

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.538 OF 2019

District : Satara

Mr. Prakash Dhondiram Gaikwad,)
R/o. House No.177, Near Rickshaw Stand,)
Satara Sadar Bazar, Satara 415 001) **...Applicant**

Versus

1. The State of Maharashtra,)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 32)
2. Commandant,)
The State Reserve Police Force, Group-2,)
Ramtakadi, Hadapsar, Pune City.)
3. The Special Inspector General of Police,)
State Reserve Police Force, Ramtekadi)
Hadapsar, Pune City, Pun.e)
4. The Addl. Director General of Police (Admn))
In the office of Director General of Police,)
M.S. Shahid Bhagat Singh Road, Colaba,)
Mumbai 400 005) **...Respondents**

Mr. R.M. Kolge, learned Advocate for the Applicant.

Ms. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member-A

DATE : **06.02.2023.**

J U D G M E N T

1. Applicant, Police Constable challenges the order of his removal issued by the Respondent No.2, Commandant, the State Reserve Police Force. The Applicant had joined the service on 02.05.1985 as Constable in State Reserve Police Force. The applicant after his service of 8 years was suspended on 22.06.1993 for the offence under Sections 498 (A) and 34 of the IPC. However, he was acquitted by the learned Sessions Judge for the offence and thereafter he was reinstated in the service on 24.06.1994.

2. The Applicant got married second time and thereafter his second wife subsequently lodged a complaint and the D.E. was initiated against him. He was held guilty in the D.E. and thereafter he was removed from the service by order dated 15.05.2015. Thus, the applicant is out of service since then.

3. Learned Advocate submits that the Applicant was reinstated in the service on 24.06.1994 and his suspension period was regularized. The Applicant has put nearly 28 to 29 years of service as Constable in the Respondent-Department. He has clean record. He unfortunately got married second time when his first wife Jayshree left him. Learned Advocate submits that because of the pressure of his father he performed the second marriage and thereafter he brought his first wife back and both his wives were staying happily for 13 years. However, the second wife has falsely lodged complaint to the Respondent-Department that she was cheated by the applicant by showing false papers of divorce and therefore the second wife got married. On receipt of this complaint the Department initiated Departmental Enquiry against the applicant, and the Applicant was held guilty for the offence of misconduct.

4. Learned Advocate submitted that because of poor pecuniary condition his first wife has left him and started staying separately. His father forced him to get married second time. The applicant has not committed any other offence in respect of his duty. Moreover, the fact that the applicant was staying with his first and second wives together for a long time should have been taken into account by the Enquiry Officer. Learned Advocate submitted that the applicant's financial condition is very bad. He has no money. As he is held guilty in the D.E., he is neither getting gratuity nor pensionary benefits. Learned Advocate submits that this removal from the service is to be set aside and quashed only on sympathetic ground.

5. Learned Presenting Officer while opposing this O.A. has argued that the Respondent has taken all appropriate legal steps pursuant to the complaint made by the second wife and initiated the Departmental Enquiry against him. She has submitted that earlier also the Applicant was suspended on account of C.R. No.411/1993 for offence under Sections 498 and 34 of IPC filed against the Applicant and his father. The D.E. was attended by the applicant. Though he was offered to cross-examine, he chose not to ask, hence, the enquiry conducted was as per the rules and the conclusion adopted on the part of D.E. is also correct and legal. Performing second marriage is misconduct. She has further submitted that as per order dated 12.05.2015 the applicant was removed from service. The orders dated 12.05.2015 and 23.09.2015 which are challenged in the O.A. are legal and to be maintained.

6. After considering the submissions of learned Advocate and learned P.O. and going through the enquiry report of the Respondent, we are of the view that the said enquiry is conducted by taking all procedural precautions and we do not find any

illegality in the proceedings of the D.E. However, at the end of the arguments learned Advocate Mr. Kolge has submitted that though he has not made alternative prayers; at the bar, he prays that the case of the applicant may be considered sympathetically and accordingly the order be passed.

7. Learned Advocate for the Applicant relied on Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982. He has submitted that the applicant was not dismissed but he was removed from the service and therefore his case can be sent to the Government as a special case for grant of Compassionate Pension as the applicant has rendered nearly 28 to 29 years of service.

8. Learned P.O. opposed this prayer and has submitted that there is no pleading to that extent in the present O.A. and in the D.E. the Applicant is held guilty and if the applicant wants to move before the Government he should withdraw this O.A. with liberty to move before the Government.

9. Submissions of both the Counsel are taken into account. We are maintaining the decision of the enquiry officer that the applicant was found guilty and therefore he is removed from service. Keeping in mind the facts of the present case, let us advert to Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred as 'MCS Rules 1982' for brevity) reads as under :-

"101. Grant of Compassionate Pension in deserving cases by Government :

(1) When a Government servant is removed or required to retire from Government service for misconduct or insolvency or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a Retiring or Superannuation Pension, Government may, if the case is considered deserving of special treatment, sanction the grant to him of a Compassionate Pension."

Chapter VII of MCS Rules 1982 deals with the 'Classes of Pensions and Conditions Governing their Grant'. Rule 62 of the MCS Rules 1982 speaks on 'Different classes of pensions'. Sub clause(6) of Rule 62 reads as below :

“(6) “Compassionate Pension, which is a pension granted to a Government servant who is removed or required to retire from Government service for misconduct, insolvency, or inefficiency.”

10. Thus, necessarily the Government servant who wants to avail off and to apply or prays for grant of Compassionate Pension he should be either removed or is to be retired on the ground of misconduct. The applicant is found guilty of misconduct and when his first marriage was intact, he performed second marriage. We do agree that the applicant is not charged with Criminal Offence of bigamy. It appears that his second wife did not lodge Criminal complaint. The applicant has rendered service of nearly 28 to 29 years. We are not aware of the Confidential Reports and other reports of his service.

11. Under such circumstances, if the applicant wants to file representation under Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 before the concerned Department and the authority, then the authority may take decision in accordance with law and thereafter his relief is to be considered.

12. In view of above, O.A. stands disposed of.

SD/-

(Medha Gadgil)
Member (A)

SD/-

(Mridula Bhatkar, J.)
Chairperson

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