

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10657 OF 2010

Akbar Khan s/o Gafoor Khan Multani,
Age 51 years, Occupation Service,
Resident of Katkatgate, Aurangabad

Petitioner

V E R S U S

- 1 The State of Maharashtra through
Secretary, Home Department, Mantralaya
Mumbai - 400 032
- 2 The Director General of Police,
Maharashtra State, Mumbai
- 3 The Commissioner of Police, Aurangabad

Respondents

Smt. A.N. Ansari, Advocate for the petitioner
Mr. A.R. Kale, AGP for the respondents/State

**CORAM : A. V. NIRGUDE &
V. K. JADHAV, JJ.
DATE : 9th October, 2015**

ORAL JUDGMENT [Per A.V. Nirgude, J.] :

1. This petition takes exception to part of the impugned order dated 8th September, 2010, passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad on petitioner's Original Application No. 947 of 1999.

2. *The facts leading to this litigation, in short, can be stated as under:-*

The petitioner joined service in 1979. In 1994, he was promoted as Head Constable. The departmental enquiry was initiated against him in 1992. In 1994, the Enquiry Officer holding him partly guilty, submitted his report to the Disciplinary Authority, and pursuant to such report, Disciplinary Authority removed him from service. The petitioner went before the appellate authority and he succeeded in getting the quantum of punishment reduced to compulsory retirement. As against this, the petitioner again went to the Revisional Authority, but said authority dismissed the revision. As against this, he filed O.A. [Original Application] No.947 of 1999. Though the petitioner filed original application before the Tribunal, it appears that he filed one more revisional application before the State of Maharashtra, and in 2003, such application was favourably considered. The order of compulsory retirement was set aside and the State of Maharashtra ordered reinstatement of the petitioner on his basic salary for three years. But since the original application was pending, the State of Maharashtra thought it fit to make this order subject to outcome of Original Application.

3. On 24th May, 2005, the State of Maharashtra further passed a favourable order about payment of 50% of back wages for three years prior to 13th August, 2003. The order further gave continuity for

pensionary benefits. These were certainly favourable developments to the petitioner. But, since they were made subject to outcome of the O.A., he was under obligation to pursue the O.A. on merits. Accordingly, the learned counsel for the petitioner argued the case before Tribunal on merits and the Tribunal held that the enquiry report itself was bad in law and that the petitioner deserved reinstatement. Unconditionally the Tribunal did not take into account the development that took place during pendency of the application namely reinstatement of the petitioner in 2003 and order paying him back wages for limited period etc. On the contrary, the Tribunal passed following order:-

- "ii. It is directed that the applicant Shri Akbar Khan be reinstated in the police service, if he has not reached the age of superannuation on the date of this order. Shri Khan will also be required to be certified as Medically fit by a competent Health authority.
- iii. The principle of "no work no pay" will however prevail and the applicant Shri Akbar Khan will not be entitled to receive back-wages from the date of his compulsory retirement in 1995.
- iv. The applicant's prayer at clause "F" only to the extent of reinstatement in service on the

post of Head Constable is being allowed. There shall be no order in respect of all consequential benefits like continuity of service, arrears of pay etc. as prayed for by the applicant. In other words, the clock that stopped in 1995 will commence ticking from now.

O.A.No.947/99 is to this extent partly allowed."

4. Learned counsel for the petitioner rightly took exception to the said order. We also realized that this part of the order was passed because the learned Members of the Tribunal were probably oblivious of the development that took place after 1999. Learned counsel for the petitioner in fact conceded that her client did not expect anything but re-instatement in terms of the orders passed by the State Government after 1999. She further stated that her client does not pray for clean acquittal and re-instatement and back wages of the year 1995. She said, her client would be happy if the outcome of the litigation would protect her client in terms of the orders of the Government in the year 2003 and 2005. We find no reason why such relevant relief cannot be granted to her client. We accordingly hold that the above quoted part of the impugned order deserves to be set aside and O.A. stands disposed of in terms of

orders of the Government dated 15th July, 2003. In view of this, this Writ Petition stands disposed of.

Rule made absolute in terms of above order.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

SRM/9/10/15