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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4376 OF 2015

State of Maharashtra
(through the Commissioner of Police)
having office at Mumbai Police
Commissionerate, L. T. Marg,
Opp. Crawford Market, Fort,
Mumbai 400 001.

....Petitioner

Versus

1. Shri Tukaram Anantha Dere,
Occupation : Nil (Ex. Police Constable)
Buckle No. 26029, Special Branch,
No. 1, Mantralaya, Security Branch,
Mumbai, R/o. Shivaji Nagar,
Gowandi, Mumbai 43.
2. Shri Harishchandra Rabhaji Thorat,
Occupation : Nil (Ex. Police Constable),
Buckle No. 23743, Mantralaya, Security Branch,
Mumbai, R/o. Plot No. 131, Sector 6, Nerul,
Navi Mumbai.

...Respondents
(Orig. Applicants)

ALONG WITH
WRIT PETITION NO. 4375 OF 2015

Shri Gangadhar Harekrishna Mohanty,
Age 44 years, Occupation” Am Advocate,
Working as Legal Advisor to the
Commissioner of Police,
having office at Mumbai Police,
Commissionerate, L. T. marg, Opp. Crawford Market, Fort,
Mumbai 400 001.

... Petitioner
(Orig. Respondent)

Versus

1. Shri Tukaram Anantha Dere,
Occupation : Nil (Ex. Police Constable)
Buckle No. 26029, Special branch,

No. 1, Mantralaya, Security Branch,
Mumbai, R/o. Shivaji Nagar,
Gowandi, Mumbai 43.

2. Shri Harishchandra Rabhaji Thorat,
Occupation : Nil (Ex. Police Constable),
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Security Branch, Mumbai,
R/o. Plot No. 131, Sector 6, Nerul,
Navi Mumbai.

...Respondents
(Orig. Applicants)

.....

Mr. A. B. Vagyan, Government Pleader with Mr. C. P. Yadav, AGP for the
petitioners in both the petitions.

Mr. Tukaram Anantha Dere, Respondent No. 1 and Mr. Harischandra Rabhaji
Thorat, Respondent No. 2 present in-person.

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**CORAM : ANOOP V. MOHTA &
V. L. ACHLIYA, JJ.**

DATE : 24th JULY, 2015.

ORAL JUDGMENT (Per Anoop V. Mohta, J.) :-

. Rule. Rule made returnable forthwith. Heard finally by
consent of parties.

2. The Petitioner/State Government has challenged order
dated 4/3/2015, passed by Maharashtra Administrative Tribunal (MAT)
in O.A. No. 991 of 2014. Operative part of which reads as under :

- “(a) *Shri R. H. Maria is directed to personally pay cost of Rs. 20,000/-. The cost be deposited by Shri R. H. Maria from his personal Bank Account, by cheque to be drawn in the name of Registrar, Maharashtra Administrative Tribunal, Mumbai from his own account within six weeks from the date of receipt of the order.*
- (b) *Mr G. H. Mohanty to pay cost of Rs. 1,000/- by cheque from his own account in the name of Registrar, Maharashtra Administrative Tribunal, Mumbai within six weeks from the date of receipt of the order.*

- (c) *In view of the compliance of order dated 18.11.2014, passed in this Original Application, Original Application is disposed of.*
- (d) *Applicants shall be free to agitate challenge, if any, to the order passed by the Commissioner of Police, Mumbai, as provided by Rules and in accordance with law.”*

3. Both the respondents are present in the Court after due service. They submit that, in view of subsequent development that both the respondents are reinstated subject to outcome of Departmental Enquiry, they are not opposing the petitioner's prayers. Since both the petitions are arising out of the same order i.e. order dt. 4/3/2015 passed by MAT, the petitions are heard together to be disposed of by this common judgment.

4. We have heard the learned GP and further perused the impugned order dt 4/3/2015 as well as copy of affidavit dt. 4/3/2015 filed by Mr Rakesh Maria, Commissioner of Police, Mumbai in O.A. No. 991 of 2014.

5. The impugned order directing Mr Maria, Commissioner of Police to personally pay costs of Rs. 20,000/- appears to be passed for the reason that there was delay in deciding the representation pursuant to order passed by MAT. The order to pay costs of Rs. 1,000/- appears to be passed against Mr. Mohanty, the Law Officer attached to Commissioner of Police for being casual & reckless in filing affidavit of Shri. Maria. It appears from the record that on 18/11/2014, the Tribunal has directed the Commissioner of Police, Mumbai to decide representation filed by the respondents within eight weeks from the date of such order. Thereafter, matter was posted on 22/12/2014 and

17/1/2015 to report compliance. However, the report of compliance was not filed. Thereafter, on 26/2/2015, the Tribunal has passed order directing the Commissioner of Police, Mumbai to personally file an affidavit on the points as mentioned in the order dt. 26/2/2015, which basically refers to 'offer an explanation for not deciding the representation within the period prescribed in the order'. In compliance of the said order, Mr Maria, Commissioner of Police, Mumbai filed detailed explanation in the form of affidavit on 4/3/2015, explaining thereby as to why the order was not complied within the stipulated time. He has also offered unconditional apology for the delay caused in complying with the order. In the affidavit filed, besides explaining the reason for delay, the Commissioner of Police has also spell out the administrative steps taken on his behalf to avoid the recurrence of such incidence.

6. In our view, the language used in the affidavit no way reflects the casualness and lack of seriousness on the part of the Commissioner to comply with the order. So also the tenor and the language used in the affidavit filed no way reflects an attitude of dislike on the part of the Commissioner of Police, Mumbai as he was called upon to answer the delay in deciding the representation. In our view, there was no reason for the Tribunal to have taken such harsh view in the matter to saddle the costs on both the petitioners. Once the Tribunal has accepted the explanation offered by the Officers and disposed of the main application by granting liberty to both the applicants to challenge the order in accordance with law, the passing of such order against both the officers was not justified.

7. Even if we consider that there was delay on the part of the

Commissioner of Police, Mumbai in deciding the representation pursuant to order dt. 18/11/2014, still in the light of the explanation put forth in the form of affidavit dt. 4/3/2015 there was no intentional or deliberate delay on the part of the said authority. In the affidavit filed on 4/3/2015, the Commissioner of Police, Mumbai has put forth detailed explanation for the delay in deciding the representation. Para 2 to 8 of the affidavit dt. 4/3/2015 reads as under :

“2. At the outset, I say that I have high respect and regard for every order passed by the Hon'ble Tribunal and have tried to comply with the same within the stipulated time frame as directed by the Hon'ble Tribunal. I say that there is some delay in complying with the order passed by the Hon'ble Tribunal which is not intentional. Therefore, I am tendering my sincere and unconditional apology for the same.

3. I say that the order dtd. 18/11/2014 passed by this Hon'ble Tribunal in O.A. No. 991/2014 was received at my office on 24/11/2014 along with the O.A. of the applicant. The said order was not shown to me as the file was in the process of being put to me through proper channels. The movement of the file is as follows. When an Order of the Hon'ble Tribunal is conveyed to this office, it goes to inward department. After an inward number is given, file then goes to concerned clerk. Concerned clerk puts up a detailed noting before the Head Clerk. Then the file goes to Office Superintendent who in turn marks it to the Administrative Officer. Administrative Officer puts his remarks and puts up the file before Jt. Commissioner of Police, (Law & Order). Thereafter, Legal opinion is sought, if required from the Law Officer and the file goes to the Jt. C. P. (Law and Order). Thereafter the file comes to the undersigned. Then I take Legal opinion from my Legal Advisor, if required & final Order is passed.

4. I say that, it is true that there is no whisper of the order of this Hon'ble Tribunal dtd. 18/11/2014 passed in O.A. No. 991/2014 in para wise remarks submitted by this office.

5. I say that, there is a Procedural and administrative delay in complying with the order of this Hon'ble Tribunal dt. 18/11/2014. There is no intentional delay. The reasons why the Order is not complied with is explained as below.

The Applicants had by their Representation dated 19-3-14 addressed to the undersigned had prayed for reinstatement in view of the Judgment passed by the Hon'ble Supreme Court of India. They had marked and delivered the copy of the said Representation to the Home Department,. Government of Maharashtra. The Government of Maharashtra called for para wise comments on the representation dated 19/03/2014 of the applicants vide letter dated 27/8/14. My Office submitted para wise comments to the Government stating that the applicants were not entitled to be reinstated vide order dated 12/12/2014 Hereto annexed and marked Annexure "A" is the copy of the letter dated 12/12/2014 submitted by Joint Commissioner of Police (L&O) to the govt. of Maharashtra. In this regard, the matter is pending with the Home Dept. for decision. Therefore, the applicants were called for personal hearing on 10/02/2015 in the chamber office of Jt. Commissioner of Police (L&O). They were informed orally that their matter is pending for disposal before the Government.

6. *I must respectfully submit that a reliance can be placed on the judgement of the Hon'ble supreme Court of India in Criminal Appeal No. 524 of 2014, wherein the present applicants and the other parties have compounded the offence as per sections 8 and 320 of Cr.P.C. in the said judgement. Their Lordship Dr. B. S. Chauhan and J. Chelameswar have held that the natural consequences of their acquittal will not make them entitled for reinstatement or service benefits automatically, an argument which is full of substance. Hereto annexed and marked Annexure "B" is the copy of the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No. 524 of 2014.*

7. *I say that to avoid recurrence of such situation this Office shall monitor all the timely compliance in all court matters in which the Commissioner of Police is a respondent.*

8. *I never had any intention to wilfully disrespect or disobey the order of this Hon'ble Tribunal. I hold this Hon'ble Tribunal in high esteem. Therefore, the delay caused in complying with the order passed by this Tribunal be condoned. I tender my unconditional apology for non-compliance of the order within the stipulated period.*

8. Thus, the bare perusal of the affidavit filed by Commissioner of Police, Mumbai, reflects that the delay was not deliberate nor there was any act committed on the part of petitioners showing disrespect to the Tribunal or lack of seriousness in complying with the orders passed by the Tribunal. There was no reason for the Tribunal to have interpreted the contents of para Nos. 5, 7 and 8 of the affidavit to be treated as an act amounting to disrespect and deliberate disobedience of the order passed by the Tribunal. In our view, the language employed in the affidavit filed neither contemptuous, derogatory or anyway reflects the arrogant attitude on the part of Officers to show disrespect to order passed by the Tribunal. In fact, in the beginning of the affidavit i.e. in para 2 of the affidavit itself, the Officer has tendered unconditional apology for delay in deciding the representations. In the subsequent para, the Officer concerned has explained the reasons, which leads to delay in taking necessary steps within the stipulated period to decide representation. In the administrative setup the possibility of such delay being caused due to procedural aspect cannot be ruled out. Therefore, there was no reason for the Tribunal to have raised doubts as to genuineness as to explanation put forth by the Officer and treat the explanation as afterthought. Apart from this, there was a confusion created as to the authority to decide the representation made by the respondents. The respondents have made the representation to the Government as well as the Commissioner of Police. The Government has sought para wise remarks. In view of the dilemma as to who should decide the representation and further the power to decide such representation was delegated by Commissioner of Police to Jt. Commissioner of Police (Law and Order), the Commissioner of Police, Mumbai cannot be said

to have acted deliberately in not complying with the order passed by the Tribunal. In fact, the Commissioner of Police has not only tendered unconditional apology and explained the delay in taking necessary steps in the matter but also mentioned in para 7 of the affidavit that, to avoid the recurrence of such incidence/situation in future, his Office will monitor the timely compliance of court matters in which the Commissioner of Police is respondent. In para 8 of the affidavit, the said deponent has further mentioned that he had no intention to wilfully disrespect or disobey the order of Tribunal and expressed that he holds the Tribunal in high esteem. Thus, in the light of the affidavit filed by Commissioner of Police, there was no reason for the Tribunal to have picked up certain sentences from the affidavit and interpreted the same as an act amounting to disrespect to the order passed by the Tribunal or to undermine the authority of Tribunal.

9. It appears from the impugned order dt. 4/3/2015, that the Tribunal has passed order to impose the costs of Rs. 1,000/- as against Mr G. S. Mohanty, the Law Officer attached to the office of Commissioner of Police, Mumbai, for the reason that the Tribunal found him casual and reckless in drafting the affidavit of Mr Rakesh S. Maria, the Commissioner of Police, Mumbai. We are of the view that there is nothing in the affidavit to treat the said officer as casual and reckless in drafting and filing the affidavit. The omission in respect of order dt. 3/3/2015 passed pursuant to order dt. 18/11/2014 passed by Jt. Commissioner of Police (Law and Order) has been satisfactorily explained during the course of hearing by the learned Presenting Officer. The affidavit was finalized at the level of the Commissioner of Police and tendered in Court on 4/3/2015. The representation was decided on 3/3/2015 at the level of Jt. Commissioner of Police (Law and Order), the

authority empowered to decide such representation. Since the affidavit was filed on 4/3/2015 and on same day the Presenting Officer was informed of order passed by Jt. Commissioner of Police in compliance of order passed by the Tribunal, the copy of order was tendered before the court. There was no reason for the Tribunal to have not accepted the explanation put forth in the matter by the concerned officer.

10. Therefore, taking over all view of the matter and discussion made in the foregoing paras, we are of the view that the order passed by the Tribunal is wholly unjust, improper, unsustainable in law and perverse and same is liable to be quashed and set aside in exercise of writ jurisdiction. Accordingly, we set aside impugned order dated 4/3/2015 passed in O.A. No. 991/2014. Both the petitions are allowed in terms of prayer clauses “A” and “B” of the petitions with no order as to costs.

11. Rule made absolute in aforesaid terms.

[V. L. ACHLIYA, J.]

[ANOOP V. MOHTA, J.]