

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.495 OF 2009

Anil s/o Kailas Pawar,
Age : 41 years, occup. Service,
R/o Rampati Chowik, Dhule,
Dist. Dhule.

.. Petitioners

versus

1. The State of Maharashtra,
through Secretary, Home Dett.,
Mantralaya, Mumbai.
2. The Director General of Police,
Maharashtra State, Mumbai
3. The Inspector General of Police,
Nasik Region, Nasik.
4. The Superintendent of Police,
Dhule, Dist. Dhule

.. Respondents

Mr. B. R. Waramaa, Advocate for petitioners
Mr. Shashibhushan P. Deshmukh, Assistant
Government Pleader for respondents

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 10th October, 2017

JUDGMENT (PER: SUNIL P. DESHMUKH, J.)

Aggrieved by order dated 16-04-2008 passed by the
Maharashtra Administrative Tribunal, Aurangabad Bench in
Original Application No. 841 of 2006, dismissing petitioner's

request to treat his suspension period from 22-07-2000 to 05-10-2001 as duty period and to quash and set aside the order of his suspension dated 06-10-2005 passed by respondent no. 4 – Superintendent of Police, Dhule declining petitioner's request to regularize aforesaid period of suspension as duty period, petitioner is before this court.

2. Petitioner had joined services as police constable and was then working under the control of Superintendent of Police, Dhule. A criminal case had been registered against him initially alleging him having committed offences punishable under sections 419, 420 and 384 of the Indian Penal Code, however, subsequently he was alleged to have committed offences punishable under sections 452, 384, 323, 504 and 506 of the Indian Penal Code. In view of the same, petitioner had been suspended with effect from 22-07-2000. A trial was conducted against him under regular criminal case no. 42 of 2001 and he was acquitted under judgment and order dated 28-08-2001 by the Chief Judicial Magistrate, Dhule, of charges levelled against him

3. Thereafter, petitioner's services had been restored bringing to an end his suspension. The petitioner had,

thereupon in March, 2005, requested the Superintendent of Police, Dhule to treat his suspension period from 22-07-2000 to 08-10-2001 as duty period in view of his acquittal from criminal case.

4. However, the petitioner had been issued in July, 2005 a show cause notice calling for his explanation as to why his suspension period be not treated as suspension only. To the show cause notice, petitioner had replied albeit, it is contended by learned Counsel for the petitioner that show cause notice was not justified. Learned Counsel additionally submits that even appeal filed against petitioner's acquittal had been dismissed, in the meanwhile. He further purports to contend that there has been no application of mind to the explanation tendered by the petitioner to the show cause notice as save and except observing that explanation is not satisfactory the matter has not been dealt with.

5. He further submits that the Maharashtra Administrative Tribunal instead of dealing with the merits of the case has drifted in the region of conjectures and surmises which has no connection or relevance whatsoever to the facts of present case and had also been carried away

by the consideration that discretion had been vested in the disciplinary authority. He submits that the Tribunal was expected to look at the factual position objectively which it did not and as such the Tribunal has faltered in its function and obligation and has rendered the decision as submitted on conjectures and surmises.

6. Learned counsel for the petitioner in support of his submissions places reliance on a decision of Division Bench of this court dated 23-08-2017 in writ petition no. 3821 of 2007. He submits, the Division Bench, relying on judgment of the Supreme Court in the case of *Brahma Chandra vs. Union of India, 1984 (2) SCC 433*, had allowed said writ petition.

7. Countering the aforesaid submissions, learned Assistant Government Pleader appearing on behalf of the respondents submits that mere acquittal in criminal case would not *ipso facto* render the suspension unjustified. Period of suspension can be treated 'as such'. The tribunal has considered rule 72 of the Maharashtra Civil Services (Pension) Rules.

8. We have perused order passed on 06-10-2005 by the Superintendent of Police, declining to treat suspension period as duty period. The same tersely refers to that the explanation given by the petitioner is not satisfactory. The criminal court appears to have found evidence of the complainant to be shaky and contradictory to his complaint. The story of complainant's witnesses no. 1 and 2 had not been found to be natural and worthy to be believed. Material witnesses were kept behind for the reasons best known to the investigating officer. Besides, there is delay in lodging complaint and the delay has not been properly explained. Further, the criminal court has considered that the investigation had not been fair. The court has found that the prosecution has not proved case against accused – petitioner herein. It appears that even no departmental enquiry had been initiated against the petitioner and in the circumstances, as observed by the Division Bench in its' order in writ petition no. 3821 of 2007, the observations of the Apex Court in the case of *Brahma Chandra (supra)*, would be relevant in present matter.

9. Learned counsel for the petitioner during the course of his submissions has referred to that the petitioner would not claim any monetary benefits for the period under suspension except subsistence allowance.

10. Thus, the position emerges that there is no objective application of mind to the explanation tendered by the petitioner to the show cause notice. The observations by the Tribunal as appearing in its' decision tend to be rather subjective and do not appear to adhere to position in present matter.

11. In the circumstances, we deem it expedient to follow the suit in writ petition no. 3821 of 2007. Thus the suspension period would be required to be treated as duty period.

12. Accordingly writ petition is allowed. Order dated 16-04-2008 passed by the Maharashtra Administrative Tribunal, Aurangabad Bench in Original Application No. 841 of 2006 as well as order dated 06-10-2005 passed by Superintendent of Police, Dhule (Respondent no. 4) are set aside. Respondents shall treat suspension period of the

petitioner from 22-07-2000 to 05-10-2001 as duty period and would award consequential monetary benefits to the petitioner save back wages barring subsistence allowance as may have been received by the petitioner.

13. Rule is made accordingly absolute.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd