

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 608/ 2022 (S.B.)

Yashwant Narayan Deshmukh,
Aged 57 years, Occupation: Police-Patil,
R/o Vyala, Tah. Balapur & Dist. Akola

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai- 32.
- 2) State of Maharashtra,
Through the Additional Commissioner,
Amravati Division,
Amravati.
- 3) State of Maharashtra,
Through the Collector, Akola
Tah. & Dist. Akola.
- 4) Sub-Divisional Officer,
Balapur, Tah. Balapur,
Dist. Akola.

Respondents

Shri A.S.Thotange, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 27th April, 2023.

Judgment is pronounced on 28th April, 2023.

Heard Shri A.S.Thotange, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. In this O.A. order dated 30.05.2022 (A-11) passed by respondent no. 2 is impugned. By the impugned order respondent no. 2 declined to grant stay to order dated 18.05.2022 (A-9) passed by respondent no. 4 operative part of which reads as under:-

त्याअर्थी मौजे व्याळा ता. बाळापूर जि. अकोला पोलीस पाटील यांना त्यांचे गैरवर्तणूकबद्दल तसेच त्यांचेवर उक्त तक्रारीच्या अनुषंगाने गुन्हा दाखल असून सदर गुन्हा दोषमुक्त होईपर्यंत किंवा एक वर्षापर्यंत जे आधी घडेल तो पर्यंत त्यांना पोलीस अधिनियम १९६७ चे कलम ९ मधील तरतुदी अन्वये मला प्रदान केलेल्या अधिकाराचा वापर करून यशवंत नारायण देशमुख पाटील, व्याळा, ता.बाळापूर यांना सदर आदेशाचे तारखेपासून निलंबित करण्यात येत आहे.

3. Case of the applicant is as follows. The applicant has been sincerely discharging his duties as Police Patil of Village Vyala. On 29.04.2021 one Prakash Nathwani and his two sons abused the applicant, damaged his cellphone, defiantly said that they will not follow the guidelines issued by the Government to close their shop by 11 a.m.

and thus prevented the applicant from discharging his duties as a public servant. In respect of this incident the applicant filed an F.I.R. at Balapur Police Station whereupon Crime No. 273/2021 was registered against Prakash Nathwani and his two sons under Sections 353, 341, 294, 188 & 506 r/w 34 of I.P.C. (A-3). On the same day, on the complaint of wife of Prakash Nathwani, Crime No. 272/2021 was registered against the applicant under Sections 452, 354, 504, 506 of I.P.C. at Balapur Police Station (A-4). To quash the R.C.C. No. 126/2021 arising out of Crime No. 273/2021 Criminal Application (A-5) is filed by the applicant which is pending before Nagpur Bench of Hon'ble High Court. On 02.03.2022 respondent no. 4 issued a notice (A-6) calling upon the applicant to show cause as to why he be not proceeded against under the provisions of the Maharashtra Village Police Act, 1967 (Hereinafter referred to as "The Act" for short). By application (A-7) the applicant sought time to file reply to the show cause notice. By application (A-8) the applicant sought copies of documents which were necessary to file reply to the show cause notice. The applicant did not receive the same. In spite of this, respondent no. 4 passed the order dated 18.05.2022 (A-9) placing the applicant under suspension purportedly under Section 9 of the Act. This order *inter alia* referred to the fact that in the crime registered against him the applicant was in magisterial custody from 30.04.2021 to 12.05.2021. The applicant challenged the order dated 18.05.2022 before

respondent no. 2 by filing an appeal (A-10). Respondent no. 2, by the impugned order dated 30.05.2022 (A-11) declined to stay the order dated 18.05.2022. Hence, this O.A..

4. On behalf of the applicant following submissions were made:-

A. Show cause notice was issued 11 months after the alleged incident.

B. Respondent no. 2 did not consider any of the submissions made on behalf of the applicant. It was apparent that the complaint was lodged against the applicant as a counterblast.

C. Copies of necessary documents were not supplied to the applicant though the same were asked for by him. Without these documents it was not possible to file reply to the show cause notice.

D. The order dated 18.05.2022 placing the applicant under suspension was shown to have been passed under Section 9 of the Act. Such order could have been passed only under Section 11 of the Act. Order under Section 9 of the Act could have been passed only after following the procedure

under Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

5. Stand of respondent no. 4 is as follows. Before passing the order dated 18.05.2022 a detailed report (A-R-3-2) submitted by P.I., Balapur Police Station was duly considered which showed that as many as 17 offences was registered against the applicant at various Police Stations. The applicant was in magisterial custody from 30.04.2021 to 12.05.2021. He did not file any reply to the show cause notice. Thus, order dated 18.05.2022 was rightly passed. Respondent no. 2, by passing the impugned order, rightly rejected prayer for granting stay to order dated 18.05.2022.

6. Order dated 18.05.2022 (A-9) shows that it was purportedly passed under Section 9 (d) of the Act. Rule 9-A of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968 reads as under:-

9A. Procedure to be observed for imposing penalties.

(1) No penalty shall be imposed on a Police Patil under clause (a) or (f) of Section 9 of the Act, unless the procedure prescribed in rules 8 & 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is followed.

(2) No penalty shall be imposed on a Police Patil under any other clause of the said Section 9 unless the procedure prescribed in rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is followed.

In the instant case Rule 9A(2) shall be attracted since the order of suspension can be seen to have been passed under Section 9 (d) of the Act.

While passing the impugned order declining stay to the order dated 18.05.2022 the only ground mentioned therefor was that the applicant was in magisterial custody from 30.04.2021 to 12.05.2021. Relevant part of the impugned order is as under:-

अर्जदार यांचे वकिलांनी उपविभागीय दंडाधिकारी, बाळापूर यांचे दिनांक

१८/५/२०२२ रोजीचे आदेशास स्थगिती मिळणेकामी आज दिनांक

३०/५/२०२२ रोजी युक्तीवाद केला.

उपविभागीय दंडाधिकारी, बाळापूर यांचे दिनांक १८/५/२०२२ रोजीचे

आदेश पाहता अर्जदार यांना दिनांक ३०/४/२०२२ रोजी अटक करण्यात

आली व दिनांक १२/५/२०२२ रोजी जामिनावर सुटका झाली आहे. सबब स्थगिती अर्ज नामंजूर.

प्रकरण सुनावणीकामी पुढील तारीख दिनांक १४/६/२०२२ रोजी ठेवण्यात आले असून अर्जदार व गैरअर्जदार यांनी सदर दिनांकास दुपारी २.०० वाजता मा. अपर आयुक्त, अमरावती विभागीय आयुक्त कार्यालय, अमरावती यांचे दालनात हजर राहावे. अनुपस्थित राहिल्यास एकतर्फी निर्णय घेण्यात येईल, याची नोंद घ्यावी.

The impugned order does not show that any of the submissions made by the applicant for grant of stay to order dated 18.05.2022 was considered by respondent no. 2. Stay could not have been refused only on the ground that the applicant was in magisterial custody from 30.04.2021 to 12.05.2021. It was incumbent upon respondent no. 2 to deal with all the submissions made on behalf of the applicant including the submission that order dated 18.05.2022 could not have been passed under Section 9 of the Act regard being had to the facts of the case and if at all the applicant was to be placed under suspension in contemplation of initiation of departmental enquiry, the order ought to have been passed not under Section 9 but under Section

11 of the Act. For the reasons discussed hereinabove the impugned order cannot be sustained. Hence, the order:-

O R D E R

The O.A. is allowed in the following terms:-

- A. The impugned order dated 30.05.2022 (A-11) declining stay to order dated 18.05.2022 (A-9) is quashed and set aside.
- B. The applicant shall be at liberty to again apply for grant of stay to order dated 18.05.2022. On such application being made, respondent no. 2 shall consider it afresh on its own merits.
- C. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 28/04/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 28/04/2023.
and pronounced on

Uploaded on : 01/05/2023.