

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.822 OF 2022

DISTRICT : NAVI MUMBAI

Sub.:- Denial of service period

Shri Sunil Nimba Mahajan.)
Age : 52 Yrs, Working as Police Head)
Constable at Highway Safety Patrolling,)
Thane and residing at A/28/02, Darshan)
Society, Sector 15, Airoli, Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Madam Cama)
Road, Mantralaya, Mumbai – 32.)
2. The Superintendent of Police.)
Thane ®, Having Office at Near)
Court Naka, Opp. Police School,)
Thane – 1.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.03.2023

JUDGMENT

1. The Applicant has challenged the order dated 08.04.2022 issued by Government (Respondent No.1) whereby Applicant's out of service period from 29.12.1998 to 06.06.2000 (525 days) is treated as out of

service period and the request of the Applicant to regularize it as duty period is rejected.

2. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

3. Following facts emerges from the record :-

- (i) Applicant came to be appointed on the post of Police Constable in pursuance of order passed by Respondent No.2 – Superintendent of Police, Thane dated 22.12.1998 and accordingly he joined the Police Force.
- (ii) Respondent No.2 abruptly by order dated 29.12.1998 terminated the service of the Applicant without assigning any reasons whatsoever in the impugned order.
- (iii) Being aggrieved by it, the Applicant approached the Government and in turn, Government in Home Department by letter dated 13.01.1999 stayed the order of termination of the Applicant and directed Respondent No.2 to submit the compliance (Page No.28 of Paper Book). Instead of making compliance of the stay order of the Government, the Respondent No.2 through Director General of Police wrote letter dated 25.11.1999 to the Government to re-consider it's decision.
- (iv) The Government, however, confirmed its decision and directed by Director General of Police as well as Respondent No.2 to reinstate the Applicant in service, as the order passed by the Government dated 13.01.1999 is confirmed.

- (v) Respondent No.2 then issued letter dated 05.06.2000 asking the Applicant to resume the duty on 06.06.2000 (Page No.30 of P.B.).
- (vi) On 06.06.2000, Respondent No.2 passed order of reinstatement of the Applicant in service subject to rider that it would be subject to final order passed in Criminal Case and he will not be entitled to any benefits of earlier service period.

4. Though in order dated 29.12.2018, Respondent No.2 did not assign any reason for termination of service, it is borne out from the record that his services were terminated because of non-disclosure of pendency of Criminal Case and Chapter Cases against him. That was the reason for terminating his services by order dated 29.12.1998. In this behalf, it would be worth to mention here that the said Criminal Case was for the offence under Sections 143, 147, 148, 337, 307, 323, 324, 435, 427, 353 and 333 of Indian Penal Code in which Pachora Police Station registered the offence against the Applicant and others on 15.11.1997 and after completion of investigation, Police filed charge-sheet in Sessions Case which was registered as Sessions Case No.14/2002. However, the Government withdrew the prosecution exercising powers under Section 321 of Criminal Procedure Code. The learned Sessions Judge accordingly granted permission to withdraw the prosecution and accused were discharged.

5. Now reverting back to the non-disclosure of information regarding Criminal Case and Chapter Case, though no Attestation Form filled-in by the Applicant is forthcoming, the fact remains that he was terminated from service because of non-disclosure of the correct information regarding Criminal Case. The Applicant himself pleads that he is not sure as to what he mentioned in Attestation Form, but that ignorance will not come to his rescue. Notably, in service record, there is specific

entry that when Character Certificate was called from Superintendent of Police, Jalgaon, it was revealed that Applicant was arrested in Criminal Case on 15.11.1997 and there were also 2 Chapter Cases under Section 107 of Cr.P.C. against him. But he did not disclose it in Attestation Form, and therefore, he was removed from service, as explicit from the extract of Service Book, which is at Page No.69 of P.B. This being so, the Applicant cannot make any capital of non-production of Attestation Form by the Respondents.

6. According to learned Advocate for the Applicant, now, all these aspects of suppression of information of Criminal Case and its consequences pales into insignificance and inconsequential in view of reinstatement of the Applicant in service as well as stay granted by the Government to his termination.

7. Thus, the issue boils down to the legality of order of Government dated 08.04.2022 whereby Applicant's request for treating period from 29.12.1998 to 06.06.2000 as duty period has been rejected. In impugned order, it is stated that Applicant is reinstated afresh in service, and therefore, the period from 29.12.1998 to 06.06.2000 cannot be treated as a duty period. Whereas in order dated 06.06.2000 issued by Respondent No.2, there is no such wording that Applicant is reinstated afresh or re-appointed. All that, in order dated 06.06.2000, it is stated that he is reinstated in service. Significantly, Respondent No.1 – Government has not filed Affidavit-in-reply to explain all these things. Affidavit-in-reply is filed by Respondent No.2 only.

8. Thus, the issue pertained to the claim of the Applicant to treat period from 29.12.1998 to 06.06.2000 as a duty period. As stated above, the Applicant came to be terminated from service by order dated 29.12.1998 and being aggrieved by it, immediately approached the Government by way of representation and Government stayed the order of termination, as seen from letter dated 13.01.1999. Apart, directions

were given to Respondent No.2 to take further action. True, in pursuance of stay granted to the termination, the Respondent No.2 was required to reinstate the Applicant in service.

9. However, at the same time, one cannot be oblivious of the fact that Applicant has suppressed material information about his involvement in Criminal Case and 2 Chapter Cases. It was the precise reason for removal from service. All that, Applicant contends that in view of stay granted by the Government, he was required to be resumed immediately. He has not made any such specific written application to Respondent No.2 for allowing him to join the service. As such, it is not a case of illegal removal/termination from service. The Applicant has obviously suppressed the material information about his antecedents, and therefore, he was terminated from service. In such situation, only because there was stay to the termination order from Government, that itself would not render him entitled to claim back-wages or to treat the period from 29.12.1998 to 06.06.2000 as a duty period. His case cannot be equated with a case of illegal termination or keeping a person away from duty illegally.

10. Apart, as rightly pointed out by learned P.O. while joining duty at initial point of time, the Applicant has made declaration that he is not involved in any Criminal Case. The declaration is part and parcel of Service Book, the copy of which is tendered by the Respondents along with Affidavit-in-reply. This being the position, twice Applicant made false statement, firstly in Attestation Form and secondly in Declaration Form. In such situation, he cannot raise grievance about his termination order. In this scenario, only because he is subsequently reinstated in service, that *ipso-facto* could not confer any right much less legally enforceable to treat the period from 29.12.1998 to 06.06.2000 as a duty period. He had audacity to make false declaration twice. In such situation, treating the period from 29.12.1998 to 06.06.2000 as a duty period would amount to giving premium and encouragement to the

Applicant though he is guilty of suppression of material facts. On the principle of “no work no pay” also, he is not entitled to treat the said period as duty period.

11. That apart, at the time of reinstatement in service by order dated 06.06.2000, he was put on notice with specific mention in the order that he will not be entitled to the benefit of any earlier service period. The Applicant has not challenged the order dated 06.06.2000 and it has attained finality. This being the position, now he cannot re-agitate the same issue in this O.A. after lapse of 22 years.

12. The totality of aforesaid discussion leads me to sum-up that Applicant is not entitled to treat period from 29.12.1998 to 06.06.2000 as a duty period and I see no reason to interfere in the impugned order dated 08.04.2000. In view of false declaration made by the Applicant at the time of joining that he is not involved in Criminal Case, the Respondent No.2 may consider to proceed against him departmentally, if deems fit, but this should not be treated as direction from the Tribunal. Hence, the order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 02.03.2023
Dictation taken by :
S.K. Wamanse.

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