

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

ORIGINAL APPLICATION NO. 717 OF 2023

DISTRICT : JALGAON

Rajendra Dharmraj Patil,)
Age : 42 years, Occu. : Service as Police Naik,))
R/o Ram Narayan Nagar, B/H New Court,))
Pachora, Tq. Pachora, Dist. Jalgaon.))

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through : Additional Chief Secretary,)
Home Department, 2nd Floor, Main Building,))
Madam Kama Marg, Hutatma Rajgur))
Chowk, Mantralaya, Mumbai-400032.))
2. **The Director General of Police,**)
Maharashtra State, Shahid Bhagatsing)
Marg, Culaba, Mumbai-400001.))
3. **The Inspector General of Police,**)
Nashik Range, Dakshata Building,)
Gadkari Chowk, Nashik-422002.))
4. **The Superintendent of Police,**)
Mahatma Gandhi Road, Jilha Peth,)
Pratapnagar, Jalgaon-425001.))

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Counsel for Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **11.07.2024**

ORDER

1. Heard Shri K.B. Jadhav, learned counsel appearing for the applicant and Shri D.M. Hange, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the parties at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking quashing and setting aside impugned order dated 12.08.2020 passed by respondent No. 4, thereby treating the suspension period w.e.f. 08.11.2015 to 04.03.2016 as it is and consequential order dated 30.08.2022, thereby rejecting the review / revision application dated 18.08.2022 submitted by the applicant for review /revision of order dated 12.08.2020. The applicant is also seeking directions to the respondents to regularize / treat the suspension period w.e.f. 08.11.2015 to 04.03.2016 as duty period and grant him pay and allowance for the said period with all consequential benefits.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

- (i) The applicant was initially appointed as Police Constable by respondents on 08.03.2003 and posted at

Mumbai. Thereafter, the applicant came to be transferred in the office of respondent No. 4 by way of inter division /district transfer order dated 22.12.2007 and since then, he is working with the respondent No. 4. Thereafter, the applicant was promoted on the post of Police Naik.

(ii) It is the further case of the applicant that while working on the post of Police Constable with respondent No. 4, one Crime No. I-3005/2015 came to be registered against him for the offences punishable under Sections 7 & 15 of the Prevention of Corruption Act, 1988 at Chalisgaon Rural Police Station on 16.10.2015. The applicant came to be arrested in connection with the said crime and released on bail. Further in pursuance to the registration of crime against the applicant, the respondent No. 4 has issued suspension order dated 07.11.2015.

(iii) It is the further case of the applicant that on 04.03.2016, the respondent No. 4 has reinstated the applicant in service and posted him in Head Quarter, Jalgaon subject to Departmental Enquiry.

(iv) The applicant further contends that in connection with the aforesaid crime, the applicant was tried in the

Sessions Case bearing No. 03/2016 and by judgment and order dated 10.05.2018, the learned Sessions Court Jalgaon was pleased to acquit the applicant.

(v) It is the further case of the applicant that the enquiry was conducted against the applicant by respondent No. 4 and show cause notice of withholding of next increment for two years was proposed. Though the applicant has submitted reply to the said show cause notice, the respondent No. 4 has issued punishment order dated 03.02.2020, thereby imposing fine of Rs. 1000/- on the applicant and directed to deduct the said fine amount from his salary.

(vi) The applicant contends that by order dated 12.08.2020, the respondent No. 4 has treated suspension period of the applicant as it is and revision preferred by the applicant against the said order dated 12.08.2020 also came to be dismissed by the revisionary authority by order dated 30.08.2022. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the applicant came to be acquitted from the criminal case by the learned Sessions Court, Jalgaon and in the Departmental

Enquiry conducted against the applicant, the punishment of fine Rs. 1000/- was imposed on the applicant. Learned counsel submits that in addition to that the suspension period of the applicant was treated as it is. Learned counsel submits that as the applicant is acquitted from the criminal case, the respondent No. 4 cannot inflict the punishment on the applicant. The suspension period was required to be considered as duty period for all purposes. The respondent authorities have not followed the provisions of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment During Suspension, Dismissal and Removal) Rules, 1981 (for short 'Rules of 1981').

6. Learned counsel for the applicant submits that the Additional Director General of Police, Maharashtra State Mumbai has issued Circular dated 24.10.2007, which is still in force. It is specifically stated in the said Circular that in the Departmental Enquiry, if the punishment is inflicted to the extent of fine or warning, then treating the suspension period as it is would not be justified in terms of Rule 72 (3) of the Rules of 1981 and consequently, the entire period is required to be considered as period spent on duty for all the purposes. Learned counsel submits that present Original Application deserves to be allowed.

7. Learned counsel for the applicant in order to substantiate his contentions has placed his reliance on following case laws :-

- (i) Ram Lal Vs. State of Rajasthan and Ors. (Civil Appeal No. 7935/2023 (Arising out of SLP (C) No. 33423 of 2018)), decided on 04.12.2023.
- (ii) O.A. No. 57/2016 (Shri Vijay Somanappa Harke Vs. The Commandant, State Reserve Police Force, Pune & Ors.), dated 06.05.2016 (Principal Seat at Mumbai).

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 4 submits that the respondent authorities after following the due procedure and after giving full opportunity of hearing to the applicant passed the order dated 03.02.2020 imposing punishment on the applicant to pay fine of Rs. 1000/-. Learned P.O. submits that the respondent authorities have passed the order by following the procedure laid down in Rule 72(6) of the Rules of 1981. The order passed by respondent No. 4 is legal, proper and in accordance with the provisions of law. Learned P.O. submits that so far as inflicting punishment of fine of Rs. 1000/- is concerned, the applicant has never challenged the said order before the appellate authority. The applicant is therefore, not entitled for any relief as claimed in the present Original Application. Learned

P.O. submits that the present Original Application is liable to be dismissed.

9. Learned Presenting Officer on the basis of short affidavit filed on behalf of respondent Nos. 1 to 4 submits that the so far as Circular dated 24.10.2007 issued by the Additional Director General of Police, Mumbai is concerned, it is in force. There were serious allegations against the applicant and therefore, the applicant came to be suspended by the respondent authorities looking to the prima-facie case and serious allegations against him. Learned P.O. submits that the suspension order is justifiable and further the applicant has not been exonerated fully. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

10. On perusal of the annexures, it appears that the applicant was tried by the learned Sessions Court in connection with Special (ACB) Case No. 03/2016 for the offences punishable under Sections 7 and 15 of the Prevention of Corruption Act, 1988. The Special Court has taken points for consideration as to whether the applicant, being a public servant working as Police Constable demanded Rs. 500/- from the informant as a

gratification and attempted to accept gratification amount of Rs. 500/- other than legal remuneration from informant. In para No. 20, the learned Additional Sessions Judge, Jalgaon has observed that there is no sufficient evidence adduced by the prosecution to prove demand of bribe amount by the accused and accordingly, answered point Nos. 1 and 2 in negative and acquitted the applicant accused.

11. On perusal of the Annexure A-4 dated 03.02.2020, which is about the final order of inflicting punishment in the Departmental Enquiry for imposing minor punishment on the applicant. Summary of the default of the applicant is word to word similar with all the charges levelled against the applicant in the criminal case, for which he came to be acquitted. Further it is also recorded in the said order that the explanation tendered by the applicant to the show cause notice in connection with the said enquiry about the minor punishment is satisfactory. However, in the final order, the punishment of fine Rs. 1000/- is inflicted on the applicant. The applicant has not challenged the said order. Let it be as it is. However, further order dated 12.08.2020 (Annexure A-5) is important.

12. The aforesaid order dated 12.08.2020 is passed in terms of Rule 72(6) of the Rules of 1981 and the period of

suspension w.e.f. 08.11.2015 to 04.03.2016 was treated as it is.

In the context of the aforesaid order, Rule 72 of the Rules of 1981 is required to be reproduced here. Rule 72 of the Rules of 1981 reads as under :-

“72. Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty- 1. When a Government servant who has been suspended is reinstated or would have so reinstated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order:-

- a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and
- b) whether or not the said period shall be treated as a period spent on duty

2. Notwithstanding anything contained in rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not suspended, subject to adjustment in respect of subsistence allowance already paid.

3. Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that

the Government servant shall be paid of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

4. In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

5. In cases other than those falling under sub-rules(2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection within such period which in no case shall exceed, as may be specified in the notice.

6. Where suspension is revoked pending finalisation of the of the disciplinary or court proceedings, any order passed under sun-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case be.

7. In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note.- The order of the competent authority under preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of temporary Government servant: and*
- (b) leave of any kind in excess of five years in the case of permanent Government servant.*

8. The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

9. The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 68."

13. In the instant case, the applicant came to be acquitted in the criminal case with the findings recorded by the learned Special Court in Special (ACB) case No. 03/2016 that there is no evidence about the alleged demand of bribe against the applicant. In the backdrop of these findings, the suspension of the applicant was wholly unjustified. Further even accepting explanation submitted by the applicant as satisfactory to the show cause notice issued in the Departmental Enquiry for imposing minor punishment, the punishment was inflicted to the extent of fine Rs. 1000/- to be deducted from salary of the applicant. The allegations in the show cause notice of the said Departmental Enquiry and the criminal case are similar. In view of the same, the suspension of the applicant is wholly unjustified and as such, in terms of Rule 72(3) & (4) of the Rules of 1981, the applicant is entitled for full pay and allowances by treating the said period of suspension spent on duty for all the purposes.

14. In this context it is necessary to reproduce circular dated 24.10.2007 issued by the Additional Director General of Police, Maharashtra State, Mumbai, which is as under :-

“क्रमांक पोमसं/ 11 ओ/ २२/७/१०३/ २००४

मुंबई, दिनांक:- २४/१०/०७

वाचा :- या कार्यालये परिपत्रक क्र X/१६२८, दिनांक ०१/०२/१९९२ व अ.शा. परिपत्रक क्र. पोमसं/११/१६२८/निलंबन/१९९६, दि. २४/०४/१९९६.

विषय:- निलंबन....

परिपत्रक :-

महाराष्ट्र पोलीस नियमावली भाग १ मधील नियम ४४२ (१) मध्ये पोलीस अधिकारी / कर्मचारी हे कसुरदार आढळून आल्यास त्यांना कोणत्या परिस्थितीत निलंबित करावे याबाबतची मार्गदर्शक तत्वे देण्यात आलेली आहेत. या नियमानुसार कसुरी गंभीर स्वरूपाची असेल व प्रथमदर्शनी पुराव्यावरून प्रकरण सेवेतून काढून टाकणे व बडतर्फ करण्याजोगे असेल अथवा त्यास सेवेत ठेवल्याने तपासात अडचणी येतील अथवा हस्तक्षेप होईल याचा विचार करून सक्षम अधिका-यांनी निलंबनाचे आदेश काढले पाहिजेत. परंतु, असे निदर्शनास आले आहे की, काही पोलीस अधिकारी व कर्मचारी यांचेविरुद्धची कसुरी गंभीर स्वरूपाची नसतांना व प्रथमदर्शनी पुराव्यावरून प्रकरण सेवेतून काढून टाकणे अथवा बडतर्फ करण्याजोगे नसतांना सक्षम प्राधिका-यांनी त्यांना निलंबित केलेले आहे. मात्र विभागीय चौकशीमध्ये अशा कसुरदारांना "दंड" किंवा "सक्त ताकिद" अशी सौम्य स्वरूपाची शिक्षा देण्यात आली आहे. अशा प्रकरणी कसुरदार पोलीस अधिकारी व कर्मचारी यांचा निलंबन काळ नियमित करण्यास फारच अडचणी निर्माण होत आहेत. विभागीय चौकशीमध्ये "सक्त ताकिद" किंवा "दंड" अशा स्वरूपाची शिक्षा दिल्याने सहानिकच कसुरीतील त्यांचे निलंबन महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयेत्तर सेवा गाणि निलंबन, बडतफी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम १९८१ च्या नियम ७२ (३) मधील तरतुदीनुसार समर्थनिय ठरत नाही. परिणामी, कसुरदार अधिकारी / कर्मचारी यांचा निलंबनकाळ हा सर्व प्रयोजनार्थ कर्तव्यकाळ म्हणून नियमित करावा लागतो.

२. तरी, सर्व घटक प्रमुखांना विनंती आहे की, त्यांनी कसुरदार अधिकारी / कर्मचारी यांचेविरुद्धच्या कसुरीच्या स्वरूपाचा अभ्यास करूनच त्यांचेवर निलंबनाची कार्यवाही करावी.

Sd/-

(ओ. अेल. वर्मा)

अपर पोलीस महासंचालक (प्रशासन)

महाराष्ट्र राज्य, मुंबई.

प्रति,

सर्व पोलीस आयुक्त.

संचालक, महाराष्ट्र पोलीस अकादमी, नाशिक.

संचालक, पोलीस बिनतारी संदेश म.रा., पुणे.”

15. Even the Additional Director General of Police, Mumbai has considered that in the event of imposing minor punishment to the extent of fine or warning treating the suspension as it is, would not be justifiable.

16. Thus considering the entire aspect of the case, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The order dated 12.08.2020 (Annexure A-5) passed by respondent No. 4 thereby treating the suspension period w.e.f. 08.11.2015 to 04.03.2016 as it is and consequential order dated 30.08.2022, thereby rejecting the review / revision application, are hereby quashed and set aside.
- (ii) The respondents are hereby directed to regularize / treat the suspension period of the applicant w.e.f. 08.11.2015 to 04.03.2016 as duty period and grant him pay and allowance for the said period with all the consequential benefits.
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 11.07.2024

(Justice V.K. Jadhav)
Member (J)