

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4212 OF 2015**

Amit Tukaram Alhat .. Petitioner
versus
The State of Maharashtra & Ors. .. Respondents

Mr. S. S. Kanetkar for petitioner.
Mr. C. P. Yadav – AGP for State.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.**

DATE : 11 MARCH 2016

P.C.:

1] The challenge in this petition is to the order dated 15 September 2014 made by the Maharashtra Administrative Tribunal (MAT) dismissing petitioner's original application no. 37 of 2014. The petitioner, in original application no. 37 of 2014, had challenged his removal from service as cleaner in the motor transport section of the police department on the ground of unauthorized absence, ranging over considerable periods of time.

2] Mr. Kanetkar, learned counsel for the petitioner has submitted that though, the petitioner had admitted the factum of absence, the petitioner had furnished explanation to the effect that he was unwell and this explanation has not been considered, both by the authorities as well as the MAT. On this ground, Mr. Kanetkar submitted that the impugned orders warrant interference.

3] We have considered the submissions made by the learned counsel for the parties, perused the record and we find that there is no case made out to interfere with the impugned orders in exercise of our extra ordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India.

4] In this case, the petitioner, has admittedly remained absent for the following periods:

- | | | |
|-----|-------------------------------|----------|
| (A) | From 17.02.2006 to 02.01.2007 | 320 Days |
| (B) | From 22.02.2007 to 02.03.2007 | 09 Days |
| (C) | From 09.03.2007 to 24.04.2007 | 46 Days |
| (D) | From 14.05.2007 to 08.10.2008 | 514 Days |

5] Before the MRT, the petitioner had contended that he had made attempts to report for duty but was not permitted to do so by the respondents. The MAT, upon perusal of the memo of appeal, has rightly concluded that such a ground finds no place in the memo of appeal and further, there is no record of the petitioner having ever raised such a ground even in the course of departmental inquiry held against him. The MAT is right in observing that this ground is only in the nature of an after thought.

6] The MAT, has recorded that the petitioner has made a statement that he was working as a driver on casual basis, during the period between 2006 to 2008 and this is how, the petitioner managed to survive. As noted earlier, the record indicates that for the period between 2006 and 2008, the petitioner has remained absent for over 889 days. The record further reveals that there was no valid explanation furnished by the petitioner. The petitioner did not even full heartedly participated in departmental inquiry held against him or in

appeal instituted by him. From all this, it is quite apparent that the petitioner was really not interested in his service and was only interested in delaying the proceedings, so that he can continue to reside in the government accommodation provided to police personnel. The MAT has recorded that the petitioner did not even immediately approach the MAT with his original application, even though, his appeal was dismissed on 11 July 2013. The petitioner instituted the original application only after he was given notice to vacate the accommodation on 30 November 2013.

7] Mr. Kanetkar then submitted that the petitioner, being a class IV employee recruited as a cleaner (civilian) in the police department, was not governed by the provisions of Bombay Police Act or the Rules made thereunder but was governed by the Maharashtra Civil Services Rules. At the behest of the petitioner, and considering the conduct of the petitioner, there is really no necessity to decide this technical objection belatedly raised. In any case, in the affidavit filed on behalf of the respondents it is clarified that the Deputy Commissioner of Police is the appointing authority as well as disciplinary authority in so far as the petitioner is concerned. Therefore, even if, the case of the petitioner were to be considered under the Maharashtra Civil Services Rules, the same would make no difference. Further, the affidavit in reply also makes reference to circular dated 6 June 2002, by which, powers in relation to imposition of penalty have been delegated to the Deputy Commissioner of Police. For all these reasons, we see no merit in this belated and technical objection raised by and on behalf of the petitioner.

8] For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)

chandka