

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

WRIT PETITION NO.6513 OF 2008

Pundlik s/o Hari Hatkar,
Died Through L.R.
Sushilabai w/o Pundlik Hatkar,
Age; 50 years, Occ; Household,
R/o; Jalgaon, Dist. Jalgaon.

...PETITIONER

V E R S U S

1. The State of Maharashtra,
Through Secretary, Mantralaya
Mumbai 32.
2. The Superintendent of Police
Head Quarter, Jalgaon,
Zilla Peth, Jalgaon.

...RESPONDENTS

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Advocate for the petitioner : Mrs.M.A.Kulkarni
AGP for the Respondent No. 1 : Mr. Vaishali N. Patil (Jadhav)
Respondent No. 2 : Served.
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 13.09.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Petitioner challenges the judgment and order dated 17.01.2008 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, in Original Application No. 18 of 2008. In his Original

Application, he had challenged the order dated 25.04.2006, passed by the Superintendent of Police, Jalgaon, imposing penalty of dismissal from service in exercise of powers under Article 311 (2) (b) of the Constitution of India by dispensing with the inquiry.

2. The petitioner was appointed on 17.05.1975 as Police Constable. He was promoted on the post of Head Constable in the year 2003. While being posted as Head Constable at Police Head Quarters Jalgaon, order dated 25.04.2006 came to be passed, dismissing him from service, in exercise of powers under Article 311 (2) (b) of the Constitution of India, by holding that it was not reasonably practicable to hold disciplinary inquiry against him. The inquiry is dispensed with, on account of three instances narrated in the order dated 25.04.2006. In the first instance dated 20.04.2006, the petitioner misbehaved with and abused his colleagues and the superior officers, upon being relieved from Pahur Police Station in pursuance of his transfer at Jalgaon Police HQ. In the second incident, he abused and assaulted the Medical Officer on 24.04.2006 and thereby created atmosphere of terror. In the third incident, when an attempt was made to conduct his medical examination to verify whether he had consumed liquor at the time of the second incident, he again misbehaved and threatened the fellow Police officials.

3. On the basis of aforesaid three incidents, a conclusion was drawn by the Superintendent of Police, Jalgaon that the petitioner had

created atmosphere of terror, because of which, there was feeling of insecurity and fear amongst public. On these grounds the Superintendent of Police, Jalgaon came to the conclusion that it was reasonably not practicable to conduct disciplinary inquiry against him, and therefore he proceeded to dismiss the petitioner from service.

4. The Tribunal has held that the Original Application was barred by limitation, as it was filed on 19.12.2017 challenging the dismissal order passed on 21.04.2006. Even after holding that the Original Application was barred by limitation, the Tribunal still proceeded to consider the Original Application on merits. The Tribunal took in to consideration three criminal cases registered against the petitioner. It is held that the decision taken by the Appointing Authority not to conduct departmental inquiry, was a well considered decision. The Tribunal further held that mere acquittal in the criminal case, that too subsequently, would not have any bearing on the order of dismissal, as he was not dismissed because of conviction. The Tribunal, therefore, proceed to dismiss the Original Application on both counts of limitation as well lack of merits. The petitioner has filed the present petition challenging the order passed by the Tribunal. During the pendency of the petition, the petitioner has expired, on account of which his wife has been brought on record as his legal representative.

5. Appearing for the petitioner Smt. Kulkarni, the learned Advocate would submit that there was no reasonable material on

record for the Superintendent of Police to dispense with the inquiry. She would submit that there was colourable exercise of powers on the part of the Appointing Authority while passing order of dismissal. She would submit that the Tribunal has erred in dismissing the Original Application on the ground of limitation. If Original Application was barred by limitation, the Tribunal ought not to have decided the same on merits. She would submit that the petitioner has rendered 31 years of service and on account of dismissal, he would not be entitled to any service benefits. She relied upon the order of acquittal of the petitioner in the criminal case, arising out of incident which was the basis for dismissing him from service. She relied upon Constitution Bench Judgment in **Union of India and Another Vs. Tulsiram Patel** AIR 1985 SC 1416 and **Workmen of Hindustan Steel Ltd. And another v. Hindustan Steel Ltd. and others** AIR 1985 SC 251.

6. Per Contra, Smt.V.N.Patil (Jadhav), the learned Assistant Government Pleader appearing for the State Government supports the order passed by the Tribunal. In support of her submission, she has relied upon the judgment and order of this Court in **Satish L. Gawte v. State of Maharashtra and Another** 2018 (5) Mh. L.J. 195.

7. We have heard the learned Advocate for the parties and perused the record. The short issue involved before the Tribunal and which again arises for our consideration in the present petition is whether the Superintendent of Police, Jalgaon was justified in

dispensing with the inquiry, while imposing the penalty on the petitioner.

8. We deal with the first contention of Smt. Kulkarni that after arriving at finding that the Original Application is barred by limitation, then the Tribunal ought not to have considered the Original Application on merits. The order of dismissal from service was passed on 21.04.2006. Soon thereafter, the petitioner came to be acquitted in Summary Criminal Case No. 1768 of 2006, by the Court of Judicial Magistrate First Class, Jalgaon, vide judgment and order dated 30.04.2007. The petitioner accordingly made representation dated 29.05.2007 praying for setting aside the dismissal order passed on his acquittal in the criminal case. Later he filed detailed representation dated 11.08.2008 to the Special Inspector General, Nashik. The Original Application was thereafter filed on 19.12.2007. As a matter of fact, the dismissal order dated 21.04.2006 was appealable. Even though, the petitioner did not immediately file appeal, he did file representation dated 11.08.2008 before the Special Inspector General, Nashik and thereafter approached the Tribunal by filing Original Application on 19.12.2007. Ideally the petitioner ought to have filed Misc. Application for condonation of delay in filing the Original Application, which was apparently not filed. Therefore, though the Tribunal is technically correct in holding that the Original Application was barred by limitation. The insignificant delay of about 7 odd months could easily have been condoned, especially in the light of making representations dated

29.05.2007 and 11.08.2008. Being conscious of these circumstances, the Tribunal appears to have proceeded to entertain the Original Application on merits, rather than dismissing the same only on limitation. We therefore do not find any gross error committed in the approach of the Tribunal warranting interference in exercise of extraordinary writ jurisdiction.

9. Coming to the merits of the dismissal order, we find that the powers of the Appointing Authority to pass order of dismissal under Article 311(2) (b) of the Constitution of India are undisputed. The only issue is whether sufficient material existed for arriving at conclusion that it was reasonably practicable to hold the disciplinary inquiry.

10. Having gone through the dismissal order, we find that the Appointing Authority has recorded specific finding that the conduct of the petitioner resulted in creation of atmosphere of terror, on account of which, two Medical Officers were required to run away from the spot. Dr. Abhijit Bhalerao was abused and assaulted by the petitioner, on account of which the Medical Officer and employees were required to run away from the Rural Dispensary, Pahur and to take shelter at District General Hospital, Jalgaon. This adversely affected the medical services in Rural Dispensary, Pahur. As if this was not sufficient, the petitioner again indulged into misconduct when he was attempted to be taken for medical examination to verify as to whether he had consumed liquor or not. He put forth his wife who issued threats of

suicide for preventing his medical examination. On earlier occasion on 20.04.2006 also, he had misbehaved, abused and threatened his fellow police officials after being transferred out of Pahur Police Station. On the basis of this material available on record, the Superintendent of Police, Jalgaon arrived at conclusion that it was not reasonably practicable to hold disciplinary inquiry against the petitioner, as he had created atmosphere of terror by repeatedly indulging in abusing and assault. If the inquiry was to be held, it was quite doubtful whether the concerned Medical Officer could have shown courage to depose against the petitioner on account of atmosphere of terror created by him.

11. Smt. Kulkarni, has relied upon the judgment of Constitution Bench in **Union of India Vs. Tulsiram Patel** (supra), particularly paragraph No. 62, which reads thus :

“The second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Art. 311 (2) is itself confirmed only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry.”

12. We fail to comprehend as to how the decision in **Tulsiram Patel** (Supra) would assist the case of the petitioner. In the instant

case, we have arrived at conclusion that the conduct of the petitioner was such that he deserved penalty of dismissal, therefore, we do not find any error being committed by the Appointing Authority in resorting to the provisions of Article 311 (2) (b) of the Constitution of India.

13. In **Workmen of Hindustan Steel Ltd. And another** (supra) relied upon by Mrs. Kulkarni, that the order of dismissal from service was set aside as a conclusion was reached by the Apex Court that no material existed for dispensing with the inquiry. In that case the dismissal was resorted to, only on account of the wife of employee filing report with police against the delinquent employee. The Apex Court came to the conclusion that no material existed for dispensing with the inquiry. However in the present case a specific finding is recorded by the Superintendent of Police to the effect that the petitioner had created atmosphere of terror, thereby, prompting him to dispense with him of the inquiry. The decision in **Satish L. Gawte** (supra) relied upon by Mrs. Patil, learned AGP appears to be more apposite. In paragraph Nos. 19, 20 and 21, this Court has summarized the law enunciated by the Constitution Bench in **Tulsiram Patel** (Supra) as under :

“19) In **Tulsiram Patel** (supra), the Constitution Bench of the Supreme Court has held that the condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable".

According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, it needs to be borne that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of [Article 311](#) makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an

inquiry or because the Department's case against the government servant is weak and must fail.

20) Further, in *Tulsiram Patil (supra)*, the Constitution Bench has held that a government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provision of a service rule is not wholly without a remedy. Such officer, can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. In the present case, although, the petitioner does not appear to have availed the remedy of appeal or revision, the record indicates that after acquittal of the petitioner, the petitioner, did make a representation for reconsideration of the impugned dismissal order. Such representation was rejected with reasons. Against the same, the petitioner thereafter instituted O.A. No. 905 of 2006, which was also rejected. The petitioner, thereafter instituted Writ Petition No. 849 of 2006 to question such rejection. This petition was also rejected on 16th March 2006.

21) In *Tulsiram Patel (supra)*, the Constitution Bench had held that the courts and tribunals exercising powers of judicial review in such matters, will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

14. So far as the reliance of Mrs. Kulkarni, on acquittal of the petitioner in the criminal case is concerned, in **Satish L. Gawte**

(supra) this Court has considered the effect of acquittal in paragraph No. 26 and 27 of the judgment and held as under :

“26] In Southern Railway Officers Association & Anr. (supra), the Hon'ble Supreme Court has further held that acquittal in criminal case by itself cannot a ground for interfering with the order of punishment imposed by the disciplinary authority. In this case, the Hon'ble Supreme Court found that the revisional authority had in fact taken into consideration the ground for acquittal and therefore, this was not a case where the authorities were oblivious to the issue of acquittal or had failed to take this consideration into account. The Hon'ble Supreme Court went on to observe that it is now well settled principle of law that the order of dismissal can be passed even if a delinquent official had been acquitted of the criminal charge. This is a complete answer to Mr. Deo's contentions based upon the acquittal of the petitioner in the criminal prosecution.

27] In this case, it is really not necessary for us to once again revisit the issue of reinstatement, in pursuance of acquittal of the petitioner. This was the precise issue raised by the petitioner in Writ Petition No.849 of 2006, which has since been dismissed. In any case, on perusing the judgment and order dated 27th October 2004, by which, the petitioner was acquitted of the criminal charges, we find that the acquittal is not really some honourable acquittal as urged by Mr. Jaydeep Deo. Basically, a benefit of doubt has been granted to the petitioner. In the said acquittal judgment, at several places, the Division Bench has commented on the negligence on the part of the petitioner, but held that such negligence may not be sufficient for conviction of the petitioner. ”

15. Thus in **Satish L. Gawte** (supra) it is held if there is no honorary acquittal and the benefit of doubt has been granted, such acquittal would not have any impact on the dismissal order. We have perused the judgment and order dated 30.04.2005 passed by the J.M.F.C. Jalgaon. The petitioner's acquittal has been recorded by giving

him benefit of doubt. Therefore, mere acquittal of the petitioner in the criminal case cannot be a reason for setting aside the order of dismissal.

16. We, therefore, do not find any error being committed by the Tribunal while dismissing the Original Application of the petitioner. The petition is thus devoid of merits and the same is dismissed without any orders as to the costs.

17. The Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE