

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.129 OF 2019**

**DISTRICT : KOLHAPUR**

Shri Yuvraj Maruti Kamble. )  
Age : 36 Yrs., Occu. : Police Naik, )  
R/o. At & Post : Barude, Tal. : Ajara, )  
District : Kolhapur – 416 505. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )  
2. The Superintendent of Police. )  
Kasba Bawada Road, Kolhapur. )...**Respondents**

**Mr. R.M. Kolge, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 23.09.2019**

**JUDGMENT**

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Mrs. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. Small issue posed for consideration in the present O.A. is whether the impugned order dated 29<sup>th</sup> August, 2017 issued by

Respondent No.2 treating the suspension period from 15.04.2011 to 08.09.2015 as 'suspension period' for all purposes is legal and valid. The Applicant is serving on the post of Police Naik. In 2011 while he was posted as Police Constable at Shahapuri Police Station, District Kolhapur, an offence under Section 376 read with 506 of Indian Penal Code vide Crime No.79 of 2011 was registered against him. He was suspended by order dated 15.04.2011. After completion of investigation of Crime No.79 of 2011, charge-sheet was filed against him vide Sessions Case No.98 of 2011 in Sessions Court, Kolhapur. The Sessions Court, Kolhapur acquitted him by Judgment dated 14.07.2015. In pursuance of acquittal in Criminal Case, the Applicant was reinstated in service w.e.f.09.09.2015.

3. The Respondent No.2 – Superintendent of Police, Kolhapur passed an order dated 29.08.2017 treating the period of suspension from 15.04.2011 to 08.09.2015 as a 'suspension period' invoking provisions of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) without specifying specific Rule of 'Rules of 1981'. The Applicant has challenged the order dated 29<sup>th</sup> August, 2017 in the present O.A. on the ground that he has been honourably acquitted in the Criminal Case and secondly, the Respondent No.2 did not give an opportunity of making representation before passing impugned order as mandatory in Rule 72(3) of 'Rules of 1981', and therefore, the impugned order is unsustainable in law.

4. Shri R.M. Kolge, learned Advocate for the Applicant has pointed out that the Applicant has been acquitted on merit, and therefore, there was no reason to treat the period of suspension as a 'suspension period' and secondly, there is no compliance of mandatory requirement of Section 72(3) of 'Rules of 1981'.

5. Whereas, Smt. K.S. Gaikwad, learned P.O. sought to contend that the Applicant was found involved in serious offence punishable under Section 376 of Indian Penal Code and it maligns the reputation of Department in the eyes of society. In so far as non-compliance of Rule 72(3) of 'Rules of 1981' is concerned, all that learned P.O. submits that before passing impugned order, the Applicant was heard, and therefore, the impugned order cannot be faulted with.

6. At this juncture, it would be apposite to reproduce Rule 72(3) of 'Rules of 1981', which is as follows :-

**“72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty.-** (1)

When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order –

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government, it may, **after giving him an opportunity to make his representation** within sixty days from the date on which the

communication in this regard is served on him and after considering the presentation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.”

7. Now, let us see the impugned order. The operative order which is material, which is as follows :-

“पोशि/३११ कांबळे यांना मा.जिल्हा व सत्र न्यायालयाने निदोष मुक्तता करण्याबाबतच्या न्यायनिर्णयाविरुद्ध शासनामार्फत वरिष्ठ न्यायालयात अपील दाखल केले आहे अजर कसे? याबाबत विचारण करता जिल्हा सरकारी वकील व सरकारी अभियोक्ता, कोल्हापूर यांनी सदर न्यायनिर्णयाविरुद्ध वरिष्ठ न्यायालयात अपील दाखल करणेबाबतचा अहवाल विधी व न्याय विभाग, मंत्रालय, मुंबई यांना पाठविला होता. तथापि विध व न्याय विभाग, मंत्रालय, मुंबई यांनी त्यांचेकडील संदर्भ क्र. ४ च्या पत्रान्वये सदरची केस ही मा. उच्च न्यायालय, मुंबई येथे अपील दाखल करणेस पात्र नसलोबत कळविले आहे. त्यास अनसुरुन पोशि/३११ कांबळे यांच्या दि. १५/४/२०११ ते दि.०८/०९/२०१५ अखेरच्या निलंबन कालावधीचा निर्णय घेण्याच्या अनुषंगाने जिल्हा सरकारी वकील यांचा अभिप्राय मागवला होता. सदरचा अभिप्राय त्यांना संदर्भ क्र. ५ अन्वये सादर केलेला असून त्यामध्ये त्यांनी प्रस्तुत गुन्ह्यामध्ये फिर्यादिने फिर्याद देण्यास लावलेला विलंब, जबाबातील विसंगती यामुळे पोशि/कांबळे यांची त्यांच्याविरुद्धच्या गुन्ह्यातून झालेली निदोष मुक्तता ही स्नमाननीय नसून त्यांना दोषमुक्त करतांना संशयाचा फायदा दिलेला आहे असे नमुद केले आहे.

यास्तव पोशि/३११ यु.एम.कांबळे, सध्या नेमणूक जयसिंगपूर पो. ठाणे यांचा दि.१५/४/२०११ ते दि.८/१९/२०१५ अखेरच्या निलंबन कालावधीचा निर्णय घेणेसाठी त्यांना दि१४/८/२०१७ रोजी आज्ञांकित कक्षात बोलाविण्यात आलेले होते. त्यावेळी त्यांना आज्ञांकित कक्षात समक्ष केलेले कथन, जिल्हा सरकारी वकील, कोल्हापूर यांचा अभिप्राय व मा. न्यायलयाचा न्यायनिर्णय याचा विचार करून पोशि/३११ कांबळे यांच्या निलंबन कालावधीबाबत खालीलप्रमाणे आदेश निर्गमित करण्यात येत आहे.

आदेश-

मी संजय मोहिते, पोलीस अधीक्षक कोल्हापूर, महाराष्ट्र नागरी सेवा नियम (पदग्रहण अवधी, निलंबन, बडतर्फ, सेवेतून कमी कालवधीतील प्रदाने) १९८१ मधील तरतुदीनुसार पोशि/३११ यु.एम. कांबळे, सध्या नेमणूक जयसिंगपूर पोलीस ठाणे यांचा दि. १५/४/२०११ ते दि.८/९/२०१५ अखेरचा निलंबन कालावधी निलंबितच (AS SUCH) म्हणून नियमित करीत आहे.”

8. In so far as Rule 72(3) of ‘Rules of 1981’ as reproduced above is concerned, it specifically mandates that an opportunity has to be given to make representation before passing the order of treatment of suspension period. Whereas, in the present case, it is explicit from the impugned order that the Applicant was simply called by Superintendent of Police in Orderly Room and heard orally and then passed the impugned order. It is not clear what submission was made by the Applicant in Orderly Room on 14.08.2017 before him. Be that as it may, admittedly, no written notice was given prior to issuance of impugned order. The learned P.O. fairly concede that no

such notice in writing as contemplated under Rule 72(3) proviso is given. This being the position, the course of action adopted by Respondent No.2 of merely calling the Applicant in Orderly Room can hardly be said compliance of Rule 72(3) in its spirit. Indeed, Rule 72(3) specifically provides that an opportunity of making representation (necessarily in writing) must be given to the concerned public servant before passing order about the treatment to suspension period, which is not given in the present case and the course adopted by the learned P.O. is not in consonance with law rather it is in violation of Rule 72(3) of 'Rules of 1981'.

9. Needless to mention that, after acquittal of the Applicant in Criminal Case, the Respondent No.2 was required to consider the Judgment in its entirety and determine as to whether to treat the suspension period as 'not spent on duty' (as a suspension period) and for that purpose, the Competent Authority needs to form its opinion as to whether the suspension was wholly unjustified as contemplated under Rule 72(3) of 'Rules of 1981'. The negative text has to be applied for holding the person to be entitled to all benefits of period of suspension and this has to be done after giving opportunity of making representation to the Applicant by passing reasoned order. In other words, the Competent Authority is required to record the specific finding as to whether the suspension period was wholly unjustified or justified, as the case may be.

10. Whereas, in the present case, firstly, no opportunity of making representation was given and secondly, the Competent Authority has not recorded any finding as to whether the suspension period was justified, as required in law. The Respondent No.2 mechanically passed the order treating the period from 15.04.2011 to 08.09.2015 as 'suspension period' without recording reasons as to whether the suspension was justified. As stated above, Rule 72(3) mandates that the Competent Authority was to record his opinion that the

suspension was wholly justified or otherwise. However, there is no such compliance of these requirements.

11. The totality of aforesaid discussion leads me to sum-up that the impugned order is not indefensible in law and matter needs to be remitted back to Respondent No.2 for necessary compliance and then to pass order, afresh. Hence, the following order.

### **ORDER**

- (A) The Original Application is partly allowed.
- (B) The impugned order dated 29<sup>th</sup> August, 2017 is quashed and set aside.
- (C) The matter is remitted back to Respondent No.2 with direction to give an opportunity to the Applicant to make his representation and on receipt of his representation, shall pass fresh order about the treatment of suspension period from 15.04.2011 to 08.09.2015 in accordance to Rule 72 of 'Rules of 1981' afresh within six weeks from today and the decision shall be communicated to the Applicant within two weeks thereafter.
- (D) If the Applicant felt aggrieved by the order of Respondent No.2, he may avail further recourse of law, as may be permissible.
- (E) No order as to costs.

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

Mumbai  
Date : 23.09.2019  
Dictation taken by :  
S.K. Wamanse.