

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 144 OF 2021**

**DISTRICT : THANE**

Smt Smita Sitaram Khaladkar            )  
Assistant Superintendent                )  
[Compulsory Retired],                 )  
R/o: 301, Ambika Tower,                )  
Tekdi Bungla, Panchpakhadi,         )  
Thane [W] 400 602.                     )...**Applicant**

**Versus**

1.    The State of Maharashtra         )  
      Through Addl. Chief Secretary,)  
      Home Department, Mantralaya,)  
      Mumbai 400 032.                 )  
2.    The Director General,            )  
      [Judicial and Technical],        )  
      Home Department,                )  
      18<sup>th</sup> floor, New Administrative )  
      Bldg, Opp. Mantralaya,            )  
      Mumbai 400 032.                 )  
3.    The Director,                     )  
      Forensic Science Laboratory,    )  
      M.S., Vidyanagari,                )  
      Hans Bhugra Marg,                )  
      Santacruz [E],                    )  
      Mumbai 400 098.                 )...**Respondents**

Shri U.V Bhosle, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)**  
**Mrs Medha Gadgil (Member) (A)**

**DATE : 08.06.2023**

### **J U D G M E N T**

1. The applicant prays that the Tribunal be pleased to quash and set aside the order dated 22.10.2019 and further the Respondents be directed to reinstate the applicant to the post of Assistant Superintendent with all consequential benefits

2. Learned counsel for the applicant submits that the applicant was appointed to Group-C post as a Clerk vide order dated 1.11.1993. The applicant submits that she was promoted from the post of Senior Clerk to the post of Assistant Superintendent vide order dated 18.11.2015 and posted at Aurangabad. Learned counsel for the applicant submits that although she was seniormost in the list of promotion, she was not given posting in Mumbai, but juniors to the applicant were given posting in Mumbai. Learned counsel for the applicant submits that the applicant joined the promotional post on 9.12.2015. The applicant submits that she proceeded on leave from 15.12.2015. The applicant submits that she has submitted her leave applications dated 21.12.2015, 20.3.2016 and 12.5.2016. She was issued memo and a preliminary enquiry was conducted against her. Learned counsel for the applicant submits that thereafter a charge sheet dated 28.12.2018 was issued to her and departmental enquiry was instituted against her for absence from

duty for 3 years and 8 months. The applicant was given 10 days' time to submit her reply. The applicant did not submit her reply. The Enquiry Officer was appointed on 2.1.2019. However, the enquiry was conducted on 26.2.2019 and in one day the enquiry was concluded. However, the applicant was not given any opportunity to defend herself. Learned counsel for the applicant further submitted that the copy of the written arguments of the Presenting Officer was not given and the enquiry was concluded. Learned counsel further submitted that the applicant had gone to Aurangabad for resuming duties on 21.8.2019, but she was not allowed to join. Learned counsel submitted that punishment order dated 22.10.2019, compulsorily retiring the applicant was passed. The applicant filed appeal against the said order. Her appeal was rejected on 22.12.2020. Learned counsel for the applicant submitted that the punishment is disproportionate to the charges.

3. Learned counsel for the applicant relied on the decision of the Hon'ble Supreme Court in the case of **STATE OF MADHYA PRADESH & ORS Vs. HAZARILAL, (2008) 3 SCC 273**.

4. Learned P.O relied on the affidavit in reply dated 14<sup>th</sup> September, 2021 filed by Rahul R. Pawar, Deputy Director in the office of Directorate of Forensic Science Laboratories, M.S, Mumbai and submitted that proper opportunity was given to the applicant.

5. In the case of Hazarilal (supra), the Government servant was a Peon appointed in a Middle School and he assaulted one person and so he was prosecuted and convicted by a Court under Sec 323 read with Section 34 of IPC for one month's simple imprisonment. But subsequently, in appeal sentence was reduced to fine of Rs. 500/- only. On account of conviction, his services were terminated by the Deputy Director, Vidisha. The said order was

challenged and the Hon'ble Supreme Court while dealing with the said case has held that the applicant was occupying lowest rank of the cadre and the act for which he was convicted does not involve moral turpitude. Therefore, the departmental penalty was excessive as compared to conduct for which the respondent was convicted and sentence imposed on him.

6. In the present case the applicant was working as Assistant Superintendent. The applicant has not committed any offence. However, it is not that only for the commission of offence of moral turpitude, a person can be removed. Discipline of a particular establishment is equally important. Absenteeism for a long period, without any reason and without any permission or sanction, amounts to a very serious misconduct. In order to condone the uninformed absenteeism, the administration is required to look into two aspects, the duration of the absenteeism and second the validity of the reason for the absenteeism. To do the work for which you are paid is a rule. There is principle that 'No Work - No Pay' and it is rooted in a basic requirement to follow the discipline of the office and that is regular attendance of the employee. No employee can remain absent without informing the authority especially when the advance technology of communication is available. The applicant remained absent on the ground that she was transferred and posted on promotion from Mumbai to Aurangabad. Transfer is an incidence of service and therefore, it is expected that every Government servant should join the place of posting wherever transferred, except where the transfer is illegal. It is not the case in the present matter. To remain present is a matter of administrative morality and violation of it amounts to grave misconduct. We also noticed that the applicant is throughout defensive and has blamed the administration for compulsorily retiring her without grave misconduct.

7. Under such circumstances, we find no merit in the Original Application and the same stands dismissed.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 08.06.2023**  
**Dictation taken by : A.K. Nair.**