

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 306 OF 2023**

**DIST.: AURANGABAD**

**Hanuman S/o Punjaba Jarare,** )  
 Age: 50 years, Occ.: Service as, )  
 Police Naik, )  
 R/o Police Quarters, B-No. 4-4, )  
 N-10, T.V. Center, Cidco, )  
 Aurangabad. )      **.. APPLICANT**

*V E R S U S*

- 1. The State of Maharashtra** )  
 Through : The Secretary, )  
 Home Department, Mantralaya, )  
 Mumbai - 32. )
- 2. The Director General of Police,** )  
 Shahid Bhagatsing Marg, )  
 Culaba, Mumbai. )
- 3. The Commissioner of Police,** )  
 Police Commissioner Office, )  
 Aurangabad Region, Aurangabad.)
- 4. The Reserve Police Inspector** )  
 Police Head Quarter, )  
 Commissioner Office, Aurangabad.)      **.. RESPONDENTS**

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 APPEARANCE :- Shri Kakasaheb B. Jadhav, learned counsel  
 for the applicant.

: Smt. Deepali S. Deshpande, learned  
 Presenting Officer for the respondent  
 authorities.

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**CORAM** : **Hon'ble Shri Justice V.K. Jadhav,**  
**Vice Chariman**  
**AND**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**  
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**RESERVED ON** : **18.02.2025**  
**PRONOUNCED ON** : **06.03.2025**  
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**ORDER**

*(Per : Justice V.K. Jadhav, Vice Chairman)*

1. Shri Kakasaheb B. Jadhav, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for respondent authorities, are present.
2. The matter is finally heard with consent of both the sides at the admission stage.
3. By filing this Original Application, the applicant is seeking direction to the respondent no. 03 to consider the period from 29.03.2011 to 21.09.2013 as duty period and pay him the salary and allowances for the said period with all consequential benefits instead of treating the said period as extraordinary leave on medical ground. The applicant is also challenging the order dated 16.04.2010 passed by the respondent no. 03, thereby reverting the applicant from the post of Police Head Constable to Police Constable and also seeking direction to the respondents to protect

the pay scale of the applicant for the post of Police Head Constable and pay the arrears. Lastly, the applicant is also seeking direction to the respondents to promote him on the post of Police Head Constable as per the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

4. Brief facts giving rise to this Original Application are as under:-

(i) The applicant was initially appointed on the post of Police Constable by order dated 24.12.1991 by respondent no. 03 from S.T. category (Annexure A-1).

(ii) The applicant was promoted on the post of Police Naik by the respondent no. 03 by the order dated 31.08.2002. Thereafter, the applicant was again promoted to the post of Police Head Constable by order dated 24.07.2003. The copy of the extract of service showing dates of promotions is marked as (Annexure A-2).

(iii) The applicant was working at Jinsi Police Station, Aurangabad and at that time he suffered with paralysis attack on 07.07.2008. The applicant was admitted in the

Hospital. The applicant had reported the same incidence to the respondent no. 03 by submitting an application. The concerned Police Station also issued a letter dated 07.07.2008 to the Medical Officer, Police Hospital, Mill Corner, Aurangabad and called the report. Copy of the letter dated 07.07.2008 is marked as (Annexure A-3).

(iv) Meantime the respondent no. 03 has issued notice dated 26.08.2009 to the applicant and directed him to submit the caste validity certificate within 07 days to the office, else his promotion will be cancelled.

(v) The applicant was further admitted in various hospitals for treatment and he was discharged from the hospital on 11.09.2009 after the medical treatment. The applicant has submitted an application on the same day i.e. 11.09.2009, thereby requesting the respondent no. 03 to allow him to join on the duty on any other post (Annexure A-5).

(vi) The respondent no. 03 issued a letter dated 06.04.2010 to the Dean of the Government Medical College & Hospital, Aurangabad and requested therein to submit the medical report to his office and the applicant was also

directed to undergo the medical examination before the Medical Board for grant of special leave. The said letter dated 06.04.2010 is marked as (Annexure A-7).

(vii) The respondent no. 03 has issued the order dated 16.04.2010 and reverted the applicant on the post of Police Constable and promotions for the post of Police Naik and Police Head Constable were cancelled on the ground that though the applicant was appointed from S.T. (Dhanwar) reserved category, he has submitted the caste validity certificate of NT-C (Hatkar) reserved category. The seniority of the applicant was also considered as 15.06.1995 in view of the provisions of the Government Resolution dated 30.06.2004.

(viii) The Dean of the Government Medical College and Hospital, Aurangabad had issued a letter dated 24.11.2010 to the respondent no. 03 and submitted the medical report/certificate of the Medical Board dated 27.10.2010, thereby incapacitating the applicant for future service (Annexure A-9 collectively).

(ix) Thereafter, without following due procedure and the provisions of The Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short the Disabilities Act, 1995), the respondent no. 03 has issued the order dated 29.03.2011, thereby retiring the applicant on medical ground. Copy of the order dated 29.03.2011 is marked as Annexure A-11.

(x) The applicant has submitted the application/representation dated 14.10.2011 to the respondent no. 03, thereby submitting that as he retired on medical ground, his family is suffering with financial crises and therefore his son may be appointed in his place (Annexure A-12).

(xi) Thereafter, the respondent no. 03 has issued a letter dated 10.09.2012 to the Dean of Government Medical College & Hospital, Aurangabad requesting therein to give specific percentage of disability of the applicant with a further request to re-examine the applicant. The applicant was also directed to remain present before Medical Board. The applicant accordingly appeared before the Medical Board and accordingly the Medical Board has again issued a certificate dated 26.09.2012 (Annexure A-13 collectively).

(xii) The respondent no. 03 had again issued a letter to the Medical Board and called report as to whether the applicant is "FIT" for duty in Police Department or not? The Chairman of the Medical Board of the Government Medical College & Hospital, Aurangabad by letter dated 04.03.2013 informed that the applicant is 'FIT' for light duty in the office as per his post (Annexure A-14).

(xiii) By order dated 21.09.2013, the respondent no. 03 reinstated the applicant in service in terms of the provisions of Section 47(1) of the Disability Act, 1995 and the applicant was posted at Police Headquarters, Aurangabad i.e. in the office of respondent no. 03.

(xiv) Further, by the said order dated 21.09.2013, whereby the respondent no. 03 has reinstated the applicant in service, the period w.e.f. 29.03.2011 till the date of joining of the applicant on duty was directed to be treated as extraordinary leave as per the provisions of rule 63 of the Maharashtra Civil Services (Leave) Rules, 1981 (Annexure A-17). Hence, this Original Application.

5. The learned counsel for the applicant submits that the applicant had suffered with paralysis attack on 07.07.2008. His

services were illegally invalidated by the respondent no. 03 on medical ground without following the provisions of Disabilities Act, 1995. Thereafter, the respondent no. 03 realized the mistake and reinstated the applicant in service by order dated 21.09.2013. However, the period from 29.03.2011 to 21.09.2013 was treated as extraordinary leave. Even the respondents have not protected the pay of the applicant. The applicant has time to time submitted applications/representations to the respondents requesting therein to treat the said period as the duty period and grant him all the benefits by protecting his pay of the post of Police Head Constable. However, the respondent no. 03 has not considered the permanent disability suffered by the applicant, which is more than 60%. The applicant is unable to speak and walk properly. Though the respondent no. 03 has issued the orders dated 27.03.2018 and 02.04.2018 and granted the benefit of Rs. 2,000/- per month as vehicle allowance and also given the exemption from Professional Tax, however, wrongly considered the period from 29.03.2011 to 21.09.2013 as extraordinary leave for no fault on the part of the applicant.

6. The learned counsel for the applicant submits that in terms of G.R. dated 30.06.2004 the services of the applicant were protected. It is directed in the said G.R. that the persons, who are



non-tribal and who are appointed or promoted from the S.T. category before 15.06.1995 shall not be terminated or reverted and they shall be absorbed in their original category and they shall be entitled for the benefits of reserved category.

7. The learned counsel for the applicant submits that the impugned action of the respondents is improper, incorrect and illegal and is liable to set aside. The learned counsel, thus, submits that this Original Application deserves to be allowed in terms of the prayer clause.

8. The learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent nos. 02, 03 and 04 submits that in terms of section 47(1) of the Disabilities Act, 1995, the respondent no. 03 has reinstated the applicant in view of the certification of the Medical Board about the physical disability of the applicant. The learned P.O. submits that the applicant remained out of service for the period from 29.03.2011 till the date of joining the service and, as such, he is not entitled for the pay and allowances of the period during which he had not worked.

9. The learned Presenting Officer submits that the applicant was initially appointed as a Police Constable from S.T.

(Dhanwar) category on 24.12.1991. However, the applicant has submitted the caste validity certificate of N.T.(C) (Hatkar) instead of S.T. (Dhanwar). Consequently, the respondent no. 03 has passed an order and the promotion order of the applicant to the post of Police Head Constable and Police Naik was cancelled on 14.04.2010 and fixed the seniority of the applicant as 15.06.1995 as per the provisions of the G.R. dated 30.06.2004. The learned P.O. submits that the order impugned in this Original Application is proper, legal and correct and calls for no interference.

10. We have carefully gone through the order dated 29.03.2011 (Annexure A-11). The said order dated 29.03.2011 (Annexure A-11), which is in Marathi, is reproduced herein below:-

“संदर्भ :- अधिष्ठाता, शासकीय वैद्यकीय महाविद्यालय व रुग्णालय, औरंगाबाद यांचे पत्र जा.क्रं. जिबी/एनबी/एमसीएच/३०४०-४१/२०१०, दिनांक २२.११.२०१०.

आदेश :

पोशि २२६४ हनुमान पुंजाराम जरारे नेमणुक पोलीस मुख्यालय औरंगाबाद शहर यांना उपरोक्त नमुद संदर्भाधीन पत्रासोबतच्या वैद्यकीय प्रमाणपत्रानुसार पोलीस शिपाई पदी पुढील कर्तव्य बजावण्यांस अपात्र ठरल्याने महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) १९८२ मधील नियम क्रमांक ६२ चे अधीन राहुन नियम क्रमांक ८० अन्वये आदेश निर्गमित झाले तारखेपासुन रुग्णता सेवानिवृत्त करण्यात येत आहे.

(मा. पोलीस उप आयुक्त (मु) यांचे मान्यतेने)

सहि/-  
(नरेश मेघराजानी)  
पोलीस आयुक्त औरंगाबाद शहर  
यांचे करीता”

11. It is the part of record that the applicant had suffered paralysis attack on 07.07.2008 and he was admitted in the Hospital. The applicant was discharged from the Hospital on 11.09.2009 and he had submitted an application on the same day i.e. on 11.09.2009 to the respondent no. 03 to allow him to join the duty on any other post. Though the applicant was allowed to join the duty on 12.09.2009, the respondent no. 03 had issued a letter dated 06.04.2010 to the Dean of Government Medical College & Hospital, Aurangabad requesting therein to submit his medical report to the office of respondent no. 03 with similar direction to the applicant to appear before the Medical Board for grant of special leave. The Dean of Government Medical College & Hospital, Aurangabad had issued a letter dated 22.11.2010 to the respondent no. 03 and submitted the medical report and medical certificate of the Medical Board dated 27.10.2010, thereby incapacitating the applicant for further service. In spite of Medical Board certificate, the respondent no. 03 again issued a letters dated 10.12.2010 and 12.01.2011 to the Medical Officer, Police Hospital, Aurangabad and called the report, whether the applicant is 'FIT' for any other duty or not? It further appears that without following the procedure and the law laid down in the Disabilities Act, 1995, the respondent no. 03 has issued the order

dated 29.03.2011 (Annexure A-11) retiring thereby the applicant on medical ground. The same is also reflected from the order reproduced hereinabove dated 29.03.2011.

12. In this context, the provisions of the Disabilities Act, 1995, which were holding the field at the relevant time, are required to be considered particularly section 47 of the said Act, which is reproduced herein below:-

***“47. Non-discrimination in Government employment. (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:***

*Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:*

*Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*

(2) *No promotion shall be denied to a person merely on the ground of his disability:*

*Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”*

13. It is clear from the provisions of section 47 of the Disabilities Act, 1995 that the applicant's services could not have been dispensed with in a manner in which the respondent no. 03 has dispensed with the services of the applicant. On the other hand, after acquiring the disability, if it is noticed that the applicant was not suitable for the post, which he was holding, he should be shifted from the said post to some other post with the same pay scale and service benefits.

14. Thereafter, the respondent no. 03 by considering all the medical certificates issued by the concerned Medical Board and also from the Police Hospital, Aurangabad has reconsidered whether the applicant can be reinstated in service by giving light duty and by order dated 21.09.2013 (Annexure A-17) reinstated the applicant. However, the period from 29.03.2011 till the date of joining of the applicant on duty after his reinstatement has been considered as extraordinary leave. The respondent no. 03 has not followed the provisions of section 47 of the Disabilities Act, 1995 in its letter & spirit and after realizing the mistake by referring to the provisions of section 47 of the Disabilities Act, 1995, reinstated the applicant in service by order dated 21.09.2013. The applicant has belatedly filed the application to reinstate him in service in terms of the provisions of section 47 of

the Disabilities Act, 1996. However, finally the respondent no. 03 has taken appropriate decision in accordance with law by order dated 21.09.2013.

15. In our considered opinion, the applicant should not suffer for the mistakes committed by the Department, for his invalidation on medical ground, thereby dispensing his services by ignoring the provisions of section 47 of the Disabilities Act, 1995 and reinstating him in service on 21.09.2013 belatedly by realizing their mistake. Thus, the said period from 29.03.2011 till the date of joining of the applicant on duty shall be treated as the period spent on duty and the applicant is entitled for the pay and allowances of the said period. The said period also shall be required to be considered for all purposes.

16. So far as the reversion of the applicant from the promotional post is concerned, the same is not concerned with the aforementioned medical invalidation, but is governed by the G.R. dated 30.06.2004. Admittedly, the applicant was appointed on the post of Police Constable by order dated 24.12.1991 issued by the respondent no. 03 from S.T. (Dhanwar) reserved category and he was issued a letter/notice dated 26.08.2009 for submission of caste validity certificate. The applicant has

submitted the caste validity certificate of N.T.(C) (Hatkar) instead of S.T. (Dhanwar). In terms of G.R. dated 30.06.2004, the applicant's service was protected for the reason that he was appointed on the post of Police Constable before 15.06.1995. However, the applicant was promoted to the post of Police Naik by order dated 31.08.2002 and thereafter he was again promoted on the post of Police Head Constable by order dated 24.07.2003 i.e. after the cut-off date "15.06.1995". In terms of G.R. dated 30.06.2004, such non-tribal persons cannot be dispensed with if he is appointed prior to 15.06.1995. However, his onwards seniority shall have to be considered from 15.06.1995. We thus find no fault in the orders passed by the respondents in respect of reversion of the applicant by following the provisions of the G.R. dated 30.06.2004.

17. It further appears that by following the provisions of section 47 of the Disabilities Act, 1995, the Department, as it appears from the orders passed by the respondent no. 03, has tried to accommodate the applicant on the light duty and by granting him various concessions. It further appears that even promotions are not denied to the applicant on the ground of his disability thereafter.

18. In view of above, this Original Application is required to be partly allowed by setting aside the order dated 21.09.2013 issued by the respondent no. 03 to the extent of treating the period w.e.f. 29.03.2011 to 21.09.2013 as extraordinary leave and the respondents are required to be directed to treat the said period as duty period and pay the salary and allowances of the said period to the applicant. We decline to interfere in the order dated 16.04.2010 issued by the respondent no. 03, thereby reverting the applicant from the post of Police Head Constable to Police Constable. Hence, the following order:-

**ORDER**

- (i) The Original Application No. 306/2023 is hereby partly allowed.
- (ii) The impugned order dated 21.09.2013 (Annexure A-17) passed by the respondent no. 03 to the extent of treating the period w.e.f. 29.03.2011 to 21.09.2013 as extraordinary leave is quashed and set aside.
- (iii) The respondents are directed to treat the period w.e.f. 29.03.2011 to 21.09.2013 as duty period and pay the salary and allowances of the said period to the applicant, within a period of 02 months from the date of this order.
- (iv) The prayer regarding quashing and setting aside the order dated 16.04.2010 (Annexure A-8 paper book page No. 39) passed



by the respondent no. 03, thereby reverting the applicant from the post of Police Head Constable to Police Constable, is hereby rejected.

(v) In the circumstances, there shall be no order as to costs.

(vi) The Original Application is accordingly disposed of.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 06.03.2025**