

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.759 OF 2021**

**DISTRICT: THANE  
SUBJECT: SUSPENSION**

Shri Rajendera Nivrutti Gaikwad, )  
Aged; 53 years, Occ. Police Constable, )  
R/at Suryoday Vihar, Siddharth Nagar, )  
Kolse Wadi, Kalyan (E) – 421306. )  
Mobile No. 9821393246. )... **Applicant**

**Versus**

1) The State of Maharashtra, )  
through the Addl. Chief Secretary, )  
Home Department, Mantralaya, Mumbai-32. )  
2) The Commissioner of Police, )  
Thane City, Thane )... **Respondents**

**Shri Rajesh M. Kolge, learned Advocate for the Applicant.**

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.**

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 12.09.2022.**

**JUDGMENT**

1. The Applicant has challenged order dated 22.09.2021 issued by Respondent No.2 – The Commissioner of Police, Thane thereby keeping the Applicant under suspension w.e.f. 28.03.2011 exercising Rule 4(4) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

2. While the Applicant was serving as Police Constable, he was convicted under the provision of Prevention of Corruption Act by Judgment dated 14.10.2010. In view of conviction he was compulsory retired w.e.f. 28.03.2011. Being aggrieved by conviction the Applicant

filed criminal case No.921/2010 which was allowed by Judgment dated 23.02.2021. In view of his acquittal the Applicant came to be reinstated in service w.e.f. 23.02.2021.

3. However, surprisingly Respondent No.2 - The Commissioner of Police, Thane by order dated 22.09.2021 again kept the Applicant under suspension with retrospective effect i.e. 28.03.2011 in exercise of Rule 4(4) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Since, the Applicant is Police Constable and provision of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 are not applicable to him, later, Respondent No.2 - The Commissioner of Police, Thane issued corrigendum on 15.11.2021 stating that the Applicant is kept under suspension w.e.f. 28.03.2011 exercising Rule 3 of Maharashtra Police (Punishment & Appeal) Rules, 1956.

4. As stated above, the Applicant being Police Constable, provision of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 particularly Rule 4(4) is not at all attracted. As per Rule 4(4) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 it is in case where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside but on a consideration of the facts and circumstance of the case, disciplinary authority decides to hold further inquiry against the Government servant on the allegation on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant is deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

5. Whereas, the Applicant being Police Constable, he is governed by the provision of Maharashtra Police Act or Maharashtra Police (Punishment & Appeal) Rules under in which there is no such provision

alike Rule 4(4) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Learned P.O. also fairly concedes this position.

6. Apart, perusal of order dated 22.03.2022 reveals that the Department has closed inquiry file. It appears that the preliminary inquiry was conducted in respect of the same allegation on the basis of which the Applicant was removed from service but Department closed preliminary inquiry file. In order it is specifically mentioned that no evidence is found to initiate regular inquiry and inquiry file is closed at the level of preliminary inquiry itself. As such, now there is no initiation or pendency of inquiry. In criminal case the Applicant is acquitted in appeal. Respondents have already regularized period of suspension from 06.10.2005 to 29.03.2011 as duty period for all purposes by order dated 13.04.2022. As such, now remains the issue of entitlement of the Applicant of out of service period i.e. from date of compulsory retirement till date of reinstatement in service (28.03.2011 to 23.02.2022) which requires to be determined by Respondent No. 2 in accordance to provision of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981.

7. It is thus explicit that impugned order dated 22.09.2021 keeping the Applicant under suspension with retrospective effect from 28.03.2011 as well as corrigendum order dated 15.11.2021 is totally bad in law and liable to be quashed. Respondent No.2 is required to determine out of service period in accordance to Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 independently.

8. For the aforesaid reasons, O.A. is disposed of as under:-

**ORDER**

- a) Impugned order dated 22.09.2021 as well as corrigendum dated 15.11.2021 keeping the Applicant under Suspension w.e.f. 28.03.2021 is quashed and set aside.
- b) Respondent No.2 - The Commissioner of Police, Thane is directed to decide the issue of pay and allowances and to determine the period of out of service i.e. from 28.03.2011 to 23.02.2022 in accordance to Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 and appropriate order in accordance to law be passed within six weeks from today.
- c) The decision as the case may be, shall be communicated to the Applicant.
- d) No order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 12.09.2022.  
Dictation taken by: N.M. Naik.

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