

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9749 OF 2018

Shri. Dnyaneshwar Valiba Avhad

.....Petitioner

V/s.

The State of Maharashtra

....Respondent

Mr. Rajesh Kolge, Advocate for petitioner.

Mr. B.V. Samant, AGP for the State.

CORAM : S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.

DATED : 27TH MARCH, 2023.

P.C. :

1. By this petition, petitioner challenges judgment and order dated 31.01.2018 passed by the Maharashtra Administrative Tribunal in Original Application No.519/2015 to the limited extent of denial of backwages during the period of dismissal from service till reinstatement. The Tribunal has partly allowed the Original Application by setting aside the order dated 17.03.2015 by which punishment of dismissal from service was imposed. The Tribunal has directed Petitioner's reinstatement in service. The Tribunal has also

granted continuity to him by directing that the period between dismissal till reinstatement be considered as continued service for the purposes of pensionary benefits, if any. The Tribunal has however denied any pay and allowances including arrears for the period between dismissal and reinstatement. Petitioner is aggrieved by the order of the Tribunal to the limited extent of denial of backwages.

2. Petitioner came to be appointed as Police Constable on 15.04.1995. A complaint was made by one Smt. Jijabai alleging that petitioner contracted marriage with her without divorcing his first wife, Vandana D. Avhad. Jijabai also accused petitioner of abusing and threatening her. Based on complaint filed by Jijabai, First Information Report was registered against him on 16.6.2008. Simultaneously, Memorandum of Chargesheet dated 8.07.2008 was issued alleging a solitary charge of contracting second marriage with Jijabai during subsistence of marriage with Vandana. It was alleged that petitioner abused and threatened Jijabai and threw her out of the house.

3. It appears that Vandana had also lodged FIR No. 334/2004 against petitioner at Bhiwandi Police Station under Section 498A of the Indian Penal Code. The disputes between them were however amicably resolved and by order dated 8.10.2008 passed by this Court in Criminal Application No. 3553/2008, the said FIR came to be quashed by consent.

4. In the meantime, the departmental enquiry in pursuance of the Memorandum of Chargesheet dated 8.07.2008 was conducted. In the departmental enquiry, Petitioner set up the defence of non-solemnisation of marriage with Jijabai. The Enquiry Officer submitted report dated 24.11.2008 holding that the charge was proved and recommended imposition of penalty of dismissal from service. Accordingly, a show cause notice dated 1st December 2008 was issued to petitioner, proposing the penalty of dismissal from service. After considering petitioner's representation, order dated 30.01.2009 was passed by the disciplinary authority imposing the penalty of dismissal from service.

5. Petitioner preferred appeal before the State Government on 18.02.2009. The Appellate Authority passed order dated 20.10.2009 allowing petitioner's Appeal and set aside the penalty of dismissal from service. Petitioner was directed to be reinstated in service. It was further directed that the decision with regard to treatment of period from the date of dismissal till reinstatement, shall be taken separately. By order dated 13th November 2009 petitioner was reinstated in service. The State Government, however, conducted *suo-moto* review of its decision under Section 27-B of the Maharashtra Police Act, 1951 and passed order dated 15.04.2010 dismissing petitioner from service. Petitioner filed Original Application No. 439/2010 before the Tribunal challenging the dismissal order. By order dated 13.05.2010, the Tribunal partly allowed the Original Application setting aside the dismissal order

dated 15-04-2010 on the ground of non-issuance of show cause notice in review proceedings taken under Section 27-B. Respondents were however granted liberty to adopt appropriate proceedings against petitioner in accordance with law. By order dated 07.06.2010 the petitioner was reinstated in service.

6. By exercising the liberty granted by the Tribunal in its order dated 13.05.2010 the State Government took up Petitioner's case in suo-moto review under Section 27-B. It appears that petitioner was heard on 10.06.2010 and thereafter order dated 21.07.2010 was passed directing that the penalty of dismissal from service imposed on petitioner on 30.01.2009 stood confirmed. Petitioner once again approached the Tribunal by filing Original Application No. 669/2011. By judgment and order dated 09.07.2014, the Tribunal remanded the matter to the Commissioner of Police, Nashik to start proceedings against the petitioner *de-novo* under Section 27-B and for rendering decision afresh after affording opportunity of hearing to petitioner. It was directed that till conclusion of the proceedings, petitioner shall not be reinstated. In accordance with the order passed by the Tribunal, the State Government took up the proceedings under Section 27-B and conducted hearing on 12th February, 2015 and passed order dated 17-03-2015 holding that the charge levelled against the petitioner was fully proved and confirmed the order of dismissal from service. Petitioner once again approached the Tribunal by filing Original Application No. 519/2015 challenging the dismissal order dated 17.03.2015. By its judgment

and order 31.01.2018 the Tribunal has partly allowed the Original Application setting aside the punishment of dismissal from service and directing petitioner's reinstatement. While petitioner is granted continuity of service, he is denied pay and allowances including arrears during the period from last dismissal till the date of reinstatement. Petitioner has been reinstated in service by order dated 26.02.2018. The petitioner has filed the present petition to the limited extent of denial of backwages.

7. Appearing for petitioner, Mr. Kolge the learned Counsel would submit that the petitioner has been kept away from duties on account of actions of respondent, which have repeatedly been found illegal by the Tribunal. That the petitioner was required to approach the Tribunal on three occasions for the purpose of his reinstatement in service. That despite direction of the Tribunal to conduct *de novo* proceedings, the State Government once again conducted proceedings for review under Section 27B by treating the proceedings as if the same were an appeal filed by petitioner. That in such circumstances, the Tribunal ought to have granted backwages. He would submit that petitioner was not gainfully employed during the intervening period.

8. Mr. Sawant, the learned AGP would oppose the petition submitting that the Tribunal has correctly denied backwages. That petitioner was facing charge of serious nature of contracting second marriage and abusing and threatening his second wife. That since the

dismissal order is set aside on technical grounds, denial of backwages in such circumstances is warranted.

9. After having heard the learned counsels for the parties, the short question that falls for our consideration is whether the petitioner is entitled to backwages during the intervening period from the date of dismissal till the date of reinstatement. The Tribunal has already granted continuity of service to the petitioner during the intervening period.

10. Petitioner was last dismissed from service by order dated 21.07.2010. Though, the order states that the State Government confirmed the order of petitioner's dismissal issued on 30.09.2009 we do not find any such order dated 30.09.2009. The first order of petitioner's dismissal was issued on 30.01.2009. He was reinstated in service in pursuance of the order of the Appellate Authority on 13.11.2009. He was once again dismissed on 15.04.2010 but reinstated in pursuance of the Tribunal's order dated 7.06.2010. He was once again dismissed from service on 21.07.2010. Though the Tribunal directed conducting de novo proceedings under Section 27B by its order dated 09.07.2014, petitioner was directed not to be reinstated. In pursuance of such *de novo* proceedings, petitioner was once again dismissed from service by order dated 17.03.2015. Since petitioner was not reinstated in service in pursuance of order dated 09.07.2014 passed by the Tribunal in O.A. No. 669/2011, the last date of dismissal of the petitioner from service would be 21.07.2010.

Petitioner has ultimately been reinstated in service on 26.02.2018. Thus, the exact period under consideration for deciding the issue of backwages is from 21.07.2010 to 26.02.2018.

11. The chronology of events narrated above, would indicate that the disciplinary proceedings against petitioner have been protracted on account of several erroneous decisions taken by the State Government while exercising power of review under Section 27B of the Act. The State Government initially allowed petitioner's Appeal by setting aside the order of dismissal and directed petitioner's reinstatement by order dated 20.10.2009. However, within a short span and without following the principles of natural justice, the order of dismissal was passed on 15.04.2010 by exercising power of review under Section 27B of the Act. The Tribunal set aside the order on 13.05.2010 and petitioner was reinstated in service on 7.06.2010. Without issuing any show-cause notice, the State Government took decision on 21.07.2010 and once again dismissed the petitioner from service under Section 27B of the Act. The Tribunal was required to intervene once again in O.A. No. 669/2011 by setting aside the penalty and granted liberty to conduct *de novo* proceedings under Section 27B. Such *de novo* proceedings under Section 27B by the State Government resulted in passing of order dated 27.03.2015, once again imposing the penalty of dismissal from service. By judgment impugned in the present petition, the Tribunal has set aside the order dated 17.03.2015. The State Government is not aggrieved by the decision of the Tribunal. Infact,

the Tribunal's order is implemented by the State Government by reinstating petitioner by order dated 26.02.2018. The State Government accepts the position that petitioner was erroneously dismissed from service from time to time.

12. Thus, petitioner has been kept away from duties since 21.07.2010 on account of erroneous proceedings conducted by the State Government under Section 27B of the Act. He was required to knock the doors of the Tribunal thrice. Petitioner was not gainfully employed during the intervening period of dismissal.

13. Considering the overall facts and circumstances of the case and especially the fact that petitioner was not gainfully employed during the intervening period of dismissal, we are of the considered view that ends of justice would meet if Respondents are directed to be pay 50% of the backwages from 21.07.2010 till 25.2.2018. The Tribunal has already granted the benefit of continuity of service to petitioner during the intervening period of dismissal.

14. The order passed by the Tribunal therefore deserves to be modified to the extent of denial of backwages. We accordingly proceed to pass the following order:

O R D E R

- (i) The Writ Petition is partly allowed. The order of the Tribunal is modified to the extent that the respondents shall pay 50% of

the backwages to petitioner from 21.07.2010 till 25.02.2018.

- (ii) The backwages shall be paid within a period 3 months.
- (iii) The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

**NEETA
SHAILESH
SAWANT**

Digitally signed by
NEETA SHAILESH
SAWANT
Date: 2023.03.30
16:17:54 +0530