

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.1995 OF 2023

Shri. Mohmmad Usman Shaikh

..Petitioner

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Chandrakant T. Chandratre, for the Petitioner.

Mrs. R. M. Shinde, AGP for the Respondent Nos.1 & 2/State.

CORAM : S. V. GANGAPURWALA, ACTING CJ &
SANDEEP V. MARNE, J.

DATE : 3rd APRIL, 2023

ORAL ORDER (Per Acting Chief Justice):

1. Rule. Rule made returnable forthwith. With consent of the parties, heard finally.
2. The petitioner had jointed as a constable with respondent in July, 1993.
3. On 30th May, 1996, the petitioner was suspended as criminal case was filed against the him. On 22nd June, 1996, the petitioner was reinstated in service. The petitioner was convicted in the criminal case by the order dated 16th February, 1999. In view of conviction, the petitioner was dismissed from service on 24th May, 1999. On 23rd August, 2007, the order of conviction was set aside in appeal. On 31st January, 2008, the petitioner was reinstated in service. Learned counsel for the petitioner submits that the period of suspension i.e. from 30th December, 1995 to 25th June, 1996 came to be considered as suspended for all purpose. So

also the period from 24th May, 1999 to 4th February, 2008 came to be considered as period spent out of duty. The petitioner filed original application. Same is dismissed. Learned counsel for the petitioner submits that the acquittal of the petitioner in criminal case is on merits. There was no reason for not treating the period from dismissal to reinstatement as duty period.

4. Learned AGP submits that the Tribunal has rightly considered the fact that the petitioner was not in service from 24th May, 1999 to 4th February, 2008 i.e. till the date of his appointment as a fresh candidate.

5. We have considered submissions.

6. The petitioner admittedly was behind the bars from 30th December, 1995 till 25th June, 1996 and again from 24th May 1999 till 4th February, 2008. The said period has to be treated as a suspension period.

7. We may not consider about the period during which the petitioner was placed under suspension from 30th December, 1995 till 25th June, 1996. The same was during the pendency of the criminal case. The petitioner was convicted in criminal case on 16th February, 1999 and thereafter the petitioner was dismissed on 24th May, 1999. The appeal filed by the petitioner was allowed and the conviction is set aside. As contended by the learned counsel for the petitioner, the judgment in appeal is on merits, the petitioner is reinstated on 04.02.2008.

8. It is admitted that no departmental proceedings were

initiated against the petitioner. The dismissal is solely on the ground of conviction in the criminal case. The reinstatement of the petitioner is ordered after conviction is set aside.

9. In light of that, there is no impediment for the respondents to treat the period from dismissal to reinstatement for the purposes of pension. The said period cannot be treated as suspension period or out of duty period. However, it is also a fact that the petitioner has not worked during the said period. As such, petitioner would not be entitled for the backwages.

10. In light of that, we pass the following order :-

- i) The impugned order passed by the respondent is modified.
- ii) The period from 24.05.1999 till 04.02.2008 shall be treated as a duty period for the purpose of pension.
- iii) However, the petitioner will not be entitled for backwages during the said period.

11. Rule is accordingly made partly absolute. No costs.

[SANDEEP V. MARNE, J.]

[ACTING CHIEF JUSTICE]