

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.959/2020(D.B.)

Dipak Ghanashyam Nimone,
Aged about 35 years, R/o. Ward No.2,
Plot No.-C-31, New Koradi, Near N.D.C.C. Bank,
Koradi Colony, Nagpur- 441111.

Applicant.

Versus

- 1) State of Maharashtra,
Through it's Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai- 32.
- 2) The Commissioner of Police,
Civil Lines Nagpur.
- 3) The Office of Deputy Commissioner of Police,
Zone-V, Dixit Nagar, Nari Road,
Nagpur-44002.

Respondents

Shri M.H.Awode, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 12th August, 2024.

JUDGMENT

Heard Shri M.H.Awode, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under-

The applicant was appointed in service as Police Naik on 22.07.2004. He was posted at Police Station Koradi, Nagpur. The applicant proceeded on leave on 14.05.2020. The applicant had visited Tirodi, Balaghat, Madhya Pradesh for inspection and purchased of home decor material for the construction of house, with his 3 other friends. On 05.07.2020, the applicant was falsely implicated by Balaghat, Madhya Pradesh Police (M.P.) for alleged involvement of the applicant in Crime No.0260/2020 for the offence punishable under Section 394 r/w Section 34 of the Indian Penal Code. The applicant was released on bail by the Court. On 06.07.2020, the respondent no.3 issued impugned suspension order. On 08.07.02020, applicant received the suspension order while he was in custody in criminal case. On 12.10.2020, the respondent no.2 Commissioner of Police issued the impugned communication of dismissal order as per the provision of Article 311(2)(b) of

Constitution of India. Therefore, the applicant has filed the present O.A. for the following reliefs-

- i. *Quash and set aside the impugned termination/ dismissal from service order dated 12/10/2020 (ANNEXURE-A) passed by the respondent No.2- Commissioner of Police.*
- ii. *Quash and set aside the impugned Suspension from service order dated 06/07/2020 passed by the respondent No.3 - The Office of Deputy Commissioner of Police, Zone-V.*
- iii. *Direct the respondents to reinstate the applicant to his post along with the payment of all the benefits as was before the issuance of the impugned order dated 12/10/2020 (ANNEXURE-A).*
- iv. *Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant application.*

Interim Relief To Be Sought:

That, in view of the facts and circumstances the applicant is currently unemployed with no source of income, that his old aged parents and children were dependent upon his income for their livelihood and due to the illegal and arbitrary dismissal order the family of the applicant is facing great hardship and starvation. That with due dedication and without any blemish or any adverse remark against the applicant he has honestly rendered his best services to the department. That due to his completion of 15 years of continuous service he is also entitled for pension but because of dismissal from service he is deprived from the said benefits. That the applicant has crossed the age of 35 years and there is no possibility of gaining any other job for maintaining the family. That the impugned

dismissal order dated 12/10/2020 is perverse and illegal as the respondent number 2 without following due procedure of law has passed the said order. Therefore, the applicant has every chance of success in the original application and every possibility of reinstatement in the service. Prima Facie it appears on the face of record that the applicant was victimized and he has good prima facie case in his favour as there is no evidence against the applicant connecting him with the alleged crime. That the balance of convenience also lies in favour of the applicant as he has honestly rendered the services and without adopting established due procedure of law the respondent no. 2 has passed the impugned order. That in the event interim relief is granted in favour of the applicant then no prejudice or harm will be caused to the respondents but on the contrary if the applicant is not granted with the interim relief of reinstatement then great prejudice or harm will be caused to the applicant which cannot be compensated in any manner.

a. quash and set aside the impugned termination/ dismissal from service order dated 12/10/2020 passed by the respondent No. 2- Commissioner of Police as it being arbitrary, capricious, illegal and bad in law;

b. quash and set aside the impugned Suspension from service order dated 06/07/2020 passed by the respondent No. 3 - The Office of Deputy Commissioner of Police, Zone-V.

c. be further pleased to direct the respondent to reinstate the applicant to his post with full benefits as sustained at the time of dismissal.

d. grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant application.

e. be further pleased to ad-interim relief in terms of prayer clause

(a) (b) and (c) till the disposal of the application.

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant is prosecuted for the serious offence punishable under Section 394 of IPC. The witnesses will not come forward to depose against the applicant. Therefore, he is dismissed from service as per the provision of Article 311 (2)(b) of Constitution of India. Hence, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out Judgment of the Hon'ble High Court of Bombay at Goa in Writ Petition No.531/2007 with 201/2009 decided on 18.07.2009.

5. Article 311 of the Constitution of India is reproduced below-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not

be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

6. Recourse to Article 311(2)(b) is to be taken very rarely and not generally. We observed that in Police department they are issuing dismissal / termination order frequently by taking help of Article 311(2)(b) of Constitution of India. In the present O.A. no any show cause notice and explanation was called from the applicant. Now in the various Judgments of the Hon'ble Supreme Court the respondents / Government are directed to promote the applicant even during the pendency of Criminal case. Though, this is not a case of promotion, but the respondents have without taking any course of

departmental enquiry dismissed the applicant from service. Dismissal from service is a death of the employee in the employment and therefore, the opportunity should have been given to the employee while dismissing / terminating the applicant from the service. Therefore, Article 311 (2)(b) is very clear. As per Article 311(2)(b) of Constitution of India, the employee shall not be dismissed or terminated without holding any departmental enquiry only exception is Article 311(2)(b). The Hon'ble High Court in Writ Petition No.531 & 201/2009 in para 19 and 20 has held that "there is no evidence to show that there was any complaint by the witnesses. Therefore, the satisfaction cannot be arrived that witnesses will not come forward to deposed against the delinquent employee." Therefore, the Hon'ble High Court has quashed and set aside the impugned order which was passed under the provisions of Article 311(2)(b) of Constitution of India.

7. In the present O.A., the impugned order does not show that there was any attempt by the respondents to call any of the witnesses to record their submission. There is nothing on record to show that any of the witnesses made any grievances / complaints against the applicant. Without initiating any departmental enquiry, the respondents have dismissed the applicant from service. This is

not proper as per the provisions of Article 311 of Constitution of India. Hence, we pass the following order-

ORDER

1. The O.A. is allowed.
2. The impugned order dated 12.10.2020 is hereby quashed and set aside.
3. The respondents are directed to reinstate the applicant within a period of three months from the date of receipt of this order.
4. The respondents are at liberty to conduct the departmental enquiry, if they wish to do so within shortest period.
5. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/08/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 12/08/2024.
and pronounced on