

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2277 OF 2016**

The State of Maharashtra and ors. .. Petitioners.
vs.
Santosh H. Mhashilkar .. Respondent.

Mr. P.G. Sawant, AGP for the State-Petitioners.
Mr. Gaurav Parkar for the Respondent.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.
DATE : 7 MARCH 2016**

P.C.:

1] The petitioners, i.e., State of Maharashtra, challenge the judgment and order dated 6 July 2015 made by the Maharashtra Administrative Tribunal, Mumbai (MAT), directing the reinstatement of the respondent-cobbler in the office of Superintendent of Police Alibaug. The petitioners-State had in fact instituted review petition before the MAT, which has since been dismissed by the judgment and order dated 22 September 2015, which order is also challenged in the present petition. The two orders, shall hereinafter be referred to as impugned judgments and orders.

2] Mr. P.G. Sawant, learned AGP for the petitioners-state, has contended that the respondent was prosecuted for a serious charge involving moral turpitude and therefore, the petitioners-State was justified in dismissing the respondent without holding any enquiry or complying with the principles of natural justice and fair play. Mr. Sawant also submitted that the subsequent acquittal of the respondent was not an honorable one, but only result of benefit of doubt. Finally, Mr. Sawant contended that upon termination of services of the respondent, vacancy was filled in by appointment of another cobbler and presently, there is no vacancy in the office of Superintendent of Police, Alibaug. For all these reasons, Mr. Sawant submitted that the impugned judgments and orders made by the MAT warrant interference under Articles 226 and 227 of the Constitution of India.

3] Mr. Gaurav Parkar, learned counsel for the respondent, submitted that a false case was filed against the respondent by his in-laws and upon trial, the respondent has been honorably acquitted. Mr. Parkar submitted that the respondent had clearly disclosed the true and correct facts in his attestation

form and the State was not at all justified in dismissing the respondent, without minimum compliance with principles of natural justice and fair play. Mr. Parkar submitted that the MAT upon consideration of all the relevant aspects has granted the respondent relief of reinstatement, though, there is no reference made to award of any backwages. In pursuance of the impugned judgments and orders, Mr. Parkar submits that the respondent has already been reinstated, but the respondent is not in receipt of salary and other benefits on the grounds of pendency of the present petition. Mr. Parkar therefore, submitted that the present petition may not be entertained.

4] Having considered the submissions of the learned counsel for the parties and perused the record, we are satisfied that this is not a case which warrants interference with the impugned judgments and orders.

5] The MAT has rightly noted that the respondent, had made all true and correct disclosures in his attestation form, at the stage of his appointment. In the attestation form, the respondent

had furnished details with regard to pending prosecution as also the circumstance that the respondent had been released on bail. Thus, this is not a case of suppression of any material particulars in the context of securing appointment in government service. The mere circumstance that the prosecution is pending, is not a ground for denial of employment in each case. In the present case, the State, after it was duly apprised of the position with regard to pending prosecution, nevertheless, appointed the respondent as a Cobbler in the office of Superintendent of Police at Alibaug.

6] After a period of four months, without holding any enquiry or even with minimum compliance with principle of natural justice and fair play, the services of the respondent came to be terminated by order dated 17 November 2008. Thereafter, the Sessions Judge, by judgment and order dated 13 April 2012 has acquitted the respondent by observing that the prosecution has miserably failed to bring on record any material to link the respondent with the offence of abatement to commit suicide. The learned AGP is therefore, not right in his submission that the respondent was acquitted by extending him the benefit of doubt.

The MAT, in the impugned judgments and orders, has rightly relied upon the principles set out in the G.R. dated 13 June 1988, which provides that a candidate against whom the prosecution is pending, can be appointed in government service and, if convicted of an offence involving moral turpitude, disciplinary proceedings should be adopted against him. In this case, the respondent was appointed despite disclosures with regard to pending prosecution. Thereafter, the respondent has been acquitted. In such circumstances, the MAT rightly interfered with the termination order and directed the reinstatement of the respondent.

7] The circumstance that some other Cobbler was appointed after termination of the respondent is not a ground to deny the respondent relief, once it is held that the termination of respondent's services were neither legal nor proper. In this case, there was neither any enquiry held nor was there even minimum compliance with principles of natural justice and fair play before termination of the respondent's services. Ultimately, the respondent has been acquitted by the Sessions Judge. There is no jurisdictional error or any illegality in the making of the impugned

judgments and orders by the MAT. There is accordingly, no case made out to interfere with the impugned judgments and orders.

8] In pursuance of the impugned judgments and orders, the respondent had already been reinstated. However, the respondent is not in receipt of any benefits like salary etc. on account of pendency of this petition, even though, there was no interim relief granted by this Court. Now that this petition is being dismissed, the petitioners-State is directed to award and start awarding such benefits to respondent within a period of four weeks from today.

9] This petition is, accordingly, dismissed. There shall however, be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)