

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

WRIT PETITION NO.5969 OF 2006

1. Kantu s/o. Shankar Rathod,
Age: 32 years, Occu: Service,
R/o: Dudhani, Tq.Akkalkot,
Dist: Solapur,
At present working as Police
Constable, Police Station Naldurg,
Dist. Osmanabad.
2. Sanjivan s/o. Nivrutti Jadhavar,
Age: 33 years, Occu: Service,
R/o. Tadgaon, Tq.Kallam,
Dist. Osmanabad
Presently working as Police
Constable at Police Station,
Ambi, Tq.Bhoom, Dist.Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra
2. The Inspector General of Police,
Maharashtra State, Mumbai.
3. The Deputy Inspector General of
Police, Aurangabad Division,
Aurangabad.
4. The Superintendent of Police,
Osmanabad, Dist.Osmanabad

RESPONDENTS

...

Mr.U.B.Bondar, Advocate for the petitioner
Ms.S.S.Raut, AGP for the Respondent/State

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 14.03.2018
Pronounced on : 20.03.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] This Petition takes exception to the impugned judgment and order dated 16.08.2006 passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad [for short 'MAT'] in Original Application No.830/1996 with Misc. Application No.61/1999 with Original Application No.831/1996 with Misc. Application Stamp No.1358/1998, and the order of termination dated 08.08.1996 issued by respondent no.4.

2] It is the case of the petitioners that petitioner no.1 belongs to 'Vimukta Jati' [VJ] category, whereas petitioner no.2 belongs to NT-D category. On 08.05.1995, the respondent authorities, after verifying the entire documents of the petitioners and after

following the entire selection process, selected the petitioners for the post of Police Constable from sportsmen category. After selection of the petitioners, they have undergone training at Police Headquarter for a period of 6 months, and thereafter at Police Training Centre, Akola for a period of 9 months. After completion of the training, the petitioners have joined the posts of Police Constable at Police Headquarter, Osmanabad. By common order dated 08.08.1996, respondent no.4 terminated the services of the petitioners without assigning any reason. Thereafter, the petitioners have challenged the said impugned order of termination before the MAT at Aurangabad, by filing Original Application Nos.830/1996 and 831/1996. The MAT in Misc. Application No.61/1999 and Misc. Application Stamp No.1358/1998 granted interim relief on 17.01.2000 in favour of the petitioners. On the basis of said interim

order, the respondents have reinstated the petitioners on the post of Police Constable. After hearing both the parties, the MAT was pleased to dismiss the Original Applications filed by the petitioners by order dated 16.08.2006, and vacated the interim relief.

3] Learned counsel appearing for the petitioner submits that the petitioners were appointed on 8th May, 1995, and thereafter they are continued in the service on the basis of the interim order passed by the MAT. He further submits that even during pendency of this Petition, the petitioners' services have been protected, and by this time the petitioners have completed more than 22 years service. Even respondents have granted promotion to the petitioners, and therefore, keeping in view the unreported judgment of this Court in the case of *The State of Mah & ors. Vs. Arun Digambarrao Kulkarni* in Writ Petition No.4204 of 2008, decided on 9th

August, 2017. Learned counsel submits that the petitioners' services deserve to be protected. It is submitted that the respondents, without considering the provisions in para 78 [1] of the Bombay Police Manual, Vol.1, 1959, and in particular clause (vii) thereof, and without following the principles of natural justice, terminated the services of the petitioners. In support of his contention that, the services, even on temporary basis, cannot be terminated without following principles of natural justice, he placed reliance on the exposition of law by the Division Bench [Coram : V.G.Palshikar and Smt. Nishita Mhatre, JJ.] in the case of *Dattaraya Kaluram Dedge Vs. Union of India & another*¹. He further invites our attention to the various documents, and also interim order passed by the MAT and submits that the Petition deserves to be allowed.

¹ 2005 [2] Mh.L.J. 295

4] On the other hand, learned AGP appearing for the respondent-State and its Officials, relying upon the findings recorded by the MAT, submits that the appointments of the petitioners were from sports category. In fact, the certificates, which were issued in favour of the petitioners, were not certified by the District Sports Officer. He further submits that though the petitioners have rendered more than 22 years service, they have been continued in service because of the interim order passed by the MAT, and this Court, therefore, legally they are not entitled to be continued in service. In support of his aforesaid contention, he placed reliance on the judgment of the Supreme Court in the case of *Secretary to Government, School Education Department, Chennai Vs. R. Govindaswamy and others*². Therefore, learned AGP submits that the Petition may be dismissed.

5] We have considered the submissions of the learned counsel appearing for the petitioner, and learned AGP appearing for the respondent-State. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, and the documents, which have been placed on record. We have carefully perused the impugned judgment and order passed by the MAT, and also other documents placed on record. It appears that, when the petitioners applied for the post of Police Constable from the sports category, they were supposed to file certificate showing their participation in the sports event, and such certificate duly signed / verified by the District Sports Officer. Admittedly, in the present case, the said certificates were not certified by the District Sports Officer. It further appears that the sport events in which the petitioners did participate were not

organized by the office of the District Sports Officer. Therefore, we are of the opinion that the findings recorded by the MAT are in consonance with the documents/material brought on record.

6] However, it appears that the MAT while passing the interim order on 17th January, 2000, has commented about the genuineness of the certificates, which were produced by the petitioners. Para 4 of the interim order dated 17th January, 2000, passed by the MAT, reads thus:

4. I have gone through these merit certificates filed by the respective petitioners and there is every reason to believe that they are genuine. Both these petitioners are taken active part in the sports conducted by the various organisations. Moreover both these petitioners after selection to the post of Police Constable had also

undergone the training for which at least the Govt. of Maharashtra has spent not less than Rs.1,00,000/- for the training programme. The discharges of both these petitioners are simplicitor without assigning any reasons and without given any opportunity to hear is certainly bad in law and deserves to be set aside.

7] It is true that said order was the interim order, nevertheless, the aforesaid observations are on factual score, inasmuch as the Member, MAT has made endeavour to find out the genuineness of the said certificates.

8] We also find considerable force in the argument of the learned counsel appearing for the petitioners that the petitioners have rendered more than 22 years service, and they have settled in life, and if they are dislodged from the services, the same would

affect upon the families of the petitioners, and the society will be deprived from their services, since they have gained more than 22 years experience by rendering satisfactory services.

9] In the light of discussion herein above, and in the peculiar facts and circumstances and keeping in view the unreported judgment of this Court in the case of *The State of Mah & ors. Vs. Arun Digambarrao Kulkarni [cited supra]*, we do not wish to disturb the services of the petitioners. In the case of *The State of Mah & ors. Vs. Arun Digambarrao Kulkarni [cited supra]*, it is observed thus:

.... For almost 18 years, the respondent is in service pursuant to the interim order passed by the Tribunal. It would not be appropriate now, to unsettle the said position after the long slumber of 18 years,

more particularly when the present petitioner implemented interim order passed by Tribunal, way back in the year 1999.

10] In the light of above, we direct the respondents not to discontinue / disturb the services of the petitioners. However, we make it clear that the petitioners will not be entitled to get / receive further service benefits, [however excluding benefits already granted / received including continuity in service, and post retirement benefits as per the Rules,] on the basis of the sports certificates [Exhibit-A] in future.

11] Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE