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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6963 OF 2021

The Special Inspector General
of Police, Konkan & Ors.

...Petitioners

V/s.

Dnyaneshwar Laxman Awate

...Respondent

Mr. A. Y. Sakhare, special counsel with Mr. P. P. Kakade, Government Pleader and Mr. S. S. Panchpor, AGP for the petitioners.

Mr. Satyavrat Joshi i/by Mr. Nitesh Jaywant Mohite for the respondent.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: JULY 21, 2022

P.C.:

1. On a praecipe moved on behalf of the respondent (after judgment on this writ petition was reserved) seeking circulation to address us on certain important legal issues, we have brought the writ petition back on board. The order reserving judgment stands recalled. Mr. Joshi, learned advocate for the respondent has been heard. We proceed to decide the writ petition here and now.

2. The petitioners, by instituting this writ petition, challenge an order dated 16th November, 2019 passed by the Maharashtra Administrative Tribunal, Mumbai (hereafter "the

Tribunal", for short) allowing Original Application No.28 of 2018 and Original Application No. 938 of 2018, instituted before it by the respondent, as well as to the order dated 3rd September, 2021 which rejected the petitioners' Review Application No.14 of 2020.

3. Before we take note of what the Tribunal held in its orders, impugned before us, it would be appropriate to appreciate the facts and circumstances leading to institution of this writ petition by the petitioners.

4. The respondent was appointed as a Police Sub Inspector (hereafter "PSI", for short) by way of direct nomination and placed on probation vide order dated 1st October, 2012 issued by the Deputy Inspector General of Police and Deputy Director, Maharashtra Police Academy, Nashik (hereafter "Police Academy", for short). While on probation, the respondent was required to undergo training in the academy. Upon successful completion of training, an order was issued by the Director General of Police, State of Maharashtra, Mumbai (hereafter "DGP", for short) dated 26th February, 2015. Much would depend upon the order dated 26th February, 2015 and, therefore, to the extent relevant, the English version thereof is set out below: -

" No. DGP/5/10/Session-108/Allocation/274/2013
Office of the Director General of Police,
Shahid Bhagatsingh Marg, Kulaba,
Mumbai-400 001

Dated – 26.02.2015

Read:- 1) Order dated 24.09.2013 of this office

2) Government of Maharashtra Ordinance No.8
of 2015, dated 16.02.2015.

The following probationary Sub-Inspectors of Police are being regularly appointed at the places indicated in front of their names from the date of completion of practical training in the district: -

Sr. No.	Name of Trainee Sub-Inspector of Police	Place of Demonstration Training	Place of Regular Appointment
1	*****	*****	*****
**	*****	*****	*****
1476	Awate Dnyaneshwar Laxman	Konkan Range	Konkan Range
**	*****	*****	*****
1534	*****	*****	*****

Sanjeev Dayal
Director General of Police, State
of Maharashtra, Mumbai

Copy to

All Police Commissioners,
All Special Inspector General of Police

Deputy Inspector General of Police, Gandhiroli
Region, Camp Nagpur.

2/- All competent heads should take necessary action at their level to accomodate probationary Police Sub-Inspectors working in their establishments at their level and submit a compliance report to this office. Also probationary Police Sub-Inspectors against whom any departmental enquiry is ongoing or proposed or, they are serving punishment or any criminal case against them is pending or if for any reason their probation period will be extended then after considering all adverse circumstances, while accommodating the probationer Sub-Inspectors in the cadre, the report should be sent to this office as per the prescribed rules.

3/- Probationary Sub-Inspectors of Police who have been posted at other places should be released immediately for appearing themselves at the place of regular appointment at the end of the probationary period.

4/- Probationary Sub-Inspectors of Police have been regularly posted in other constituencies from the present training district.

5/- If a probationary Police Sub-Inspector resigns, the office should be informed accordingly."

5. In due course of time, the respondent faced disciplinary proceedings. Charge-sheet was issued against the respondent on 14th October, 2016 alleging misconduct committed by him under the provisions of the Prevention of Corruption Act, 1988. An inquiry officer was appointed who proceeded with the inquiry, notwithstanding the objection of the respondent that criminal proceedings had been launched against him on the self-same facts and simultaneous proceedings were not permissible in law. The objection was spurned, whereafter a report of inquiry was submitted on 27th July 2017 finding the respondent guilty of charge nos. 1, 3, 5 and 6. A notice was issued on 18th December, 2017 by the petitioner no.1 calling upon the respondent to show cause why he should not be dismissed from service based on the findings arrived at by the inquiry officer. Challenging the show-cause notice dated 18th December, 2017, the respondent had instituted Original Application No. 28 of 2018 on 8th January, 2018. During the pendency of the said application, the respondent was dismissed from service by an order dated 1st September, 2018. The subject matter of challenge in Original Application No. 938 of 2018 was the order of dismissal that was passed against the respondent by the petitioner no.1.

6. Original Application Nos.28 and 938 of 2018 were heard together by a Division Bench of the Tribunal. Both these

applications succeeded. The impugned order of dismissal dated 1st September, 2018 as well as the notice dated 18th December, 2017 calling upon the respondent to show-cause against the proposal to dismiss him from service (wrongly referred to as an order dated 26th February, 2015 in the Tribunal's order) were set aside and the appointing authority of the respondent was granted liberty to pass order afresh in accordance with law.

7. The short point on which the original applications succeeded is this. The Tribunal was of the view that the respondent had been appointed by the DGP and not by the petitioner no.1; and since the respondent was not dismissed by the DGP, the appointing authority, the provision contained in clause (1) of Article 311 of the Constitution of India was breached.

8. The petitioners challenged the order dated 16th November, 2019 before this Court by instituting Writ Petition (St) No. 4777 of 2020. In course of hearing, the petitioners sought to rely upon the order dated 1st October, 2012 by which the respondent was initially appointed as a probationary PSI. According to them, such order of appointment was neither a part of the writ petition nor was it part of the counter affidavit that was filed before the Tribunal. The explanation offered for not placing it before the Tribunal was attributed to its non-traceability at the relevant point of time. A coordinate bench of this Court [of which one of us (Chief Justice) was a member] by order dated 27th October, 2020 declined to interfere with the impugned order of the Tribunal on the ground that the order dated 1st October, 2012 had not

been placed before the Tribunal for its consideration. The writ petition was dismissed, granting liberty to the petitioners to seek a review of the order dated 16th November, 2019 in accordance with law. Review Application No.14 of 2020 was thereafter instituted by the petitioners, which was dismissed by the Tribunal by its order dated 3rd September, 2021.

9. The short question that we are tasked to decide is whether the respondent was dismissed from service by his appointing authority in accordance with the constitutional mandate engrafted in clause (1) of Article 311 of the Constitution of India.

10. We have noted the contents of the order dated 26th February, 2015 issued by the DGP hereinbefore. It would be profitable, at this stage, to consider the order dated 1st October, 2012 issued by the Deputy Inspector General (hereafter "DIG", for short) and Deputy Director, Police Academy. To the extent relevant, the English version thereof is set out below: -

“Office of the Dy. Inspector General
Of Police & Deputy Director, Maharashtra
Police Academy, Trambak Road Nashik.

-: **APPOINTMENT ORDER** :-

Direct Nomination of the following candidate as Probationary Police Sub-Inspector as shown in front of his name, has been granted Pay Band-2, Rs.9300-34800, having Basic Pay R. 10,100/- and Grade Pay Rs.4,300/-, from the date of commencement of training at the Maharashtra Police Academy, Nashik, and the appointment is temporary, on the following terms and conditions:

S.No.	Name of the Birth Candidate	Date of	Home Town	Date of training w.e.f.	
964	Awate Dnyaneshwar Laxman	10.06.1987	Sangli	11/12/2012	BN

1. **Terms & Conditions**

2.1 From the date of his appearance at Maharashtra Police Academy, Nashik as Trainee P.S.I., and thereafter, he will be treated as Cadet.

2.2 *****

2.3 The Probation Period will be of 2 years (24 months) as follows: -

(I) **First 12 months:** - Maharashtra Police Academy, Nashik/Police Training Center, Turchi, Tasgaon Sangli (divided into two phases) till final examination.

(II) **Next 12 months:** - Practical training in the Commissionerate/District (continued or into two phases).

2.4 During the training period at Maharashtra Police Academy, Nashik, it is necessary to pass the regular final examination. In case the candidate fails to pass the regular final examination, opportunity will be given to pass the final examination as under: -

2.5 (I) During the period of demonstration training, at Commissionerate/District, candidate did not show progress, the Director General of Police, Maharashtra State, Mumbai can enhance the probation period of such candidate for further six months.

(II) If the progress of the candidate is not satisfactory even during the extended probationary period, their appointment as P.S.I. Candidate (PSI Cadet) will be cancelled by the Director General of Police, without giving any reason or without any

prior notice.

- 2.6 During the probationary period, candidate cannot acquire the norms of training, and the candidates found to be misbehaving, or their behaviour is not proper, while the trainees at the training center, they will be removed from the services by the Appointing Authority, and thereafter, during the practical training at the District/Commissionerate, or of the same rank/commissionerate may be reduced to the equivalent of an officer (Deputy Inspector General of Police or a senior officer, can remove such trainee from the services.
- 2.7 After completion of training at Maharashtra Police Academy, Nashik, the trainees will be sent for demonstration training to the establishment any Police Commissionerate/District to the post of Police Sub-Inspector.

- 2.10 After completion of training/probationary period by the aforementioned candidates satisfactorily and successfully they will absorbed in the cadre of Police Sub-Inspector.

- 2/- In order that no administrative difficulty/confusion as to the Officer of which Rank has made appointments of the abovementioned candidates, arises in future, the entry of the number of the said order, name of the Appointing Authority (Deputy Inspector General of Police) and the date of appointment should be clearly made in the Service-Books of all the candidates and one copy of appointment order should be preserved in the service-book of each of the Trainee-Police Sub-Inspector.

*****"

(emphasis ours)

11. From the facts and circumstances narrated above, it would be clear that the respondent was appointed as a probationary PSI by the DIG of Police who is also the Deputy

Director, Police Academy. After successful completion of training, the order dated 26th February, 2015 was issued by the DGP whereby along with the respondent, the DGP proceeded to regularly appoint the PSIs at the places indicated against each one of them from the date of completion of practical training.

12. According to Mr. Sakhare, learned senior advocate appearing for the petitioners, the order dated 26th February, 2015 was wrongly regarded by the Tribunal as the appointment order of the respondent whereas, in fact, it was really a posting order since the DGP is the competent authority to allot the successfully trained PSIs in the six divisions of Maharashtra.

13. *Per contra*, Mr. Joshi contended that the tenor of the order dated 26th February, 2015 would clearly indicate that the respondent was regularly appointed by the DGP and not by the DIG of Police or Special Inspector General of Police.

14. Having heard the parties, we have no hesitation to hold that the contention advanced on behalf of the petitioners must be accepted. Clause (1) of Article 311, *inter alia*, mandates that a no person who holds a civil post shall be dismissed or removed from service by an authority subordinate to that by which he was appointed. While Article 311 does not affect the principle that a Government servant holds office at the pleasure of the Governor, the object thereof is to afford protection to a class of persons who otherwise hold office during pleasure. The article makes no distinction between permanent and temporary members of the services

or between persons holding permanent and temporary posts. It would, therefore, be reasonable to hold clause (1) as not excluding an appointment on probation which means that the appointee has been recruited on a trial basis for a particular period. The reason for prescribing a period of probation and how such period has to be understood in service jurisprudence is elaborately discussed by the Supreme Court in its decision reported in (1983) 2 SCC 217 (**Ajit Singh & Ors. vs. State of Punjab & Anr.**). We may profitably refer to the following passage from the said decision: -

“7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus penitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private

employer is entitled to (see *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer."

15. However, a probationer, at the expiration of the probationary period and upon successful completion of probation acquires a right to be considered for confirmation according to the extant rules governing service and as and when such confirmation takes place, he is absorbed in regular service and secures a right to the post.

16. In the light of the aforesaid settled principle, we are inclined to hold that the order dated 1st October, 2012 issued by the DIG of Police and Deputy Director, Police Academy is an appointment order of the respondent on probation and the order dated 26th February, 2015, issued by the DGP is the order of absorption in service upon confirmation that the probation has been successfully completed.

17. The Tribunal failed to consider that once an appointment is made on probation and if, in accordance with the rules of service, the appointment is confirmed by issuance of a fresh order of regular or substantive appointment, the date of appointment of the appointee relates back to the date when he was initially appointed on probation and it is, therefore, that initial order which must be regarded as the

order of appointment in service and the officer making such appointment regarded as the appointing authority.

18. In the affidavit-in-reply filed by the respondent, the order dated 1st October, 2012 has been labelled to be an order of posting and not an order of appointment. While we look at the Bombay Police Manual, 1959, Chapter-II thereof deals with 'Recruitment'. Under rule 33, particulars of appointing authority for Inspectors of Police, Sub Inspectors, Head Constables and Constables are mentioned. For Sub Inspectors, it is the DIG of Police at the Police Training School Nashik, who is the appointing authority. It does not appear from the impugned orders of the Tribunal that rule 33 of the Bombay Police Manual was brought to its notice. Such provision makes the position clear as to who the appointing authority of a PSI, who is initially appointed on probation and placed at the Police Academy, would be.

19. We have also looked into the service book of the respondent produced by Mr. Sakhare. The entry at page no.4 of such service book reveals that the respondent was appointed by the order dated 1st October, 2012.

20. It is true that before the Tribunal, in course of hearing of the original applications, the appointment order dated 1st October, 2012 was not placed. That, however, did not preclude the Tribunal from enquiring of the petitioners whether such an order of appointment on probation did exist or not. Insofar as police service is concerned, it seldom happens that initially appointment is not made on probation. In fact, the order of the DGP dated 26th February, 2015 did say that the PSIs

named therein, who had been on probation, were being given posting orders. Thus, even without the order dated 1st October, 2012 being on record, the Tribunal was wholly unjustified in holding that the respondent was not dismissed by his appointing authority. Also, the Tribunal committed gross error in rejecting the review application of the petitioners. We may quote here paragraphs 10 and 11 of the order on the review application, which reflects the flawed approach adopted by the Tribunal. It reads: -

"10. As such, even if appointment order dated 01.10.2012 which is now for the first time tendered in revision is considered, it also does not make any difference, since all the terms and conditions mentioned in this appointment order dated 01.10.2012 and appointment order dated 05.11.2012 (sic, 26.02.2015) are same. The Tribunal has also recorded specific findings on the basis of appointment order dated 26.02.2015 (Page Nos.24 to 26 of O.A.) that appointing authority of the Applicant is Director General of Police and Inspector General of Police, Maharashtra State.

11. Suffice to say, there is no such apparent error on the face of record, as contemplated under Order 47 Rule 1 of CPC to review the order passed by this Tribunal."

21. The decisions cited by Mr. Joshi have been considered by us. The decision reported in 2021 (2) ALL MR 810 (S.C.) (**Rajasthan High Court vs. Ved Priya**) set aside the order of reinstatement in service passed by the High Court, under challenge in the civil appeal, on the ground that termination of the respondent was not based on allegation of misconduct. In its decision reported in (1979) 2 SCC 111 (**State of Uttar Pradesh vs. Bhoop Singh Verma**), the Court held that if

alleged past misconduct were the motive and not the foundation of the order of termination simpliciter of a temporary servant, Article 311(2) of the Constitution is not attracted. We have failed to find the relevance of these decisions to the facts at hand. Indeed, the decision reported in AIR 1979 SC 1912 (**Krishna Kumar vs. The Divisional Assistant Electrical Engineer, Central Railway**) interfered with the order of removal from service imposed upon the appellant by the Divisional Assistant Electrical Engineer, Central Railway, Nagpur because such engineer was subordinate in rank to the Chief Electrical Engineer who was the appointing authority. Also, the Division Bench of this Court [of which one of us (M.S. Karnik, J.) was a member] in the decision reported in 2019 (1) ALL MR 121 (**Union of India vs. Mr. Manoj Kumar V. Kumare**) set aside the order of removal but that was based on the finding that the respondent had not been removed by his appointing authority, i.e., the Senior Divisional Personnel Officer. That is, however, not the case here. The decision of the Single Bench of this Court reported in 2019 ALL MR (Cri) 4480 (**Balu Dasu Rathod vs. State of Maharashtra**) is on the point of grant of sanction by the competent authority being a *sine qua non* for taking of cognizance under the Prevention of Corruption Act. We are not dealing with a case of sanction and, therefore, this decision does not assist the respondent.

22. For the foregoing reasons, the writ petition is allowed and the orders under challenge stand set aside. No costs.

23. Since the Tribunal had decided the sole point as to whether the respondent was dismissed from service by his

appointing authority and we have, while failing to agree with the Tribunal, answered such point by taking a different view of the matter, we propose to direct a remand of the original applications to the Tribunal to consider the other points which the respondent might raise before it. It is ordered accordingly.

24. This order would result in revival of Original Application Nos. 28 of 2018 and 938 of 2018, which may now be disposed of by the Tribunal in accordance with law as expeditiously as possible. All other contentions on merits are left open.

25. The petitioners shall collect the service book of the respondent from the Registrar General of this Court.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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