

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5911 OF 2012

Shri Prashant Shyam Sapkale,
Age-35 years, Occu:Nil,
R/o-Behind Bunglow No.1,
Gopalnagar, Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32,
- 2) The Commandant,
Stare Reserve Force,
Group No.6, Dhule.

...RESPONDENTS

...

Mr.M.R. Wagh Advocate for Petitioner.
Mrs. V.S. Chaudhari, A.G.P. for Respondent
Nos. 1 and 2.

...

WITH

**CIVIL APPLICATION NO.3569 OF 2015
IN**

WRIT PETITION NO.5911 OF 2012

- 1) Mr. Wahab Masjid Shaikh,
Age-26 years, Occu:Nil,
Dhule,

- 2) Mr. Kishor s. Karan,
Age-43 years, Occu:Nil,
At Post-Dhule,
- 3) Mr. Abdul Wahid Shaikh Mohammad,
Age-45 years, Occu:Nil,
Bhoi Galli, Devalgaon Raja,
Ward No.12, Dist-Buldhana.

...APPLICANTS
(Proposed Intervenors)

VERSUS

- 1) The State of Maharashtra,
Through: Secretary,
Home Department,
Mantralaya, Mumbai-32,
- 2) Shri Prashant Shyam Sapkale,
Age-35 years, Occu:Nil,
R/o-Dhule.

...RESPONDENTS

...
Mr. Santosh B. Narwade Advocate for Applicants.
Mrs. V.S. Chaudhari, A.G.P. for Respondent
No.1.
Mr.M.R. Wagh Advocate for Respondent No.2 -
Original Petitioner.

...

CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.

DATE OF RESERVING JUDGMENT : 26TH FEBRUARY, 2018

DATE OF PRONOUNCING JUDGMENT: 9TH MARCH, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Petition under Article 226 of the Constitution of India is filed with following substantive prayers:

"(b) Quash and set aside the order dated 11.06.2010 passed by the Honourable MAT, Aurangabad Bench in OA No.665/2001 and also the discharge/ dismissal order passed by the respondent dated 23.2.2001 and hold and declare the same to be bad in law.

(c) It be held and declared that the Govt. orders No.RCT032000/CR 292/POL-5-A dated 17.7.2000 is applicable to the petitioner and he is entitled to get additional chance to appear and pass the examination. The petitioner be reinstated in service till final disposal of this Petition."

2. The brief facts giving rise to this Petition are as under:

A) In November, 1997 after his due and proper

selection depending upon qualification and eligibility, the Petitioner was selected by Respondent No.2 as a police constable vide order dated 24th November, 1997. In the appointment order certain conditions are enumerated. It is mentioned that his services could be terminated without giving any notice and his appointment was subject to verification of his antecedents in respect of character, conduct and verification of details mentioned in the attestation form. The Petitioner joined the services with Respondent No.2 in December, 1997 at Dhule. He underwent training of Advance Training Course along with other similarly selected and appointed constables. He was then sent to Daund for further training where he remained to complete the said training till 20th January, 1999. After completion of training the Petitioner was not allowed to appear for the examination, and the Petitioner and other 40 candidates were asked to go to Dhule and to surrender his kit. After going to Dhule, all of a sudden on 5th February, 1999, the Petitioner was

served by termination order by Respondent No.2. No notice was issued to the Petitioner nor hearing was given to him before issuance of such termination order.

B) It is the case of the Petitioner that he along with two others preferred O.A. No.191 of 1999 before the Maharashtra Administrative Tribunal (in short "MAT"), Bench at Aurangabad. On 18th June, 1999 the Division Bench of the MAT directed to reinstate the Petitioner and others, admitting the Original Application. It is submitted that the Principal Bench of MAT at Mumbai also directed reinstatement of similarly placed candidates, termination being violative of Explanation 4 to Rule 3(2) of Bombay Police (Punishment & Appeal) Rules, 1956. Pursuant to the order of the MAT, the Petitioner was reinstated. It is submitted that again on 3rd October, 2000 the Petitioner was served with another termination order on the ground that his services were no more required. The Petitioner challenged the said

termination order by filing O.A. St. No.2857 of 2000 before the MAT, Aurangabad Bench. On 5th January 2001, the order withdrawing Petitioner's discharge order was placed before the MAT and a statement was made on behalf of the Respondent that Petitioner was reinstated in service. In view of said facts the MAT was pleased to dispose of the Original Application St. No.2857 of 2000, filed by the Petitioner.

C) The Respondent, on 23rd February, 2001 passed order withdrawing order dated 18th December, 2000 of reinstatement of the Petitioner and again discharged the Petitioner. The ground for such withdrawal was shown to be decision of the Government to give one more chance being restricted to the constables working in Police Department, and same was not applicable to the case of the Petitioner. It is submitted that the Petitioner and one Mr. D.G. Sharma, a similarly placed candidate were given one more chance to appear for the examination by the Dy. Inspector

General of Police, SRPF, Pune. However, the said decision of giving third chance was withdrawn subsequently. It is submitted that said Sharma is still in service and the Petitioner is subjected to discharge.

D) It is submitted that the Petitioner was again compelled to file Original Application bearing No.665 of 2001 before the learned MAT, Aurangabad Bench. Challenge to the action of Respondent No.1 withdrawing the benefits was thus:

(i) One months notice was not given to the Petitioner,

(ii) There was violation of principles of natural justice,

(iii) The action was illegal, arbitrary and against equity and good conscience,

(iv) The action was discriminatory. There cannot be distinction amongst Police Force and SRPF, bot being under administrative control of one and the same department i.e. Respondent No.1.

E) It is submitted that the Division Bench of learned MAT was pleased to dismiss the Original Application on 11th June, 2010 with a only reason that benefit wrongly given by Government to one other employee cannot be a basis to claim such benefit. Hence this Petition is filed by the Petitioner challenging the order passed by the learned MAT in Original Application No.665 of 2001, dated 11th June, 2010.

F) By way of amendment, it is submitted by the Petitioner that on 14th December, 2011, the Special Inspector General of Police (State Reserve Force), Nagpur has caused a communication to the Commandant State Reserve Police Force, Group No.6, Dhule, wherein it is specifically stated that as per Government orders from Home Department No. RTR 3200/CR-147/Police-5 dated 12th April, 2001, in Rule 11 of the Recruitment of Police Constable Rules 2000, instead of 'two chances', the words 'three chances' be inserted/incorporated. Further

instructions are given that necessary action be taken on the application submitted by the Petitioner on 20th September, 2011 as per the orders of the Home Department dated 12th April, 2001. Thus it is clear that in the case of the Petitioner, instead of three chances permissible to him, only two chances are given and his services came to be terminated illegally. The above communication is dated 14th December, 2011 and the impugned order passed by the MAT is dated 11th June, 2010. It is submitted that, therefore, the learned MAT had no occasion to consider the said communication which is very much in favour of the Petitioner.

G) It is further submitted that there is yet another communication from the Government through the Home Department, addressed to the Additional Director General of Police, SRPF, Mumbai dated 7th October, 2011 i.e. after the impugned order passed by the learned MAT on 11th June, 2010. In this communication, instructions are given to the

addressee that no specific opinion/recommendations be given as the Petitioner has filed the Court case. The subject mentioned in this communication is regarding grant of third chance to appear for examination and also there is reference of name of the Petitioner. Thus it is clear that Respondents are acting with mala fide intention, and instead of accepting the truth that Petitioner deserves to be granted third chance to clear the examination, the impugned order of termination cannot sustain legally. It is further submitted that the decision to terminate the services of the Petitioner was taken at secretary level and hence it smells of mala fide, as the secretary had no reason to take interest in the termination of services of the constable.

3. Learned counsel appearing for the Petitioner, referring to the grounds taken in the Petition, submitted that the order passed by the learned MAT is unsustainable in law being misconstrued and misconceived. Learned Members of

the MAT failed to consider that once the benefit of concession is given to employee, it cannot be arbitrarily withdrawn by subsequent action unless there are cogent and justifiable reasons. Learned counsel further submitted that learned MAT failed to give finding on the point that if two chances are granted, why third chance is not granted to the Petitioner as has been granted to similarly placed person, namely Mr. Sharma. Learned counsel invites our attention to the communication dated 14th December, 2011, whereby amendment is introduced to Rule 11 of the Recruitment of Police Constable Rules, 2000, and instead of 'two chances' the words 'three chances' are incorporated. Learned counsel submits that as this amendment was introduced on 14th December, 2011 and the impugned order was passed by the learned MAT on 11th June, 2010, the learned MAT had no occasion to consider the said amendment to the recruitment rules. He therefore, submits that the Writ Petition deserves to be allowed.

4. On the other hand, learned A.G.P. invites our attention to the reply filed on behalf of Respondent No.2 and submits that after the appointment the Petitioner was sent for training but unauthorizedly the Petitioner remained absent from training on two occasions, firstly for the period from 25th April, 1998 to 29th April, 1998 and again from 11th June, 1998 till 16th June, 1998. Considering overall conduct of the Petitioner during the course of regular training, the final examination body did not allow him to appear for final examination. As Petitioner had remained absent from initial and basic training and thereby showed disinterest, therefore his services were brought to an end vide order dated 5th February, 1999. As per order passed by learned MAT in Original Application No.191 of 1999, the Petitioner was reinstated in service. Immediately after the reinstatement, the Petitioner was sent at SRPF Gr. VI Daund for regular training where he had undergone training during the period from 1st November, 1999 to 18th March, 2000. Petitioner was

tested in outdoor and written examination on 18th March, 2000 under the Chairmanship of Deputy Inspector General of Police, SRPF, Pune. The Petitioner was declared as "Failed" vide letter dated 19th March, 2000. Therefore, the Petitioner was further kept as repeater at the said training center at Daund. The Petitioner had undergone training during the period from 20th March, 2000 to 19th July, 2000 and during the course of second attempt, the Petitioner secured 15.5 marks out of 100 and as such he was declared as "Failed" in the written examination vide letter dated 23rd August, 2000. Referring to the circular dated 4th March, 1994 issued by the Special Inspector General of Police, SRPF, Mumbai, learned A.G.P. submits that since the Petitioner did not clear the examination within two attempts and declared as failed, in view of the provisions of the said circular, the services of the Petitioner were brought to an end by discharging him from services vide order dated 3rd October, 2000. Further it is submitted that Petitioner's discharge order dated 3rd October,

2000 was withdrawn under wrong impression that the Government decision dated 17th July, 2000, to give third chance to the new recruits to appear in the examination, was applicable to the member of SRP Force. Therefore, Respondent No.2 again passed order dated 23rd February, 2001 withdrawing order of reinstatement of the Petitioner and again discharged him from service. Hence it is prayed that the Writ Petition may be dismissed.

5. We have considered the submissions of the learned counsel appearing for the Petitioner and also learned A.G.P. appearing for the State. With their able assistance, we have carefully perused the pleadings, grounds taken in the Petition, annexures thereto, amended pleadings, the reply filed on behalf of Respondent Nos.2, annexures thereto.

6. We have also perused the findings recorded by the Maharashtra Administrative Tribunal in the impugned order. Though we are not

convinced to cause interference in the Judgment and order passed by the learned MAT, on merits, however we find considerable force in the argument of the learned counsel appearing for the Petitioner that communication dated 14th December, 2011, whereby amendment is introduced to Rule 11 of the Recruitment of Police Constable Rules, 2000, and instead of 'two chances' the words 'three chances' are incorporated, and as the impugned order was passed by the learned MAT on 11th June, 2010, the learned MAT had no occasion to consider the said amendment to the recruitment rules.

7. On this technical ground alone, that the amendment to the recruitment rules was not before the learned MAT, we quash and set aside the impugned Judgment and order dated 11th June, 2010 passed by the Maharashtra Administrative Tribunal in Original Application No.665 of 2001. We grant liberty to the Petitioner to file fresh Original Application before the Maharashtra Administrative

Tribunal raising the ground of amendment to the recruitment rules, which ground was not raised by the Petitioner in the earlier Original Application.

8. Rule made absolute on the above terms. The Writ Petition stands disposed of, accordingly.

9. In view of the order passed in Writ Petition, the Civil Application for intervention also stands disposed of.

[S.M. GAVHANE, J.]

asb/MAR18

[S.S. SHINDE, J.]