

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 895 OF 2015

Shri Shyam Pundalim Gawade ... Petitioner

V e r s u s

1. The Police Department,
Through the Superintendent of Police
and another ... Respondents

Mr. Anoop Atchut Gaoker, Advocate under Legal Aid Services.

Mr. S. Dhargalkar, Addl. Government Advocate for the Respondents.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Date : **17th February, 2016**

ORAL ORDER (Per F. M. Reis, J.)

Heard Shri Anup Gaoker, learned Counsel appearing for the Petitioner
and Shri Dhargalkar, learned Addl. Government Advocate appearing for the
Respondents.

2. The above Petition seeks for the following reliefs :

(A) The Police Department may be specifically
directed

(a) To set aside the cover-up operation to give equal
protection of law to the victims of the cover-up
operation the two Police Constables Prabhakar Naik
and Shyam Gawade of Vasco Police Station,
Therefore;

(b) To reinstate them into service with all consequential benefits from the date of their suspension, therefore;

(c) To give them promotions as Head Constables, Assistant Sub Inspector and/or Police Sub Inspector as case may from due date, therefore;

(d) To pay them arrears of their regular monthly pay, regular increments, compensatory pays, weekly off pays and other applicable pay and allowances. therefore;

(e) To pay them interest on total amounts payable⁴ to them, at the rate of interest applicable to provident funds account at the respective year, and

(f) to place the matter of the cover-up operation before the Home Ministry and after making provision for ready made availability of documentary evidence before Home Ministry and then;

(B) The Home Ministry may be specifically directed: to take second look into the matter, therefore to institute:

(a) A Judicial Proceeding against all the accused persons of cover-up operation for the serious cognizable offences committed by them as defined and punishable under Indian Penal Code and

(b) A quasi judicial proceedings against all the Government Servant Members of the cover-up operation for the serious criminal misconducts and

(c) A quasi judicial proceeding against A. K. Teli for committing serious misconducts.

(d) to withdraw promotions, rewards, good service tickets issued to the Government Servants members of the cover-up operation.

(e) to recover the amounts paid to the Government members of the cover-up operation as regular monthly pay and allowances, other allowances from the officers, authorities of the Government who mislead, prejudiced, interfered with the administrative justice and take appropriate action against them.

(C) Invoking the ruling of Honorable Supreme Court of India in Sebastiao M. Hongary vs. Union of India AIR 1084 SC 1026 Exemplary Costs and provisional compensation may be granted.

(D) To place the detail report of the implementation of the direction along with the copies of all the proceedings before the Court within the period of 15 days with the copy to the Petitioner.

(E) To pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.

3. Mr. Gaoker, learned Counsel appearing for the Petitioner under Legal Aid Scheme, has vehemently argued that the entire proceedings of the disciplinary inquiry initiated against the Petitioner stands vitiated as this Court whilst examining a PIL Writ Petition no. 379 of 2000 has observed that the whole exercise smacks of malafides and, as such, directed the Government to hold an inquiry. Learned

Counsel further pointed out that these observations itself would justify the re-opening of the issues and direct the State Government for reinstatement and other reliefs. Learned Counsel further submits that the subsequent inquiry conducted by the Deputy Superintendent of Police is only a cover-up exercise and has no basis in law. Learned Counsel further submits that the observations of this Court in the PIL WP no. 379 of 2000 clearly suggests that the Petitioner was innocent and, as such, the Order passed by the Deputy Superintendent of Police be quashed and set aside.

4. On the other hand, Shri Dhargalkar, learned Addl. Government Advocate appearing for the Respondents, has strenuously brought to our notice that pursuant to the directions of this Court in the PIL WP no. 379 of 2000, an inquiry was held by the Deputy Superintendent of Police and a report has been submitted which is at page no. 26. Learned Addl. Government Advocate has also brought to our notice the conclusion at page 39. Learned Addl. Government Advocate further submits that the Disciplinary Authority held in the said report that the Petitioner and others had acted on their personal behalf whilst committing the subject defaults. Learned Addl. Government Advocate further pointed out that after such report was submitted, the PILWP no. 379 of 2000 came to be disposed of by observing that the State Government may take further action in accordance with law. Learned Addl. Government Advocate further pointed out that as far as Departmental inquiry is concerned, the Order has been passed on 20.02.2009. Learned Addl. Government Advocate has also brought to our notice the observations of this Court whilst disposing of the Contempt Petition no. 4 of 2002 which clearly points out that the Petitioner has been unnecessarily approaching the

Court on frivolous grounds. Learned Addl. Government Advocate as such submits that the Petition be rejected.

5. We have considered the submissions of the learned Counsel and we have also gone through the records. Pursuant to the directions issued by this Court in PIL Writ Petition no. 379 of 2000, a report was submitted by the Deputy Superintendent of Police which is placed on record. On perusal of the said report, the conclusions at page 39 reads thus :

“Conclusion :

From the above discussion it can be concluded that ex-HC Ramesh Naik, ex- PC Prabhakar Naik, and ex-PC Sham P, Gawade acted on their own in the extortion process and they pocketed the amount themselves. The then PI A. K. Teli was not involved in the episode."

6. Thereafter, the report was placed before this Court in the PILWP no. 379 of 2000. The said report was accepted while disposing of the said Writ Petition and there were also directions to initiate departmental proceedings against the persons involved in such action. Accordingly, proceedings were initiated which culminated in the Order dated 20.02.2009. As such, we find that there is no material on record to justify the relief sought by the Petitioner herein.

7. Apart from that, whilst disposing of the Contempt Petition no. 4 of 2002, by Order dated 01.08.2002, this Court has observed at Para nos. 7 and 10 thus :

“7. The Petitioner was dismissed from service after holding a Departmental Enquiry. The dismissal was confirmed when his Writ Petition came to be dismissed. The Petition before the Supreme Court also came to be dismissed. In Contempt Petition, the jurisdiction of the Court to grant relief is extremely limited. The Court cannot travel beyond the scope of its jurisdiction. A perusal of the Order of the Division Bench dated 13th December, 2000 would show that a Division Bench had not directed that the Petitioner be treated as under suspension or subsistence allowance be paid to him or that the Petitioner be reinstated in service. In fact, the dismissal of the Petitioner stands confirmed in view of the dismissal of his Writ Petition in the High Court and the dismissal of the Special Leave Petition before the Apex Court. Therefore, the submissions urged by the Petitioner at 'A' cannot be said to be a wilful default committed by the Respondents in not following the directions issued by the Court. At 'B', the Petitioner has urged that the Respondents have not taken any action against the persons who have falsely involved him in this Court. It is needless to mention that no directions of this nature were at all issued by the Division Bench while entertaining PIL Writ Petition no. 379 of 2000. Similarly, at 'C', the Petitioner has stated that he has filed this Petition for enforcement of his Fundamental Rights under Articles 14, 19 and 21 of the Constitution of India.

10. I have perused the original record which was placed before me by the learned Advocate General appearing for the Respondents and I find that the Government and the Home Ministry have complied

with the directions issued by the Division Bench of this Court in its Order dated 13th December, 2000, in letter and spirit and there is no breach whatsoever."

8. Taking note of the said observations and considering the material placed on record by the Respondents as the dismissal of the Petition has been upheld by the Hon'ble Supreme Court, we find that the Petitioner is not entitled for any relief in exercise of the jurisdiction under Article 226 of the Constitution of India by reopening the issues which have been finally decided..

9. For the aforesaid reasons, the Petition stands rejected.

K. L. WADANE, J.

F. M. REIS, J.

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