

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 591/2017(S.B.)**

Vitthal S/o Kalipuri Puri,
aged about 59 years, Occupation: Retired (Head Constable),
R/o Police Quarter, Police Head Quarter,
Amravati, Tah. & Dist. Amravati.

Applicant.

Versus

1. The State of Maharashtra,
through it's Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Director of General of Police,
Near Regal Cinema, Mumbai.
3. The Commissioner of Police,
Amravati Police Commissionerate,
Amravati, Tah. & Dist. Amravati.

Respondents

Shri S.N.Gaikwad, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated: - 18th November, 2024.

JUDGMENT

Heard Shri S.N.Gaikwad, learned counsel for the
applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicant in short is as under-

The applicant was appointed as a Police Constable in the year 1982. The respondents have absorbed him in regular service w.e.f. 18.03.1983. One criminal case was filed against the applicant, for the offence punishable under Section 85 (1)(2) and 66 (i)(b) of Bombay Prohibition Act. The applicant was discharged (dismissed) from service. Applicant was acquitted by the Chief Judicial Magistrate First Class, Amravati on 27.10.1983. Thereafter, the applicant was given reinstatement (reappointment). The respondents have considered the service of the applicant from the date of reinstatement (reappointment). The applicant had filed O.A.No.286/2016. The applicant was given liberty to file separate O.A. in respect of the rejection of regularisation period from 17.04.1983 to 28.04.1992. Therefore, the applicant has filed the present O.A. for direction to the respondents to regularise the service from 17.04.1983 to 28.04.1992. Therefore, the applicant has filed the present O.A. for the following reliefs –

- i. *allow the instant original application with costs;*
- ii. *be pleased to quash and set aside the impugned order dated 27.04.2017 (Annexure-A9) issued by the respondent No. 3 i.e. The commissioner of Police, Amravati;*
- iii. *further be pleased to treat the period from 17.04.1983 to 28.04.1992 as a duty period for all purpose and direct to release the arrear therefrom;*

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

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was found in possession of illicit liquor. He was also found misbehaving under the influence of liquor. Therefore, offence punishable under Sections 85 (1)(2) and 66 (i)(b) of Bombay Prohibition Act was registered against him. Applicant was discharged (dismissed) from service by the respondents after the registration of crime against him that order was not challenged by the respondents. After the acquittal by Chief Judicial Magistrate, Amravati, applicant was reappointed and therefore services of the applicant was counted from the date of reappointment. Applicant cannot claim that his earlier service shall be taken into consideration for the purpose of pensionary benefits. Hence, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out copy of service book and submitted that the order of applicant was reappointed and not fresh appointment. The learned counsel for the applicant has submitted that respondents have wrongly interpreted the reappointment. It is contended that the applicant was reappointed and not newly

appointed. Therefore, the applicant is claiming regularisation of his earlier service.

5. The learned P.O. has pointed out copy of the service book and order dated 27.04.2017. The learned counsel for the applicant has pointed out Judgment of the Hon'ble Bombay High Court, Bench at Auragabad in the case of **Baban Shriram Wafare Vs. Zilla Parishad, Ahmednagar 2002(3) Mh.L.J. 390.**

6. The learned P.O. has pointed out Judgment of the Hon'ble Bombay High Court in the case of **Mohan Moreswar Agashe Vs. Managing Director, Maharashtra State Electricity Distribution Company Ltd. and another 2017(3) Mh.L.J. 892.** The learned P.O. has submitted that the applicant was not reappointed, but his appointment was fresh and therefore his earlier service cannot be taken into consideration. The applicant had not worked for near about 10 years and therefore the applicant cannot claim service benefits on the principal of no work no pay. At last, learned P.O. has submitted that the applicant was not reappointed, but his appointment was fresh and therefore from the date of new appointment his service was counted for the purpose of pensionary benefits.

7. There is no dispute that applicant was discharged (dismissed) from service after the registration of crime for the

offence punishable under Sections 85 (1)(2) and 66 (i)(b) of Bombay Prohibition Act. Applicant was dismissed from service on 17.04.1983. Applicant was acquitted by Chief Judicial Magistrate, Amravati on 23.10.1983. The applicant was again appointed by the respondents after the order of acquittal, as per order dated 03.03.1992.

This Tribunal in O.A.No.286/2016 passed the following order on 27.04.2017. The said order is reproduced below-

3. *The learned P.O. placed on record one communication dated 24/03/2017. It is taken on record and marked 'X' for identification. From the said communication, it seems that the respondent has rejected the applicant's request for regularization of pay for the period from 17/04/1983 to 28/04/1992. The learned counsel for the applicant submits that since the State has taken decision not to regularize the said period, he may be allowed to file separate the O.A. for the said purpose and so also consequent action as prayed in clause (iii) above.*

4. *So far as for grant of pension / pensionary benefits is concerned, the learned counsel for the applicant submits even if said period is not regularized, the applicant is entitled to claim pension / pensionary benefits and therefore directions may be issued to the respondent authorities to consider his pension case within a time frame, without prejudice to his right of regularization and the application be disposed of accordingly. In view thereof, the following order-*

The O.A. stands disposed of with following directions:-

(i) *The respondent no.3 is directed to consider the case of the applicant for release of pensionary benefits which were withheld by the respondents, if the applicant is otherwise eligible for the pensionary benefits. Necessary decision In this regard be taken*

within three months from the date of receipt of this order. The applicant will be at liberty to file separate O.A. regarding the order of rejection of regularization period from 17/04/1983 to 28/04/1992. No order as to costs.

8. From the plain reading of the order in service book it appears that the applicant was appointed, but thereafter one word is in the service book stating that (पुर्ननियुक्ती) reinstatement the order is clarified by the respondents in the order dated 27.04.2017. It is stated that it was not a reappointment, but it was a fresh appointment and therefore applicant is not entitled for the earlier service benefits.

9. As per the Maharashtra Police Act, the respondents have discharged / dismissed the applicant. Thereafter, the applicant was reappointed as fresh candidate. The applicant had not challenged the said order dated 03.03.1992. Hence, the applicant cannot say that he was reappointed. In the earlier O.A., the applicant had challenged the same order. The learned counsel for the applicant has pointed out decision of the Hon'ble Bombay High Court in the case of **Baban Shriram Wafare Vs. Zilla Parishad, Ahmednagar 2002(3) Mh.L.J. 390**, the said decision is not applicable. In view of the recent decision of Bombay High Court in the case of **Mohan Moreshwar Agashe Vs. Managing Director, Maharashtra State Electricity**

Distribution Company Ltd. and another 2017(3) Mh.L.J. 892. the Hon'ble Bombay High Court has held that the earlier service cannot be taken into consideration because of the acquittal in view of the principal of no work no pay.

10. The applicant was not reappointed, but his appointment was fresh and therefore he cannot be claim the benefit of earlier service. Hence, the following order-

ORDER

The O.A. is dismissed with order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 18/11/2024.
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.
Judgment signed on : 18/11/2024.
Uploaded on : 18/11/2024.
