

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4540 OF 2016

[Ganesh s/o Pandurang Tayade .vs. The District Superintendent of Police, Buldhana]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Bharat Kulkarni, Advocate for the petitioner,
Ms. Tajwar Khan, Assistant Government Pleader for the respondent.

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CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : DECEMBER 23, 2016.

By this writ petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, dated 28.7.2015 in so far as it refuses to grant full back wages to the petitioner and directs his reinstatement with 50% back wages.

While the petitioner was working as a Constable with the respondent, an enquiry was initiated against the petitioner on the ground that the conduct of the petitioner was unbecoming of a member of the police force, inasmuch as he was behaving arrogantly with his landlord and also torturing him. The charges levelled against the petitioner were proved in the departmental enquiry and the petitioner was removed from service. In the departmental appeal, the order was modified and the petitioner was compulsorily retired from service. The petitioner challenged the order before the Maharashtra Administrative Tribunal. The Maharashtra Administrative Tribunal set aside the order of compulsory retirement and directed the respondent to reinstate the petitioner in service with continuity of service and 50% back-wages. The petitioner has challenged the order, as the Tribunal has not granted 100% back wages to the petitioner.

On a perusal of the original application and the impugned order, it appears that the petitioner cannot seek 100% back wages in the circumstances of the case. Though the Tribunal has set aside the order imposing the penalty of compulsory retirement, the petitioner has admittedly not worked during the period from the date of the imposition of penalty, till the Maharashtra Administrative Tribunal passed the order of reinstatement of the petitioner. By applying the principle of 'no work no pay', the petitioner may not have received any back wages, but since the Tribunal was of the view that the punishment was harsh and the charge should not have been levelled against the petitioner, the Tribunal rightly granted 50% back wages to the petitioner. Though the petitioner had challenged the order of compulsory retirement in the original application, no specific prayer was made by the petitioner for grant of back wages or the salary for the period during which he did not work. Considering the fact that a specific prayer was not made, the petitioner may not have been entitled to back wages, but the Tribunal, after taking a lenient view in the matter, appears to have granted 50% back wages to the petitioner. Merely because the petitioner was not gainfully employed for the period during which he was out of service, it cannot be said that the petitioner would be entitled to 100% back wages when admittedly he has not worked for a considerable period.

Since there is no error in the order of the Tribunal, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE