

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.605 OF 2016

DISTRICT : SOLAPUR

Shri Aakash Audumbar Tambe,)
Age 25 Years, occ. Nil, Ex.Police Constable,)
Buckle No.1857 attached to Solapur City Police)
Commissionerate, R/o Shridhar Nagar,)
Near Ganpati Ghat, Tuljapur Road, A/P Hipparge,)
Tal. South Solapur, District Solapur)..Applicant

Versus

1. The Commissioner of Police, Solapur City)
2. The State of Maharashtra,)
Through Principal Secretary, Home Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

DATE : 22nd August, 2023

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The applicant who was working as Police Constable is challenging the order dated 29.2.2016 passed by the Commissioner of Police, Solapur City – Respondent No.1 dismissing the applicant from service invoking the provisions of Section 25 & 26 of the Mumbai Police Act, 1951 and in exercise of the powers vested in him under Article 311(2)(a) of the Constitution of India.

3. Ld. Advocate for the applicant submits that the impugned dismissal order was passed on the ground of suppression of fact, while filling the Attestation Form on 3.7.2014, of pending criminal case against the applicant and imposition fine of Rs.1000/- in the Criminal Court.

4. Ld. Advocate for the applicant submits that the applicant was appointed by order dated 28.8.2014 as Police Constable. Ld. Advocate submits that criminal case vide STC No.3715 of 2012 came to be filed on 7.6.2012 against the applicant and others in the Court of Ld. JMFC, Solapur for the offences punishable under Section 323, 324, 242, 504, 506 r/w Section 34 of IPC for the alleged incident of 13.4.2012. Ld. JMFC, Solapur by its judgment and order dated 24.7.2015 convicted the applicant under most of the charges and released the applicant on bond and imposed fine of Rs.1000/-.

5. Ld. Advocate submits that the applicant & others preferred Criminal Appeal No.105 of 2015 in the Court of Ld. Sessions Judge, Solapur. Ld. Sessions Judge, Solapur by its judgment and order dated 1.2.2017 allowed the appeal and set aside the conviction. The applicant and others were released on PR and SB of Rs.15,000/- each in view of Section 437(a) of Cr.P.C.

6. Ld. Advocate submits that clause 11(a), (b) & (c) of Attestation Form are in respect of antecedents of the applicant. The complaint was a private complaint and summons were served on 17.7.2012. On 6.7.2013 applicant was not present before the Ld. JMFC and he sent an application.

7. Ld. Advocate for the applicant raised two other points. Ld. Advocate submits that the impugned order is stigmatic and he should not have been dismissed under Article 311(2)(a) of the Constitution of India. Ld. Advocate for the applicant pointed out report dated 29.7.2014 sent by Superintendent of Police, Solapur (Rural) to the Commissioner of Police, Solapur about his character verification and antecedents stating therein that nothing adverse is found against the applicant on the record of Solapur Taluka Police Station and no criminal case is registered against him and he is not convicted and no objectionable report is available against him and he has no association with any organization banned by the Union or State. This report was submitted after he filled up the form and thereafter considering this report the applicant was appointed by order dated 28.8.2014 and he worked till 29.2.2016. Thereafter before dismissal he should have been given opportunity of Departmental Enquiry under Article 311. Ld. Advocate for the applicant also refers to Rule 3 and 4 of the Bombay Police (Punishments and Appeals) Rules, 1956.

8. During the course of hearing of this OA the Ld. Advocate for the applicant has pointed out that in the impugned order dated 29.2.2016 the Commissioner of Police, Solapur has dismissed the applicant from service on two grounds. Firstly, that he was convicted in criminal case and secondly, he suppressed the pendency of criminal case against him in clause 11 of the Attestation Form for antecedents.

9. Ld. Advocate for the applicant pointed out that in para 6 of the additional affidavit in rejoinder dated 6.9.2018 filed by the applicant he has placed a development during pendency of this OA that Criminal Appeal No.105 of 2015 filed by the applicant and others was allowed by the Ld. Sessions Judge, Solapur by its judgment and order dated 1.2.2017 and he is being acquitted. Under such circumstances the Ld. Advocate for the applicant submits that there is no reason for which he is dismissed without holding Departmental Enquiry under the provisions of Article 311(2)(a) of the Constitution and Section 25 & 26 of the Bombay Police Act, 1951.

10. Ld. Advocate for the applicant submits that the applicant should not have been dismissed under Article 311(2)(a) and whereas a DE should have been initiated against him and other punishments like suspension, termination, removal etc. could have been awarded. Ld. Advocate for the applicant also submits that impugned order may be quashed and set aside and the matter may be remitted back to the competent authority for passing appropriate order in view of the subsequent developments.

11. Ld. Advocate for the applicant has relied on the judgment of the Hon'ble Supreme Court in **Commissioner of Police & Ors. Vs. Sandeep Kumar, (2011) 1 SCC (L&S) 734 : (2011) 4 SCCF 644** and **the judgment and order dated 9.7.2021 passed by this Tribunal in OA No.598 of 2016 Shri Rahul Damurao Pawar Vs. The State of Maharashtra & Ors.**

12. Ld. Advocate for the applicant has amended the prayer and added prayer clause 9(b) wherein he seeks directions to quash and set aside the impugned order dated 29.2.2016 in view of the judgment and order dated 1.2.2017 passed by the Ld. Sessions Judge, Solapur in Criminal Appeal No.105 of 2015 by which the criminal appeal was allowed and conviction

of the applicant was set aside. He therefore prays that impugned order be quashed and set aside and applicant be granted all consequential service benefits.

13. Per contra, Ld. PO refers to affidavit in reply dated 22.7.2016 filed by Munir Ahmad Patel, Police Inspector in the office of Commissioner of Police, Solapur City and submits that it is clearly mentioned in Instruction No.3 of Attestation Form that, if at any time, any candidate provides false information or intentionally conceal the information, that candidate must be liable at any stage of service for the punishment of end of service. Ld. PO submits that acquittal in criminal appeal is a subsequent event and applicant is dismissed for suppressing the facts in attestation form and pendency of criminal case. Ld. PO on instructions submits that at present there are total 8 cases pending against the applicant. Therefore, she submits that the impugned order is rightly passed and the OA may be dismissed.

14. We have heard both the sides at length. By the impugned order dated 29.2.2016 the Commissioner of Police, Solapur has dismissed the applicant from service on two grounds. Firstly, that he was convicted in criminal case and secondly, he suppressed the pendency of criminal case against him in clause 11 of the Attestation Form for antecedents.

15. As per impugned order dated 29.2.2016 the applicant was dismissed for two reasons. Firstly, he was convicted by Ld. JMFC on 24.7.2015 and fine of Rs.1000/- was imposed on him. And secondly for the reason that though the applicant was aware of his prosecution and pendency of criminal case, he suppressed this information deliberately in the antecedent clause of Attestation Form. Hence, though the order of conviction was set aside by the Sessions Court by order dated 1.2.2017 still the second reason of suppression of criminal antecedents remains.

16. Moreover the dismissal is under Article 311(2)(a) of the Constitution of India which reads as follows:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1) 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.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be

recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”

17. Thus the rule is that a Member of civil service of the State should not be dismissed or removed by the authority without following due procedure of enquiry and after giving him necessary opportunity of audience except certain circumstances referred in the Article. Thus, in the present case he was dismissed by order dated 26.2.2016 and in view of the judgment of JMFC dated 24.7.2015. It is true that subsequently the said judgment was set aside by the Ld. Sessions Judge by judgment and order dated 1.2.2017 and conviction was set aside. He was released on PR Bond and SB of Rs.15,000/- each. Thus, considering the chronology of the conviction, dismissal and further acquittal when the order of dismissal was passed the applicant was a convict and therefore the order dated 29.2.2016 cannot be faulted with.

18. Ld. Advocate for the applicant relied on the subsequent event of acquittal. He prayed in the course of final arguments that he wanted to amend prayer clause 9 and accordingly he made application and in all fairness amendment was allowed and carried out on 7.7.2023 by which he challenged the said order of dismissal dated 29.2.2016 and also prayed for consequential service benefits.

19. Ld. PO files affidavit in reply dated 19.8.2023 of Shri Ashok Shamrao Toradmal, Assistant Commissioner of Police, Solapur City. Ld. PO has submitted that the conduct of the applicant to amend the OA at late stage i.e. after 7 years shows that the applicant is not in need of

Government service. She submits that applicant has deliberately suppressed about criminal case pending against him and that is disqualification for a candidate. Ld. PO further submits that as the amendment is carried out it is necessary for the State to point out that at present 8 criminal cases are pending against the applicant in the Court and chart showing the pending criminal cases is submitted along with the reply.

20. In certain cases the developments which occur after the cause of action are not to be considered. However, the present case is pertaining to the dismissal of the applicant on the ground of misconduct. The applicant has suppressed the fact of prosecution against him and pendency of the criminal case when he filled up the application form. Today the record placed before us and the facts revealed throw light on the character of the applicant. In the present charge of misconduct the issue of character is involved. The applicant, pending this OA, is prosecuted for nearly 6 offences punishable under Section 420, 468, 465 of IPC i.e. cheating and forgery. We are of the view that such facts do have bearing over the character of the individual. Hence, we are of the view that order of dismissal is legal and correct under Article 311 of the Constitution of India.

21. For the aforesaid reasons the Original Application deserves to be dismissed and the same is dismissed with no orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
22.8.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
22.8.2023

Dictation taken by: S.G. Jawalkar.