

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.176 OF 2017**

DISTRICT : AHMEDNAGAR

Shri Balasaheb Nana Wakchaure,)
Age 37 years, Occ. Nil, Ex-Police Constable)
[Buckle No.BN-040215], Ghatkopar Police Station,)
Mumbai R/o A/P Vithe, Tal. Akole, Dist. Ahmednagar)
Correspondence Address:)
C/o Mr. Santosh N. Wakchaure,)
G-1, 706, Neelkanth-Dara Apartment,)
Near Phadke Maidan, Subhash Nagar, Adharwadi)
Road, Lalchowki, Kalyan (W), District Thane)..Applicant

Versus

1. The Commissioner of Police,)
Mumbai Police Commissionerate, L.T. Marg,)
Crawford Market, Fort, Mumbai 400001)
2. The State of Maharashtra,)
Through Principal Secretary, Home Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.D. Karanjkar, Member (J)
RESERVED ON : 11th June, 2019
PRONOUNCED ON : 14th June, 2019
PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Brief facts of the case:

2. The Applicant was working as Police Constable in the office of Respondent no.1 since 1.6.2004. On 2.5.2013 while he was on duty at Line Police at Ghatkopar Police Station, he noticed that the branch of a tree was likely to fall on passersby. He, therefore, tried to chop off the branch. While doing so he fell on the ground injuring his eye and neck. Even after undergoing surgery, the Applicant continued to remain bedridden due to multiple complications. He is not even in a position to sign and needs help of someone else to put his thumb impression. As the Applicant was unable to procure his salary he tendered his resignation on 21.10.2014. On 16.2.2015 Respondent no.1 approved his resignation. Realizing the mistake made by him Applicant made representation to Respondent no.1 on 14.8.2015 to withdraw the resignation. However, the same was rejected by Respondent no.1 on 23.10.2015. In January, 2017 through his brother, who is also working in Police Department, he became aware about the protection available to him under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the said Act of

1995). He, therefore, approached the office of Respondent no.2 and obtained the circular dated 8.8.2011 directing the Police Department to follow the provisions under Section 47 of the said Act of 1995. The same did not evoke favourable response. He has, therefore, prayed that he be provided all the benefits under Section 47 of the said Act of 1995 (prayer clause 9(b) page 18 of OA).

3. The Ld. Advocate for the Applicant has relied on the judgment of the Hon'ble Supreme Court in the case of Kunal Singh Vs. Union of India & Anr, 2003 SCC (L&S) 482. Para 12, which is relevant, reads as under:

“12. Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act.”

4. The Respondent no.2 has filed affidavit and relevant portion of the same is as under:

“30. With reference to contents of paragraph nos.9(b) to 9(e), I say as follows: The contents therein are denied as the petitioner did not withdraw his resignation in period of 90 day's available to him to reconsider his resignation. But he continues to insist upon to approve his resignation expeditiously. It is submitted that petitioner is not covered/entitled to claim

benefit of Section 47 as he willingly tendered his resignation. Further it is submitted that resignation of petitioner was sanctioned as per the provisions of MCS (Pension) Rules, 1982 and Circular dated 8.8.2011 specifically talks about employees who are declared medically unfit and who are made to retire on medical grounds. Whereas the petitioner willingly resigned and hence he is not entitled to claim benefits of Section 47 in whatsoever form. It is submitted that order dated 16.2.2015 was passed after giving opportunity of 90 days to withdraw resignation. As the petitioner has willingly resigned and it was sanctioned by the competent authority after following due process as per rules and regulations the order dated 16.2.2015 is just and proper.

(i) In view of above facts and circumstances, the orders passed by Respondent no.1 on 16.2.2015 and 23.10.2015 are valid. The Applicant is not entitled to claim the benefit of Section 47 of the Act, 1995 as he has willingly tendered his resignation and ceased to be an employee of the Government. The provisions of the Act of 1995 is applicable only to the employees who are in Government service. The Respondent no.1 has accepted the resignation of the Applicant after following due procedure prescribed by rules and regulations. I say and submit that in the case of The Union of India Vs. Gopan Chandna Mistna, the Hon'ble Supreme Court has observed that in the case of Government servant or functionary who cannot under the conditions of his service or office, normally the tender of resignation becomes effective and his office or service tenure terminated when it is accepted by the competent authority. I say and submit that there is no evidence on record to show that the petitioner was either coerced into seeking premature retirement or the appointing authority compulsorily retired him on the medical ground of disability. The act of request of the petitioner to seek premature retirement appears to be voluntarily which was been accepted by the appointing authority i.e. Respondent no.1.

(ii) I say that, pursuant to the directions given by this Hon'ble Tribunal on 3.8.2018 to re-examine the representation of the Applicant and the Respondent no.2 had, after once again re-examined the representation of

the Applicant, came to the conclusion that the Applicant's case cannot be considered as per rules."

(Quoted from page 118-120 of OA)

5. The Respondent no.2 has, therefore, submitted that the OA is devoid of any merit and the same should be dismissed.

Discussion and findings:

6. The Respondents have admitted that the Applicant fell down while discharging his official duties and became bedridden. According to the Respondents, since the Applicant did not withdraw his resignation within stipulated period of 90 days, the same cannot be considered. According to Respondent no.1, Applicant had resigned voluntarily and his father was persisting that the same be accepted on priority. The Respondents are harping on voluntary submission of resignation by the Applicant. The Respondents have preferred to deny him benefits of Section 47 of the said Act of 1995 as he willingly tendered his resignation.

7. In the peculiar circumstances, where the Applicant is not even in a position to sign or have his food on his own and is totally bedridden, the conclusion that he has tendered the resignation voluntarily is not tenable. Moreover, the Applicant does not have any other source to financially support himself. Even his wife has deserted him as he has become a burden. In the peculiar circumstances it is the duty of the department to support the Applicant at the time of his misery and the same cannot be overlooked by resorting to technicalities. It would be, therefore, appropriate and in the interest of justice to take care of him as per the provision of the said Act of 1995. As observed by the Hon'ble Supreme Court in the case of Kunal Singh (supra) it was duty of the Respondent

No.1 to provide adequate cover and protection to the Applicant when he became incapacitated.

8. Section 47 of the Act is mandatory, and it was statutory obligation on the Respondents to comply this direction but it was not done. The legal position is settled that whenever the statute directs that a particular relief may be given, then there is no alternative to such directions. In view of this matter, we do not see any substance in the contention that the Applicant has voluntarily resigned, therefore, he is not entitled for any relief. The law is that there cannot be estoppels against statute. In view of this legal position the applicant is entitled for the relief claimed in the Original Application. Hence, the following order:

O R D E R

1. The Original Application stands allowed in terms of prayer clause 9(a) to 9(e).
2. The Respondents do pay Rs.10,000/- to the Applicant on account of cost of this proceeding.
3. The order to be complied within a period of three months.

Sd/-

(A.D. Karanjkar)
Member (J)
14.6.2019

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
14.6.2019

Dictation taken by: S.G. Jawalkar.