

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11016 OF 2015

Ravindra V. Gandhe	...Petitioner
Versus	
The Commissioner of Police, Thane and ors.	...Respondents

WITH

WRIT PETITION NO. 394 OF 2016

Sunil M. Tawade	...Petitioner
Versus	
The State of Maharashtra and ors.	...Respondents

Mr. U.B. Nighot for the Petitioner in WP-11016/2015.
Mr. Pravin H. Padave for the Petitioner in WP-394/2016.
Mr. O.M. Kulkarni, AAGP for Respondent Nos.1 to 3/State.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : APRIL 4 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule in both these petitions. With the consent of and
at the request of learned counsel for the parties, Rule in
both the petitions is made returnable forthwith.

3] Learned counsel for the parties submit that the issues in these two petitions are virtually identical and therefore, both these petitions can be disposed of with common judgment and order. In fact, in both these petitions, the challenge is to the common judgment and order dated 2nd February 2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. Nos. 188 of 2013 and 189 of 2013 instituted by the petitioners. Accordingly, it is only appropriate that both these petitions are disposed of by common judgment and order.

4] By orders dated 2nd February 1999, the petitioners, who were police constables were removed from service, on the basis that they had links with some underworld gangsters. The petitioners challenged their removal by instituting Writ Petition No. 7294 of 2003 and Writ Petition No. 3791 of 1999 before this court.

5] Both these writ petitions were disposed of by judgment and order dated 17th August 2004, which reads as follows:

"Both these petitions complain of violation of the provisions of section 26(2) of the Bombay Police Act.

This provision requires grant of opportunity to show cause against the proposed punishment.

2. In these cases both the Petitioners were removed from service after it was found reasonably impracticable as contemplated under Article 311(2) of Constitution of India to hold departmental enquiry against them. The allegation was that both the Petitioners are involved in or connected with a criminal gang called "Suresh Manchekar gang". The reason given for not holding departmental enquiry as envisaged by Article 311 (2) of the Constitution is cogent and relevant to the enquiry required to be held.

3. We need not interfere with the finding in this case. However, the contention is that even if you dispense with an enquiry under Article 311(2) of the Constitution, you cannot dispense with a notice under section 26(2) of the Bombay Police Act. This aspect is already decided by this court in writ petition No. 5248 of 1999.

4. Looking to the facts, interest of justice would be met in the present case, if Respondent is directed to issue notice under section 26(2) of the Bombay Police Act, requiring the Petitioner to show cause as to why no penalty mentioned in the notice be not imposed on the Petitioners. This should be preferably done within one year.

5. The petitioners shall be deemed to be under suspension for this period of one year. During that period he shall be entitled to subsistence allowance as permissible in law.

6. With these observations, both Petitions are disposed of.

7. Authorities to act on copy of this order duly authenticated by Sheristedar of this court."

6] Though, after some delay, the respondents issued notice to the petitioners as contemplated by section 26(2) of the Bombay Police Act and finally, made orders dated 31st October 2011 confirming the removal of the

petitioners. The petitioners by instituting O.A. Nos.188 and 189 of 2013, challenge these orders.

7] The MAT by the impugned judgment and order has quite correctly rejected the petitioners' contention that since the notice issued to them by the respondents in pursuance of directions made by this court in its judgment and order dated 17th August 2004, there was no reference to section 26(2) of the Bombay Police Act, the order dated 31st October 2011 confirming the petitioners removal from the service was invalid. From the perusal of notice, it is quite clear that the same relates to section 26(2) of the Bombay Police Act and merely because there may not have been specific mention of the section in the notices, that by itself, does not render such notices or the action taken on basis of such notices, infirm. Accordingly, we reject the self same contention raised on behalf of the petitioners in these petitions.

8] Mr. Nighot and Mr. Padave, learned counsel for the petitioners, however pointed out that the MAT, in the impugned judgment and order, has proceeded on the basis

that the petitioners, despite receipt of notice and reminders, failed to submit any response to the notice under section 26(2) of the Bombay Police Act or even appear before the competent authority to present their case.

9] The learned counsel point out that on basis of the information received by the petitioners under the Right to Information Act, 2005 in the form of notings/Roznama maintained by the competent authority, it is very clear that the petitioners had, in fact, filed their response to the notices and even appeared before the competent authority and made their submissions.

10] The learned counsel for the petitioners point out that this information was not available for production before the MAT and the respondents also failed to place this information before the MAT. Such information is at Exhibit-1 (Pages 85 to 94 in the paper-book of Writ Petition No.11016 of 2015).

11] The learned counsel for the petitioners submit neither has the petitioners response nor their submissions been taken into consideration by the competent authority before passing the orders dated 31st October 2011. On this short ground, they urge that the order dated 31st October 2011 be set aside.

12] Mr. Kulkarni, learned AAGP for the respondents / State, submits that since the petitioners had filed the response and had even appeared before the competent authority, it was for them to have pleaded these facts and produce material in support of such pleadings before the MAT. Since the petitioners, did not do this, the MAT made the impugned order. Further, since the petitioners did not do this, even the respondents were denied opportunity of responding to these matters. Mr. Kulkarni, however, does not dispute the information supplied to the petitioners in form of Exhibit-1, i.e., noting/roznama before the competent authority.

13] From the perusal of Exhibit-1, i.e., noting/roznama before the competent authority, we find that there is a

noting with regard to the petitioners remaining present before the competent authority and making their submission. There is also some material on record to suggest that a response was also filed by the petitioners to the notice under section 26(2) of the Bombay Police Act. However, for reasons attributable to the petitioners themselves, all these material, was not available before the MAT, which made the impugned judgment and order. Accordingly, it will be appropriate if the impugned judgment and order is set aside and the matters are remanded to the MAT for fresh consideration of O.A. Nos. 188 of 2013 and 189 of 2013, in accordance with law and on their own merits.

14] Accordingly, we dispose of these petitions with the following order:

- (a) The impugned judgment and order dated 2nd February 2015 made by the MAT is hereby set aside;
- (b) O.A. No.188 of 2013 & O.A. No.189 of 2013 are remanded to the MAT for disposal on their own merits and in accordance with law;

(c) The petitioners are granted liberty to either amend their O.As. or to file additional affidavit by placing additional material, including, but not restricted to the information obtained by them under the Right to Information Act, within a period of 8 weeks from today. The respondents are granted time of further 4 weeks or such further time in the discretion of the MAT to file their response to amend the O.As. or additional affidavits. This time limit will commence from the date of receipt of copy of amended O.As. or filing of additional affidavits by the petitioners;

(d) Except the contention based upon non-reference to section 26(2) of the Bombay Police Act in the notices, all other contentions of the petitioners as well as the respondents are kept open for determination by the MAT, in pursuance of remand;

(e) We request the MAT to dispose of the O.As. as expeditiously as possible and preferably within a period of 8 months from today;

(f) The parties to appear before the MAT on 2nd May 2018 at 10.30 p.m. and produce authenticated copy of this order;

(g) Rule, in both the petitions, is disposed of in the aforesaid terms. There shall be no order as to costs.

(h) All concerned to act on an authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)