

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.905 OF 2021**

Mr. Rajkumar Baburao Shriman	)	
Ex. Police Head Constable	)	
(Buckle No.231) attached to Sadar	)	
Bazar Police Station, Solapur City	)	
R/o. Block No.16, Ashok Chowk,	)	
Solapur City, Solapur	)	<b>....APPLICANT</b>

**VERSUS**

1)	The Commissioner of Police,	)	
	Police Commissionerate	)	
	Solapur City, having office at	)	
	New Administrative Building,	)	
	Gandhi Nagar, Solapur 3	)	
2)	The State of Maharashtra,	)	
	Through Additional Chief	)	
	Secretary, Home Department,	)	
	Having office at Mantralaya,	)	
	Mumbai.	)	

**...RESPONDENTS.**

Mr. Bhushan A. Bandiwadekar, learned Counsel for the Applicant.  
Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

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

**DATE** : **29.04.2024**

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

1. Applicant who was working a Police Head Constable in Sadar Bazar Police Station, Solapur challenges the Summary Dismissal order dated 16.09.2020 issued by the Respondent No.1, competent authority and thereafter the Appellate Authority order dated 02.08.2021 thereby confirming the Summary Dismissal order issued by Respondent no.1.

2. Applicant while working as Police Head Constable at Solapur protected many book ledger and gamblers who were conducting their business within the jurisdiction of the Police Station where the Applicant was working. It is alleged that he was also encouraging them by taking regular periodic bribes from those persons and further he is alleged for furnishing and circulating false news about one Police Officer in the newspaper and this is how he was responsible in lowering down the image of Police Department in the society. He misled the public. He allegedly had closed connection with the persons conducting illegal business and also Criminals. He also took disadvantage of his position and pressurized complainants. He did not wear his uniform when on duty and thus he was found indiscipline and dishonest person and unbecoming of police personnel. Therefore, he was summarily dismissed by order dated 16.09.2020. Thereafter, the Applicant filed Appeal before the State. The State Ministry, Home confirmed

the said dismissal and dismissed the appeal by order dated 02.08.2021. The Applicant thereafter filed the present O.A. on 15.11.2021 and prayed that the order of dismissal under Clause (2) of the proviso (b) of Article 311(2) of the Constitution be quashed and set aside.

3. Learned Counsel Mr. Bandiwadekar has submitted that the order of dismissal is without reasons justifying the summary dismissal. It appears from the order that the Applicant was removed from the service in public interest, but it is not contemplated under Clause (b) of second proviso of Article 311(2) of the Constitution. Learned Counsel has further submitted that in the order the reference is given of his previous 20 years of service i.e., during the period from 2001 till 2020. He has submitted that the Applicant's history is not to be taken into account. He has submitted that though the Applicant was suspended earlier the suspension was revoked and his suspension period was considered as duty period and he was also given increments. Learned Counsel has submitted that since the applicant was given regular increment so this history cannot be considered as a ground for summary dismissal of the applicant.

4. Learned Counsel has argued that by order dated 13.07.2020 and in the remarks it was mentioned that the said suspension was revoked subject to the result of the D.E. Learned Counsel has

pointed out the file noting dated 13.03.2020 which was produced and relied by him and considering this the suspension order was issued by the Commissioner of Police. Learned Counsel has also pointed out that noting dated 16.09.2000 (Exhibit-K) wherein the Commissioner of Police has opined that the applicant is undeserving and he cannot be kept in the service and he is to be summarily dismissed and thereafter the applicant was dismissed. Learned Counsel has submitted that after going through the noting and order of suspension it was clear that the Police could collect the evidence against him and also they wanted to initiate the Departmental Enquiry, but they did not do so. Learned Counsel has submitted that the Applicant would have been superannuated on 31.07.2022. Learned Counsel has pointed out that the Applicant was suspended on 17.03.2020 by the Commissioner of Police, Solapur in respect of the same alleged misconduct. Learned Counsel has relied on the judgment Hon'ble Supreme Court in the case of **Union of India and others Versus Ram Bahadur Yadav reported on (2022) 1 SCC 389**

5. Learned C.P.O. has submitted that in this matter Preliminary Enquiry was conducted by the ACP Mr. Kamlakar Takawale and he has submitted the report on 14.09.2020. Learned C.P.O. has pointed out that the witnesses have expressed that their names should not be revealed to the Applicant. She has further argued that the reasonable apprehension that these witnesses would not

come forward to give evidence/ statement against the applicant and therefore the order of dismissal under Clause (b) of second proviso of Article 311(2) of the Constitution was justified.

6. Learned Counsel for the Applicant has countered these arguments made by learned C.P.O. by submitting that the Applicant had earlier lodged the Criminal cases against those persons who are proposed witnesses, and therefore they had come forward to give statement against him.

7. After plain reading of Article 311 of the Constitution it shows that the allegations and the charges should be such that the competent authority should be satisfied that it is not reasonably practicable to hold such enquiry. Hence, whether it is not only reasonable to hold enquiry or not practical to hold enquiry, is not contemplated, but it should not reasonably practicable to hold such enquiry. The reasons, for satisfaction of the competent authority are required to be noted down in writing. The reasons mentioned in such orders should be clear to show that why it was not reasonably practicable to conduct the D.E. In the present case we find following two points :

- (i) The Commissioner of Police, Solapur himself suspended the applicant from the service in March, 2020 and when his suspension was revoked on 13.07.2020 in the order of revocation of suspension the remark was mentioned that this revocation of suspension is subject to outcome of the

Departmental Enquiry. Thus, at that stage, the higher authority wanted to initiate D.E. against the Applicant. However, suddenly after two months thereafter i.e. on 16.09.2020 the order of dismissal, by invoking the powers under Clause (b) of second proviso of Article 311(2) of the Constitution, was issued and the Applicant was dismissed.

(ii) By considering the allegations mentioned in the order against the Applicant, we are of the view that it is not the case where to conduct the D.E. was not reasonably practicable though learned C.P.O. has pointed out that in the preliminary enquiry the witnesses stated that whatever they have said should not be informed to the Applicant. Such apprehension of the witnesses alone does not form a good ground to do away Departmental Enquiry.

Considering the facts of the case, we are of the view that such apprehension in the case the Police Department is baseless and it was not the case of the Summary Dismissal where the Departmental Enquiry cannot be reasonably practical to conduct. Learned Counsel has further prayed for the consequential service benefits and for that purpose he relies on paragraph 16, 17, 18 of the judgment of **Ram Bahadur Yadav (supra)**.

*“16. The respondent was only a Head Constable during the relevant point of time and he was not in powerful position, so as to say that he would have influenced or threatened the witnesses, had the inquiry was conducted. The very fact that they have conducted confidential inquiry, falsifies the stand of the appellants that it was not reasonably practicable to hold an inquiry. The words ‘not reasonably practicable’ as used in the Rule, are to be understood in a manner that in a given*

*situation, ordinary and prudent man should come to conclusion that in such circumstances, it is not practicable. In the present case, there appears no valid reason to dispense with inquiry and to invoke Rule 161 of the Rules. We are in agreement with the view taken by the High Court. In the case of Sahadeo Singh & Others v. Union of India & Others<sup>1</sup>, this Court has held that in the facts and circumstances of the said case, it was not reasonably practicable to hold a fair inquiry, as such, it was held to be justifiable on the facts of the case. Whether it is practicable or not to hold an inquiry, is a matter to be considered with reference to the facts of each case and nature of charge, etc.*

*17. In the judgment in the case of Tarsem Singh v. State of Punjab & Others, this Court has categorically held that when the Authority is of the opinion that it is not reasonably practicable to hold inquiry, such finding shall be recorded on the subjective satisfaction by the authority, and same must be based on the objective criteria. In the aforesaid case, it is further held that 10 reasons for dispensing with the inquiry must be supported by material.*

*18. With regard to plea of the appellants for grant of back wages, in the case of Tarsem Singh, this Court has held that payment of back-wages would depend on result of the inquiry. In the present case on hand, by the time, the order came to be passed by the learned Single Judge, the respondent had retired from service on attaining the age of superannuation. In normal course, we would have permitted to hold inquiry, but keeping in mind that the respondent had retired from service even before the judgment was rendered by the learned Single Judge, we are not inclined to do so at this stage. Though, it is alleged that the respondent had conspired with the main accused for commission of theft of Non-Judicial Stamp Papers nearly worth of Rs.1 Crore, but not even a police complaint was filed for reasons best known to the appellants.”*

8. We set aside order of dismissal. Order of dismissal under Clause (b) of second proviso of the Article 311(2) of the Constitution is hereby set aside. Applicant has crossed the age of superannuation on 31.07.2022. Under such circumstances and considering the allegations, the Respondent-Department may take

decision to initiate the Departmental Enquiry against the Applicant.

**O R D E R**

- (A) Original Application is allowed.
- (B) The order of dismissal Clause (b) of second proviso of the Article 311(2) of the Constitution is hereby quashed and set aside.
- (C) Applicant is retired hence all his retiral benefits are to be released to him as per entitlement.
- (D) This order will not come in the way of the Respondent, if the Respondent wants to initiate the Departmental Enquiry against the Applicant in future.

Sd/-

**(Medha Gadgil)**  
**Member(A)**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**

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