

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

WRIT PETITION NO. 3969 OF 2014

Gajanan Vaijnath Wasmatkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Dhananjay M. Shinde, Advocate for the Petitioner.

Shri K. N. Lokhande, A.G.P. for the Respondent Nos. 1 to 5.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 12.09.2022.

FINAL ORDER (*Per Sandeep V. Marne, J.*) :-

. By the present petition, the petitioner challenges judgment and order dated 04.03.2011 passed by the Maharashtra Administrative Tribunal (for short "Tribunal") in Original Application No. 670 of 2011. Before the Tribunal, the petitioner had challenged the order dated 09.02.2010 passed by the Disciplinary Authority imposing the penalty of reduction to basic pay of police constable for a period of two years as well as treatment of suspension period as such. The petitioner had also challenged orders dated 01.07.2010 and 04.08.2011, by which his appeal and revision were dismissed.

2. In the disciplinary proceedings, petitioner faced five charges (i) that he assaulted the complainant on the pretext of

molesting a lady and extorted an amount of Rs. 14,200/- along with two other constables, (ii) that out of the extorted amount, Rs. 5,000/- were received by the petitioner which fact was admitted by him before the Superior Officers, (iii) that after the incident came to the notice of the Superior Officers through a complainant and after the trio were called for enquiry, they presented a altogether different lady by asking her to narrate false sequence of events alleging that she was molested by the complainant. They also took a false defence that the complainant on its own handed over the amount which was kept in custody by the trio, (iv) that the extorted amount was returned to the complainant in presence of Superior Officers and receipt to that effect was executed by the complainant. Upon being asked to give statements, the trio disappeared from the police station, (v) that the trio attempted to malign the image of the complainant and far from protecting the citizens, they indulged into serious misconduct. In the departmental enquiry though the complainant was cited as witness, he did not turn up for evidence. However, rest of the seven witnesses were examined. The enquiry officer submitted report holding that all the charges leveled against the petitioner were proved. After following principles of natural justice, the disciplinary authority imposed penalty of reduction to the basic pay of police constable for two years and further proceeded to treat the period of suspension as such. Appeal and revision petition came to be dismissed.

3. The Original Application No. 670 of 2011 filed by the petitioner challenging the orders of the disciplinary authority,

appeallate authority and revisional authority has been dismissed essentially relying upon the factum of return of extorted amount by the petitioner and his two accused police personnel.

4. Appearing for the petitioner, Mr. Shinde, learned counsel has submitted that on account of failure to examine the complainant, who was the star prosecution witness, the entire enquiry proceedings are vitiated. He took us through the evidence recorded in the enquiry as reflected in the enquiry officer's report to buttress his claim that there was no evidence to support the charges. Mr. Shinde has relied upon the judgment of the Apex Court in the case of **Hardwarilal Vs. State of U. P. and others** reported in **(1999) 8 SCC 582** in support of his contention of non examination of the complainant.

5. Mr. Lokhande, learned Assistant Government Pleader for the State Government opposes the petition and supports the order passed by the Tribunal. He also taken us through the report of the enquiry officer to contend that sufficient evidence was available on record to punish the petitioner.

6. After hearing learned counsel for the parties, we find that the charges leveled against the petitioner were serious in nature. The charge of extortion of amount from a citizen by implicating him in false allegation is extremely serious. Luckily for the petitioner, the complainant did not turn up in the disciplinary enquiry. Mr. Shinde attempted to take mileage of the fact of non examination of the complainant in the enquiry. However,

perusal of the charges leveled against the petitioner would indicate that same were in two parts (I) the incident of extorting money, which was possibly not witnessed by anyone except by the complainant and (II) misconduct committed by the petitioner in presence of superior officers after the incident. So far as aspect of return of extorted money is concerned, we find that atleast two witnesses namely Shri Mirza Wahab Baig, Police Sub Inspector and Shri Katkar, Police Inspector have confirmed that the extorted amount was returned by the petitioner in their presence. With regard to other charge of setting up false witness before superior officers in his defence is concerned, there is enough evidence on record. The allegations of leaving the police station when called upon to give statement is also supported by evidence. In these circumstances, we find that non examination of complainant has had no effect on the findings recorded in the disciplinary proceedings. Therefore, reliance of Mr. Shinde, on the judgment of the Apex Court in the case of **Hardwarilal** (*supra*) is of no avail.

7. After perusal of the entire evidence on record, we have no hesitation in holding that the petitioner has been dealt with in a most lenient manner by the employer. Even after the charge of extortion of amount from the complainant was to be momentarily ignored, the charge of setting up a false lady witness which is leveled against a police constable is a serious charge warranting higher degree of penalty. Despite this the petitioner has been virtually let off with a lenient penalty of reduction to basic pay of police constable for two years. To make things worst, the charge

of return of extorted money is found to be proved by evidence appearing on record. We, therefore, find that the findings recorded in the disciplinary proceedings did not suffer from the vice of perversity. Consequentially, we do not find any error being committed by the Tribunal in dismissing the original application. The petition is devoid of any merits. Same is dismissed without any orders as to the costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22