

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.813 OF 2018

DISTRICT : SOLAPUR

Shri Dattatraya Ramkaran Badiwale,)
Age 36 years, Dismissed Police Constable,)
R/at House No.12, North Sadar Bazar,Solapur 413003)..Applicant

Versus

1. Government of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai -32)
2. Director General of Police, MS, Old Council Hall,)
S.B. Marg, Mumbai 400039)
3. Superintendent of Police,)
Solapur (Rural), District Solapur)..Respondents

Shri M.D. Lonkar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member (A)

DATE : 10th May, 2024

J U D G M E N T

1. The Applicant prays that this Tribunal be pleased to hold and declare that impugned Orders of Superintendent of Police, Solapur Rural dated 22.12.2017 and 15.1.2018 as illegal and bad in law and same be quashed and set aside. Further the period spend outside duty by the Applicant from 18.6.2010 up to 20.12.2016 be treated as period spent on duty and all back wages be directed to be paid to Applicant as per Order dated 1.12.2016 in OA No.196/2016.

2. Ld. Advocate stated that Applicant had earlier filed O.A. No.196/2016 challenging impugned Order dated 18.6.2010 of Superintendent of Police, Solapur Rural by which he was imposed punishment of 'Discharge from Service' while serving on the post of 'Police Constable' because of invalidation of his ST Caste Certificate. The Tribunal by Order dated 1.12.2016 in OA No.196/2016 had quashed and set aside the impugned Order dated 18.6.2010 of 'Discharge from Service' but the issue of back wages was left to be appropriately decided by Respondents which also includes 'DGP Maharashtra State'.

3. Ld. Advocate further stated that Superintendent of Police, Solapur Rural accordingly has passed Order dated 15.1.2018, wherein it is stated that the period of 'Discharge from Service' of Applicant from 18.6.2010 up to 20.12.2016 cannot be considered as period spent on duty by Applicant although he had been reinstated in service by Order dated 20.12.2016 of Superintendent of Police, Solapur Rural. However, Applicant was subsequently 'Dismissed from Service' under the provisions of Article 311(2)(a) of the 'Constitution of India' by Order dated 22.12.2017 of Superintendent of Police, Solapur Rural.

4. Ld. Advocate then mentioned that Regular Criminal Case No.1422/2010 was filed against Applicant in the Court of Chief Judicial

Magistrate, Solapur relating to Applicant having submitted forged documents for securing recruitment to the post of 'Police Constable' from S.T. Category. The Ld. Chief Judicial Magistrate, Solapur by Order dated 13.7.2015 convicted the Applicant and sentenced him to 'Rigorous Imprisonment' for 'One Year' and 'Fine' of Rs.2000/-. The Applicant challenged this Order dated 13.7.2015 by filing Criminal Appeal No.92/2015 in the Court of Ld. Sessions Judge, Solapur. The Ld. Sessions Judge, Solapur by Order dated 2.7.2018 has partly allowed the appeal and altered the sentence imposed of Applicant. He sentenced the Applicant to suffer 'Simple Imprisonment' for 'Five Days' and 'Fine' of Rs.10,000/-. Ld. Advocate for the Applicant submits that the said Order dated 2.7.2018 of Ld. Sessions Judge, Solapur has since been challenged by Applicant in the Hon'ble Bombay High Court in Criminal Revision Application No.406/2018 which now is 'Sub-Judice'.

5. The Superintendent of Police, Solapur Rural passed Order dated 15.1.2018 relating to 'Discharge from Service' of Applicant from 18.6.2010 to 20.12.2016 in observance of Order dated 1.12.2016 in OA No.196/2016 but concluded that period when Applicant was outside upon 'Discharge from Service' cannot be considered as having been spent on duty by Applicant. However, it is pertinent to note that the Order passed by Superintendent of Police, Solapur on 15.1.2018, makes no reference to directions given by Order dated 1.12.2016 in OA No.196/2016.

6. The directions given to Superintendent of Police, Solapur Rural by Order dated 1.12.2016 in OA No.196/2016 are as follows:

6. The facts are such that even as we give necessary directions, we also direct the reinstatement of the Applicant subject to ultimate outcome of the D.E. that the Respondents will have to hold in the matter. It is also clarified that the authorities shall take into consideration

in deciding the matter of the Applicant the G.R. dated 21.10.2015 in its proper perspective and also they should make sure that if similarly placed Police Constables have been reinstated there should be no hostile discrimination against the Applicant.

7. *The order dated 18.6.2010 impugned herein stands quashed and set aside, but with directions that the Applicant shall be reinstated to the post he had been discharged from within a period of four weeks from today. The Respondents shall hold a regular D.E. providing the Applicant effective opportunity of being heard hearing in the mind the guidelines laid down in the preceding paragraph.*

8. *Original Application is thus allowed to this extent with no order as to costs. The issue of back wages is naturally left to be appropriately decided by the Respondents. We have expressed no opinion thereabout."*

7. The directions were given in 'Para 6' and 'Para 7' of Order dated 1.12.2016 in OA No.196/2016 including holding of regular 'Departmental Enquiry' and deciding about payment of back wages as per direction in 'Para 8' were not acted upon with alacrity by Superintendent of Police, Solapur Rural. However, now Applicant stands 'Dismissed from Service' by Order dated 22.12.2017 of Superintendent of Police under 'Article 311(2)(a)' of 'Constitution of India'. Thus, the only issue which deserves to be re-considered by Superintendent of Police, Solapur Rural with an 'Open Mind' is whether the period spent outside duty by Applicant from 18.6.2010 up to 20.12.2016 could have at all been decided as not having been spent on duty especially when Order dated 18.2.2010 about his 'Discharge from Service' had been quashed and set aside by Order dated 1.12.2016 in OA No.196/2016. The impugned Order dated 15.1.2018 is rather cryptic and appears to have been passed just because dark shadow had been cast upon Applicant due to Order dated 22.12.2017 of

Superintendent of Police, Solapur Rural for his 'Dismissal from Service' under 'Article 311(2)(a)' of 'Constitution of India'.

8. The Superintendent of Police, Solapur Rural is therefore directed to pass 'Reasoned Order' upon giving 'Personal Hearing' to Applicant within 'Four Weeks' after diligently referring to Order dated 1.12.2016 in OA No.196/2016 and provisions of 'Rule 71' of the MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. The Original Application No.813 of 2018 with these directions to Superintendent of Police, Solapur Rural is thus disposed off. No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)
10.5.2024

Sd/-
(Mridula Bhatkar, J.)
Chairperson
10.5.2024

Dictation taken by: S.G. Jawalkar.