

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.3539 OF 2017

Shaikh Shakil s/o Shaikh
Mohammed

..Petitioner

Versus

The State of Maharashtra,
through Secretary
Dairy Development and
Fisheries, Mantralaya,
Mumbai and ors.

..Respondents

Mrs A.N. Ansari, Advocate for petitioner
Mr S.G. Karlekar, A.G.P. for respondents no.1 to 3

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

DATE : 23rd March 2018

PER COURT

1. The petitioner was appointed on compassionate ground by the respondents on 24.2.2009. On or about 2.9.2009, the petitioner was terminated on the ground that the petitioner does not comply with the condition no.5 of the appointment order. The condition no.5 of the appointment order in the regional language reads thus :

५ ते ज्या विभागातील रहिवासी असतील त्या विभागातील विभागीय अधीक्षक पोलीस
यांचेकडील त्यांचे निर्दोष वर्तणुकीचा दाखला असणे आवश्यक आहे

2. The petitioner had initially approached the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad challenging the order of termination. The Original Application is dismissed. The criminal case which was filed against the petitioner was made the basis of termination order, concluded and the petitioner is acquitted. Thereafter,

the petitioner moved the respondents for reinstatement. The said application is not considered. As such, petitioner filed the Original Application before the Tribunal along with application for condonation of delay. While considering the delay condonation application, the tribunal also rejected the Original Application on merits. In fact, the Original Application was not registered and the application for condonation of delay and the Original Application were rejected by the said order and aggrieved thereby, the petitioner is before this Court.

3. From the facts on record, it is manifest that the father of the petitioner was serving as an Attendant in the office of respondent no.3. While in service, he died in the year 2002. The petitioner applied to the respondents immediately, seeking appointment on compassionate ground. The petitioner was issued appointment order as an Attendant by respondent no.2 on 24.2.2009 after lapse of seven years. It appears that in the year 2008, criminal case was registered against the petitioner. It is the contention of the petitioner that petitioner was never issued notice of that criminal case. The petitioner was not taken in custody for a single day nor he applied for bail at any time. The petitioner was not possessing any knowledge of the criminal case filed.

4. According to learned Counsel, the termination of the petitioner is not on the ground that the petitioner suppressed the criminal case being filed against the petitioner. Even, the said ground cannot exist. The petitioner had applied for appointment on compassionate ground

in the year 2002 and was issued appointment order in the year 2009. The case against the petitioner, as contended is registered in the year 2008. So, there is no question of the criminal case being mentioned in the application made to the respondent in the year 2002. Subsequently, even the petitioner has been acquitted in the criminal case. The criminal case against the petitioner was under Sections 143, 148, 353, 332, 336, 337, 427 read with Sec.149 of Indian Penal Code and Section 135 of the Bombay Police Act.

5. The petitioner was appointed as an Attendant. The petitioner was acquitted on 28.8.2014. He is acquitted on the ground that offence could not be proved against the petitioner.

6. It is manifest that the petitioner was terminated for no fault of the petitioner. Even, the nature of the offence was not considered nor it was considered that at the time the application was made by the petitioner in the year 2002, there was no criminal case against the petitioner.

7. Mrs Ansari, learned Advocate for the petitioner, on instructions, states that the petitioner would not claim monetary benefits by way of backwages from the date of termination till reinstatement.

8. Considering the fact that the petitioner was not at fault nor any suppression can be attributed to the petitioner and further that the petitioner is already acquitted in the criminal case, we are inclined to exercise our equitable jurisdiction and pass the following order:

(I) The impugned order of termination dated 2.9.2009 passed by respondent no.2 is quashed and set aside. So also, the impugned order dated 27.2.2007 passed by the Member, Maharashtra Administrative Tribunal, Aurangabad in Miscellaneous Application no.452 of 2016 in Original Application St.no.1954 of 2016 is quashed and set aside.

(II) The respondents shall reinstate the petitioner within a period of three weeks. The petitioner shall not be entitled for any backwages from the date of termination till the date of reinstatement. However, the said period shall be counted for continuity in service.

9. Writ Petition is accordingly allowed in above terms. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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