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

WRIT PETITION NO.13813 OF 2022

Gopichand Kashinath Sanap

..petitioner

Vs.

The Government of Maharashtra & Anr.

.. Respondents

...

Mr. Sachin Punde a/w Mr. Sangram Suryavanshi for petitioner.

Ms. Reena Salunkhe, AGP for Respondent-State.

...

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 3rd JANUARY, 2024.

PC. :

1. Heard. The challenge raised in this Writ Petition is to the order passed by the Maharashtra Administrative Tribunal in Original Application No.785 of 2019 decided on 06/07/2021. By the said order, the Tribunal has refused to interfere with the order passed by the Appellate Authority on 04/01/2018 and set aside the punishment imposed on the petitioner.
2. The petitioner while serving as an Assistant Sub-Inspector with the Police Department was proceeded against in departmental proceedings. At the conclusion of the enquiry, punishment of compulsory retirement was imposed by the Disciplinary Authority. Being aggrieved, the petitioner filed an Appeal before the State Government which partly allowed the same. After confirming the findings recorded in the enquiry, the Appellate Authority modified the order of punishment from "compulsory retirement"

to “stern warning”. It further proceeded to deny the petitioner the benefit of backwages for the relevant period. Being aggrieved, the petitioner approached the Maharashtra Administrative Tribunal. The Tribunal found that since the petitioner had not discharged duties during the relevant period, he was not entitled for backwages as a matter of course. In view of the fact that the findings recorded by the Enquiry Officer were confirmed by the Appellate Authority, it followed the law laid down by the Hon’ble Supreme Court in *Union of India & Ors. Vs. Jaipal Singh*, (2004) 1 SCC 121 and did not grant any relief to the petitioner.

3. The learned counsel for the petitioner submits that firstly the punishment imposed by the Disciplinary Authority was modified and the minor penalty of “stern warning” was imposed on the petitioner. This would indicate that there was no reason to deprive the petitioner of salary for the period when he was out of employment. Further, the Appellate Authority took about six years to decide the petitioner’s appeal for which the petitioner could not be faulted. On this premise, it is submitted that the relief of backwages ought to be granted to the petitioner.

4. The learned Assistant Government Pleader for the Respondents has supported the impugned order.

5. We find that firstly the Appellate Authority while modifying the punishment imposed on the petitioner has confirmed the guilt of the petitioner as recorded by the Enquiry Officer. It has interfered only to the

extent of the punishment imposed on the petitioner. The discretion to deny backwages was thereafter exercised considering the nature of charges. The Tribunal has taken into consideration the fact that the guilt of the petitioner was confirmed and that the petitioner did not discharge duties during the relevant period. On that premise, the denial of backwages was upheld. We find that the discretion exercised in this regard cannot be said to be either arbitrary or illegal. The Hon'ble Supreme Court in *Union of India & Ors (supra)* has observed that if the service of the delinquent cannot be utilised during the relevant period, the same can be a reason for denying backwages. Insofar as pendency of the appeal is concerned, we find that the same by itself cannot be a reason to grant benefit to the petitioner especially when the petitioner did not take any efforts to have the appeal decided earlier.

6. In absence of any illegality or perversity in the approach of the Tribunal, we do not find any case made out to interfere in writ jurisdiction.

7. The Writ Petition is thus dismissed with no order as to costs.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]