

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.614 OF 2016

DISTRICT : SOLAPUR

Shri Sanjay Kashinath Manthalkar,)
Age 49 years, occ. Nil, Ex-Police Naik (Jodbhavi Path))
Police Station, Solapur R/at 438 South Kasba, Solapur)..Applicant

Versus

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

Shri B.A. Bandiwadekar – Advocate for the Applicant

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

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

DATE : 1st August, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

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

2. In this matter the applicant challenges the order dated 29.12.2011 passed by respondent no.1 dismissing the applicant summarily by invoking the powers under Article 311(2)(b) of the Constitution of India. He also challenges the order dated 1.3.2016 passed by respondent no.1 informing that he has no power to reinstate the applicant in the light of his acquittal dated 17.10.2015 by the Ld. Special Judge, Solapur in CR No.163 of 2011.

3. The applicant was working as a Police Naik at Jodbhavi Peth Police Station, Solapur. He was prosecuted for offence under the Prevention of Corruption Act as he has demanded and accepted bribe of Rs.500/- (Rupees five hundred only). Ld. Magistrate passed the order on 13.12.2011 to lodge the complaint and accordingly CR No.163 of 2011 came to be registered. The Commissioner of Police, Solapur thereafter passed the impugned order dated 29.12.2011 of summarily dismissal against the applicant without holding any Departmental Enquiry (DE).

4. Ld. Advocate for the applicant submits that applicant earlier was tried in Special Case (ACB) No.12/2012 before the Special Court, Solapur and by order dated 17.10.2015 the applicant was acquitted from the offences which were registered against him under Section 384 of IPC r/w Sections 7 & 13 of Prevention of Corruption Act, 1988. He submits that as the applicant was acquitted he made representation by letter dated 29.1.2016 that he is to be reinstated as he is having unblemished service of 22 years without any stigma. However, his representation was rejected

on the ground that though the applicant is acquitted he was earlier dismissed by the Police Department by invoking powers under Article 311(2)(b) of the Constitution of India and therefore powers for reinstatement of such Government servants once dismissed do not vest with the Commissioner of Police or department and therefore he was asked to approach the Judicial Forum and therefore he has approached this Tribunal.

5. Ld. PO relies on the affidavit in reply dated 4.8.2022 filed by Dr. Pritee Prakash Tipare, Assistant Commissioner of Police, Crime Branch, Solapur on behalf of respondent no.1.

6. Ld. PO also relies on the affidavit in reply dated 26.9.2016 filed by Gurudatt Limbaji Madhekar, Police Inspector in the office of Commissioner of Police, Solapur on behalf of respondent no.1. Ld. PO points out para 14 of the reply and submits that respondent no.1 after application of mind and after recording reasons separately in writing has passed a legal and valid order on 29.12.2011 under Article 311(2)(b) of the Constitution of India and has rightly imposed the punishment of dismissal as his conduct is a stigma for Police Department. It was further mentioned that the Police Department is known for discipline and the applicant's conduct is likely to cause serious adverse effect on the public in general. It was necessary in the prevailing situation of the case that he is the best Judge on the spot and the said provision enables him to dispense with the enquiry.

7. Ld. Advocate for the applicant relied on the judgment of the Hon'ble Supreme Court in **Sudesh Kumar Vs. State of Maharashtra & Ors. (2005) 11 SCC 525** wherein it was held that reasons were not sufficient for dispensing with a regular departmental enquiry and it set aside the dismissal.

8. We have heard both the sides. In this case it is clear that the respondent no.1 has applied his mind to the facts and has mentioned the reasons for dismissal in his own handwriting. While we appreciate the fact that it is important to hold a prompt enquiry in this case, the respondent no.1 has not mentioned reasons why holding such an enquiry was not reasonably practicable. We hold that the reasons mentioned by the respondent no.1 are not sufficient for dispensing with the regular departmental enquiry. It is clear that Article 311(2) is by nature of an exception and in normal circumstances a regular departmental proceedings should be followed by giving the delinquent officer a chance to be heard. In the light of these observations, we pass the following order.

9. The Original Application is allowed and the impugned order dated 29.12.2011 passed by respondent no.1 dismissing the applicant is not sustainable and is hereby quashed and set aside. The applicant is to be reinstated in service within a period of one month from the date of this order. Relying on the principle of 'no work no pay', no back wages are to be given to the applicant. However, he is to be given the benefit of continuity in service for all other purposes. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
1.8.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
1.8.2023

Dictation taken by: S.G. Jawalkar.