criteria on the basis of said Sports reservation. Surprisingly, his order had

been shown to be appointed from the Open General Category and not from the Open Sports Category. He has joined his duties immediately without noticing the said fact. Not only this, but he was sent for training by the respondent no. 4. Thereafter, he noticed the mistake and therefore, he filed application dated 17.12.2007 with the respondent No. 4 for making necessary correction be carried out in his appointment order. On the basis of his request, the necessary noting were prepared by the office of respondent No. 4 proposing modification in the appointment order observing that he applied for appointment under Sports Persons' category and relaxation in the height criteria has been given to him. Thereafter, the respondent no. 4 issued order dated 11.2.2008 modifying the order of his appointment dated 21.09.2007 to that effect.

3. It is contention of the applicant that, when he filed application for correction of his appointment order, he was under mental stress due to his domestic problems. Therefore, on 14.01.2008, he tendered his resignation from the post of Police Constable to the respondent No. 4, through the Reserve Police Inspector of the Police

Headquarters at Hingoli. The respondent No. 4 had not taken any decision on the said resignation tendered by the applicant within stipulated period of 30 days. No communication was received to the applicant as regards acceptance of the resignation. Meanwhile, the applicant realized that his action of tendering resignation was wrong and it was not in the interest of himself or his family. Therefore, on 21.02.2008, he approached the respondent no. 4 along with medical certificate dated 20.02.2008 and submitted application for withdrawing his resignation before the Dy. S.P. (Headquarter) who forwarded it to the Establishment Clerk. By that time, the applicant's resignation has not been accepted by the respondent no. 4. Therefore, it was essential and incumbent on the respondent no. 4 to permit the applicant to join his duties by issuing necessary directions to the subordinates. Instead of that, the respondent no. 4 issued order dated 21.02.2008 accepting his resignation with retrospective effect from 13.02.2008. The said act on the part of the respondent no. 4 is illegal and therefore, he filed an application dated 28.02.2008 with the respondent no. 4 with a request to

withdraw the order dated 21.02.2008, but the respondent no. 4 had not taken any decision in that regard. Therefore, on 15.04.2008, the applicant has submitted application /appeal before the respondent No. 3 mentioning all these facts. Thereafter, on 22.04.2008, the respondent no. 4 informed him that his request to reinstate in service by filing application dated 28.02.2008 has been rejected on the ground that his resignation has already been accepted by order dated 21.02.2008 and another candidate from waitlist had already been appointed in his place. It is contention of the applicant that the said act on the part of the respondent no. 4 is illegal. Thereafter, he waited for decision of the respondent no. 3 on his application dated 15.04.2008, but he had not received response from the respondent No. 3. Therefore, on 12.09.2008, he approached the respondent no. 2 mentioning all these facts and prayed to quash the order dated 21.02.2008 passed by the respondent No. 4. But no decision was taken by the respondent No. 2. Therefore, he filed application dated 31.01.2009, with the respondent No. 1 narrating all these facts. The respondent No. 1 had repeatedly called for necessary information/report

from the respondent No. 2 in that regard, but no decision has been taken by the respondent No. 1 for long time. On 3.3.010, the respondent No. 1 issued communication informing him that his request has been rejected. Thereafter, again the applicant made representation to various authorities including the then Hon'ble Home Minister on 13.07.2009 and 1.9.2012. Again information has been called from the respondent No. 4 in that regard. On 8.7.2014, he received communication from the respondent No. 1 thereby mentioning him that his request for reinstatement in service has been rejected. It is contention of the applicant that the orders issued by the respondent no.1 is illegal and therefore, he filed the present Original Application and challenged the communication dated 8.7.2014 issued by the respondent No. 1 and prayed to direct the respondents to reinstate him on the post of Police Constable.

4. The respondent nos. 1 to 4 have filed their affidavit in reply and contended that due to clerical mistake in the appointment order issued to the applicant it has been wrongly mentioned that he has been selected from Open

General category and after due verification, the said mistake has been rectified by the office of respondent no. 4. They have admitted the fact that the applicant joined the service as Police Constable on the establishment of respondent No. 4 and he was sent for training. They have admitted the fact that on 14.01.2008, the applicant tendered his resignation due to family problem and expressed his desire to pay/ deposit amount of training and one month's salary. It is their contention that as per G.R. dated 2.12.1997 concerned authority has to take decision on the resignation tendered by the employees within 30 days and communicate the decision to the employee. It is their contention that the respondent no. 4 accepted the resignation of the applicant w.e.f. 13.02.2008 and informs the applicant accordingly, by communication dated 21.02.2008. It is their contention that once the resignation has been accepted by the respondents, there is no question to withdraw the same on the ground mentioned in the application. It is their contention that they have informed the applicant accordingly on 22.04.2008. It is their contention that since the applicant had tendered his resignation and it was

accepted by the respondent no. 4, the applicant's post had been filled up as per the Circular of Additional Director General of Police, Training and Spl. Unit, Maharashtra State, Mumbai dated 5.2.2008 and as per the instruction of Additional Director General of Police, Training and Spl. Unit, Maharashtra State, Mumbai. As the vacancy created due to resignation tendered by the applicant had been filled up, the request of the applicant to withdraw the resignation and to reinstate him in the service has been rejected. They have admitted that the applicant has submitted representation/appeal with the respondent No. 3 and the respondent No. 3 had called report from the respondent No. 4 in that regard. It is their contention that they have rejected the representation made by the applicant in view of the provisions of G.R. dated 2.12.1997. It is their contention that the decision taken by the respondent No. 4, rejecting the request of the applicant is proper legal and therefore, they prayed to reject the Original Application.

5. We have heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. We have

perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

6. Admittedly, the applicant was selected for the post of Police Constable after completion of recruitment process. Admittedly, on 21.09.2007, the respondent no. 4 issued appointment order to the applicant on the post of Police Constable. It is not much disputed that initially the applicant was appointed from the Open General category and accordingly, it has been mentioned in his appointment order. There is no dispute about the fact that the applicant applied for the post under Sports Persons' category and accordingly, he got relaxation in height criteria, as he applied under Sports category. It is not disputed that after receiving appointment order, the applicant joined services of the respondent No. 4 and thereafter, he had been sent for training. It is not much disputed that on joining the services, the applicant noted the mistake occurred in the appointment letter and therefore, he applied to the respondent No. 4 for correction in the appointment order mentioning that he was selected under Sports Persons' category. Admittedly, the respondent No. 4 issued order

dated 11.2.2008 and modified the earlier appointment order dated 21.9.2007 correcting that the applicant has been selected from the category of Open Sports category.

7. There is no dispute regarding the fact that meanwhile, on 14.01.2008 the applicant tendered his resignation on the ground that mental situation owing to his domestic problems through the Reserve Police Inspector of the Police Headquarters at Hingoli, with a request to accept his resignation immediately, but he had not deposited one month's salary as required while tendering his resignation. Admittedly, he has not received any communication from the respondent no. 4 as regards acceptance or refusal of the resignation. But on 21.02.2008, he received communication from the respondent no. 4 informing him that his resignation has been accepted w.e.f. 13.02.2008. It is much disputed that thereafter, the applicant had made several representations with the respondents with a request to permit him to withdraw his resignation and to reinstate him in the service. The applicant has contended that he realized his mistake in tendering the resignation and therefore, he was withdrawing his resignation. The respondent No. 4 i.e.

the Superintendent of Police, Hingoli informed the applicant by his communication dated 22.4.2008 that his application for withdrawing the application dated 28.2.2008 has been rejected, as his resignation has already been accepted w.e.f. 13.2.2008. Admittedly, thereafter, the applicant made several representation with the respondents, but his request has been rejected by the respondents by communication dated 8.7.2014.

8. Learned Advocate for the applicant has submitted that the respondent No. 4 has wrongly issued the communication dated 21.02.2008 accepting resignation of the applicant w.e.f. 13.2.2008. He has submitted that there is no provision to accept the resignation giving retrospective effect and therefore, the said order is illegal. He has submitted that the communication dated 22.4.2008 issued by the respondent No. 4 is also illegal. He has submitted that the communications dated 3.2.2010 & 8.7.2014 issued by the respondent No. 1 rejecting his request for reinstatement in service are also not legal one. He has argued that the respondent No. 4 had not taken any decision on the resignation tendered by the applicant within

30 days from its receipt i.e. from 14.1.2008 and informed the applicant accordingly. Therefore, communication dated 21.02.2008 issued by the respondent No. 4 accepting resignation w.e.f. 13.02.2008 is illegal. He has submitted that the applicant approached the respondent No. 4 on 21.02.2008 after realizing his mistake to tender his resignation and requested respondent No. 4 to allow him to withdraw his resignation. At that time, no decision was taken by the respondent No. 4 on his resignation, but the respondent No. 4, thereafter issued impugned communication dated 21.02.2008 mentioning that his resignation has been accepted w.e.f. 13.02.2008. He has submitted that the said act on the part of the respondent No. 4 is illegal and therefore, he prayed to allow the Original Application and prayed to quash the impugned orders dated 21.2.2008 and communication dated 8.7.2014 issued by the respondent No. 1.

9. Learned Presenting Officer has submitted that the applicant tendered his resignation on 13.1.2008 and expressed his desire to accept with immediate effect and also expressed his desire to pay necessary dues as per

Rules. He has submitted that the applicant has not deposited one month's salary. He has argued that in view of the provisions of G.R. dated 2.12.1997, the competent authority has to take decision on the resignation within a period of one month and to inform the concerned person accordingly. He has submitted that in case, nothing has been informed to the applicant within one month, then it shall be deemed that the resignation has been accepted after completion of one month. He has attracted my attention towards the paragraph no. 2 (A) (4) of the G.R. dated 2.12.1997, which is at paper book page no. 62 (Exhibit R-1). He has submitted that in view of the said deeming provision, the resignation of the applicant has deemed to be accepted w.e.f. 13.02.2008 and accordingly, respondent No. 4 has informed the applicant by order dated 21.02.2008. He has submitted that there is no illegality in the said order, as the said order is in view of the provisions of G.R. dated 2.12.1997. He has submitted that the applicant has not withdrawn his resignation before acceptance of the resignation and once it has been accepted, the same cannot be withdrawn. He has submitted

that in view of the said provision, the request of the applicant to withdraw the resignation and to reinstate him has not accepted by the respondent No. 4 and therefore, he prayed to reject the present Original Application. There is no illegality in the impugned orders and therefore, he prayed to dismiss the Original Application.

10. On going through the documents on record, it reveals that the applicant tendered his resignation on 13.01.2008 (Annexure A-3), which is at paper book page no. 28 (in the application the date has been wrongly mentioned as 23.01.2008, but at the bottom of the said application it has been mentioned that it was received on 14.01.2008 likewise, there is an endorsement of the inward section mentioning that it has been received on 13.1.2008). In view of the G.R. dated 2.12.1997, the competent authority has to inform the applicant within a period of one month from the receipt of the said resignation i.e. from 13.01.2008 regarding its acceptance or rejection. If the said communication has not been issued within one month, then it would be deemed that the resignation is accepted on completion of one month. Relevant provision in that regard

is in para no. 2(a)(4) of the G.R. dated 2.12.1997, which is as follow:-

“२(अ) शासकीय अधिका-याचा/कर्मचा-याचा राजीनामा स्वीकारण्यासंदर्भातील सर्वसाधारण सूचना -

(४) राजीनामा स्वीकारण्यास सक्षम असणा-या प्राधिका-याने राजीनामा अर्जावर प्राधान्याने कार्यवाही करून राजीनामा स्वीकृती/अस्वीकृती बाबतचा अंतिम निर्णय संबंधित शासकीय अधिका-याला/कर्मचा-याला, त्याने राजीनामा सादर केल्याच्या दिनांकापासून एक महिन्याच्या अवधी पूर्ण होण्याच्या आत कळवावा. सदरहू कालमर्यादेचे काटेकोरपणे पालन करण्याची जबाबदारी, राजीनामा स्वीकारण्यास सक्षम प्राधिका-यांची राहिल.

राजीनामा स्वीकारण्यास सक्षम असणा-या प्राधिका-याने राजीनामा स्वीकृती /अस्वीकृतीबाबतच्या अंतिम निर्णयासंबंधात, संबंधित शासकीय अधिका-याला /कर्मचा-याला, त्याचा राजीनाम्याबाबतचा अर्ज प्राप्त झाल्याच्या दिनांकापासून एक महिन्याच्या आत काहीही कळविले नसेल, तर अशा प्रकरणी उपरोल्लेखित एक महिन्याचा कालावधी पूर्ण झाल्यानंतर संबंधित शासकीय अधिकारी /कर्मचारी यांचा राजीनामा सक्षम प्राधिका-याने स्वीकारला आहे असे समजण्यात येईल.”

11. In the instant case, the respondent No. 4 has not informed anything to the applicant within one month i.e. before 13.02.2008. Therefore, in view of the deeming provision as provided in the G.R. dated 2.12.1997 in paragraph no. 2(A)(4), the resignation deemed to be accepted on completion of one month i.e. on 13.2.2008. Accordingly, the respondent no. 4 has communicated the said decision to the applicant by his communication dated

21.2.2008. No doubt, the provisions of the G.R. dated 2.12.1997 provides that the employee, who tendered his resignation, can make a request for withdrawal of resignation before acceptance of resignation by the competent authority. But in this case, the applicant has not applied for withdrawal of resignation before its acceptance. He moved an application for withdrawing resignation for the first time on 28.2.2008. But his resignation has been accepted prior to that i.e. w.e.f. 13.02.2008. Therefore, his request has been rightly rejected by the respondent No. 4, as well as, respondent No. 1. Therefore, in our opinion, there is no illegality in the impugned orders issued by the respondents. Therefore, we do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard.

12. The respondent No. 4 has accepted the resignation of the applicant in view of the G.R. dated 2.12.1997 and after accepting resignation, the applicant moved an application for withdrawal of the resignation, which is not in accordance with the said provisions and

