

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.891 OF 2015

**DISTRICT: PUNE
SUBJECT: TERMINATION**

- 1) Mr. Balasaheb Dhuraji Gavali,)
Aged 43 Yrs, Occ. Nil,)
R/at. 06, Sahyadri Bldg. Adinath Nagar,)
Shirur, Dist. Pune.) **... Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary, Home Dept.,)
Mantralaya Mumbai.)
- 2) The Director General of Police,)
Shahid Bhagat Singh Marg, Colaba, Mumbai.)
- 3) The Commissioner of Police,)
Pune City, Pune.)
- 4) The Deputy Commissioner of Police,)
Head Quarter-1, Pune City, Pune.) **... Respondents**

Shri K.R. Jagdale, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)
Smt. Medha Gadgil, Hon'ble Member (A)

DATE : 18.06.2021.

PER : Shri A. P. Kurhekar, Hon'ble Member (J)

JUDGMENT

1. The Applicant has challenged the order of termination from service dated 15.10.2015 passed by the Deputy Commissioner of Police, Pune invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. In nutshell of the facts giving rise to Original Application are as under:-

The Applicant was appointed on the post of Police Constable by order dated 09.12.2014 with stipulation that his appointment is purely temporary and would be terminated without assigning any reason. Accordingly, the Applicant has joined the service on 28.04.2015. He was on duty as Beat Marshal along with Police Head Hawaldar Shri B. B. Khandekar. While he was on duty, he allegedly consumed alcohol and abused one Shri Munna Yadav, Cashier, Khadki Cantonment Toll and further allegedly demanded bribe to the Manager of Tollnaka. He was sent for medical examination and found drunk. Alcohol was also detected in blood. On account of this incident, the show cause notice was given to him on 11.08.2015 calling explanation as to why his services should not be terminated in terms of Clause No.78 of Maharashtra Police Manual. He submitted reply to the show cause notice denying allegations and claimed to be innocent. However, he came to be terminated from service by order dated 15.10.2015 by Deputy Commissioner of Police, Pune which is under challenge in present Original Application.

3. Shri K.R. Jagdale, learned Counsel for the Applicant assailed the impugned termination order on following grounds:-

(A) The appointing authority of the Applicant is Commissioner of Police but termination order is issued by Deputy Commissioner of Police, and therefore, *ex-facie* it is bad in law.

(B) The impugned order of termination is punitive and stigmatic, and therefore, in absence of regular Departmental Enquiry (DE), he cannot be terminated from service.

4. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents made feeble attempt to support the impugned order contending that as per condition made in appointment order, the applicant's appointment was purely on temporary basis and he was liable to be terminated if he indulged in any misconduct or conduct unbecoming of a Police Constable. As such, according to her since the Applicant found indulged in misconduct, he was rightly terminated from service since appointment was temporary.

5. Learned P.O. however fairly concedes that no regular D.E. was initiated against the Applicant and she was fair enough to admit that appointing authority of the Applicant is Commissioner of Police (Respondent No.3) but he is terminated by Deputy Commissioner of Police (Respondent No.4). Faced with this situation, she submits that liberty be given to the Respondents to initiate regular D.E. or to adopt the legal course of action against the Applicant.

6. In so far as the appointment is concerned, indisputably the appointing authority of the Applicant is Commissioner of Police and not Deputy Commissioner of Police. However, the Applicant is terminated by order dated 15.10.2015 by Deputy Commissioner of Police which is obviously not in accordance to law.

7. As per Article 311 (1) of the Constitution of India no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. As such, the appointing authority is the only appointing authority for dismissal, removal or termination of Applicant from service. In the present case, admittedly the Applicant is terminated by the Deputy Commissioner of Police which is contrary to protection under

Article 311 of Constitution of India. On this point alone, the impugned order of termination is liable to be quashed.

8. Furthermore, it is well settled that even in case of temporary employment where termination order is punitive or stigmatic, it is not permissible without holding D.E. One can understand if there is a simple termination of service or simple discharge from service without any stigma where termination can be upheld. However, in present case, it is obvious that termination order is stigmatic and punitive. It is based on the allegations that the Applicant had consumed alcohol and mis-conducted in public. The operative order of termination reads as under:-

मी, मकरंद रानडे, पोलीस उप-आयुक्त, मुख्यालय-१, पुणे शहर मला प्रदान करण्यांत आलेल्या अधिकाराचा वापर करून, अस्थायी नवप्रविष्ट पो.शि.बाळासाहेब धुराजी गवळी, यांनी उपरोक्त नमूद प्रमाणे पोलीस गणवेशांत मद्यार्काचे सेवन करून व सार्वजनिक ठिकाणी जाऊन, अत्यंत बेशिस्त, गैरशिस्त, बेजबाबदारपणे पोलीस खात्यास न शोभणारे असे कृत्य करून, पोलीस खात्याची प्रतिमा जनमाणसांत मलिन केल्याचे वर्तन केलेले आहे. यास्तव तुमच्या सेवेची पोलीस विभागास आवश्यकता नसल्याने, सदरचे आदेश निर्गमित केल्याचे दिनांकापासून महाराष्ट्र पोलीस नियामवाली, १९५९ भाग-१ मधील नियम क्र.७८ नुसार तुमची “सेवा समाप्त (Terminate from Service)” करण्यात येत आहे.

It is thus *ex-facie* from the order that the termination is punitive as well as stigmatic.

9. True, before termination the Applicant was given show cause notice to which the Applicant has submitted reply denying all the allegations made against him. Indeed, the Applicant made detailed representation to Commissioner of Police on 20.08.2015 stating that his statement was recorded by force and allegations against him are false. Be that as it may, the fact remains that no regular D.E. was initiated against the Applicant. Mere issuance of show cause notice is hardly enough compliance and it cannot be equated with D.E. The Respondents were required to frame charges of imputation and to follow the provisions of law to conduct regular

D.E. That being not done on this account also the impugned order is not sustainable in law.

10. It is no more *res-integra* that where the termination order is stigmatic or punitive, the services cannot be terminated arbitrarily. A probationer as well as temporary servant is also entitled to protection against stigmatic or punitive termination. In this behalf, Shri K.R. Jagdale, learned Counsel for the Applicant rightly referred to the following decision:-

- (a) Judgment of Hon'ble Supreme Court in ***Civil Appeal No.3040/1982 Anoop Jaiswal V/s Government of India and Anr.*** decided on 24.01.1984,
- (b) Judgment of Hon'ble Supreme Court in ***Civil Appeal No.141/1983 Kanhialal V/s District Judge and Ors.*** decided on 10.01.1983,
- (c) Judgment of Hon'ble Supreme Court in ***Civil Appeal No.9346/2013 (Arising out of Special Leave Petition (Civil) No.17215/2009) Registrar General High Court of Gujarat and Anr. V/s Jayshree Chamanlal Buddhhatti*** decided on 22.10.2013,
- (d) Judgment of Hon'ble Supreme Court in ***Civil Appeal No.1965/2000 (Arising out of SLP (C) No.11701/1999) V.P. Ahuja V/s State of Punjab and Ors.*** decided on 06.03.2000,
- (e) Judgment of Hon'ble High Court, Bombay in ***Writ Petition No.1753/2009 Shri Shantilal Dnyanu Jadhav V/s The Commissioner of Police*** decided on 10.03.2010.
- (f) **2006 SCC (L & S) 1677 (Hari Ram Maurya Vs. Union of India & Ors).**

11. Learned Counsel for the Applicant further referred to the decision rendered by this Tribunal in ***O.A. No.699/2005 (Shri Kishor S. Jadhav V/s State of Maharashtra & Anr.)*** arising from similar situation. In that case, the Applicant therein was on probation and was discharged from service on allegation of misconduct. Preliminary enquiry was

conducted and the Applicant came to be terminated. The Tribunal quashed termination order having found it stigmatic and punitive which was passed without following procedure contemplated under Bombay Police (Punishment & Appeal) Rules, 1956.

12. In this behalf, it would be further apposite to refer one more decision of **AIR 1960 SC 689 (State of Bihar Vs. Gopi Kishore Prasad)**, where in Para No.6, the Hon'ble Supreme Court held as under:-

“6. It would thus appear that, in the instant case, though the respondent was only a probationer he was discharged from service really because the Government had on enquiry come to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection of [Art. 311\(2\)](#) of the Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in that direct way, without casting any aspersion on his honesty or competence, his discharge would not, in law, have the effect of a removal from service by way of punishment and he would, therefore, have no grievance to ventilate in any Court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those circumstances, to insist upon the protection of [Art. 311 \(2\)](#) of the Constitution. That protection not having been given to him, he had the right to seek his redress in Court. It must, therefore, be held that the respondent had been wrongly deprived of the protection afforded by [Art. 311\(2\)](#) of the Constitution. His removal from the service, therefore, was not in accordance with the requirements of the Constitution.

As such, in view of dicta of the Hon'ble Supreme Court, the impugned order is in violation of settled principle of law.

13. Suffice to say, in view of aforesaid settled legal position, the order of termination being stigmatic and punitive without holding D.E. is totally unsustainable in law and secondly being passed by the authority subordinate to the appointing authority. The Applicant is entitled to protection under Article 311(2) of Constitution of India. The impugned order is, therefore, liable to be quashed.

14. It is however made clear that appointing authority is at liberty to initiate regular D.E. or to adopt any other legal course as he thinks fit. Since, the termination order is liable to be quashed, the Applicant is liable to be reinstated in service but he will not be entitled for pay and allowances from the date of termination till reinstatement.

15. The totality of the aforesaid discussion leads us to sum up that the impugned termination order dated 15.10.2015 is totally unsustainable in law and deserves to be quashed. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned termination order dated 15.10.2015 is quashed and set aside.
- (C) The Applicant be reinstated in service within a month from today.
- (D) The Applicant will not be entitled for back wages from the date of termination till reinstatement on the principle of no work no pay.
- (E) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)

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

Place: Mumbai
Date: 18.06.2021
Dictation taken by: V. S. Mane