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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10782 OF 2023**

Mr. Shivanand Hanmant Bobade	]	
Ag-37 years, Occ: Service	]	
R/o : A/P, Chinchani, Tal: Tasgaon,	]	
Dist: Sangli.	]	 Petitioner.

V/s

1] The State of Maharashtra	]	
	]	
2] The Special Inspector General	]	
of Police, Kolhapur Range, Kolhapur,	]	
having office at Kasba Bawda, Kolhapur	]	
	]	
3] The Superintendent of Police,	]	
Sangli, having office at Vishrambaugh,	]	
Sangli.	]	 Respondents.

Mr. Satyavrat Joshi a/w Mr. Ashish S. Vernekar for the Petitioner.
Mr. V.M. Mali, AGP for Respondents-State.

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

DATE: 5th APRIL, 2024

ORAL JUDGMENT: (Per A. S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith and heard learned Counsel for the parties.

2] The challenge raised in this writ petition is to the order passed by

the Maharashtra Administrative Tribunal dismissing the Original Application that was preferred by the Petitioner. The Petitioner while serving as Police Constable was proceeded against departmentally. On 02/07/2021, Superintendent of Police, Sangli – the Disciplinary Authority passed an order dismissing the Petitioner from service. The Petitioner preferred an appeal against the said order under Section 27 of the Maharashtra Police Act (for short, the Act of 1951). The Special Inspector General of Police, Kolhapur Region – Appellate Authority allowed the appeal on 12/04/2022 and noted that an opportunity ought to be given to the Petitioner. For that reason, he modified the order of dismissal. The penalty of dismissal was substituted with the penalty of withholding increments for a period of three years. Acting on the order passed by the Appellate Authority, the Disciplinary Authority directed the Petitioner to report at the Police Headquarters for resuming his duties. In the meanwhile, it appears that on 14/05/2022, a criminal case was registered against the Petitioner vide FIR No.116 of 2022. On that basis, the Disciplinary Authority on 20/5/2022 issued a communication to the Appellate Authority bringing the said fact to its notice. A request was made to re-consider the order of penalty dated 12/04/2022. On that basis, the Appellate Authority

on 07/06/2022 proceeded to modify the order of penalty and dismissed the appeal preferred by the Petitioner. As a result, the order of dismissal from service was restored.

3] The Petitioner challenged the aforesaid order dated 07/06/2022 before the Maharashtra Administrative Tribunal by filing Original Application No.1052 of 2022. Before the Tribunal the issue with regard to service of the order dated 12/04/2022 on the Petitioner was gone into. After finding that there was no actual service of the order dated 12/04/2022 passed by the Special Inspector General, modifying the order of penalty, the learned Members of the Tribunal were of the view that it was permissible for the Respondents to modify the appellate order dated 12/04/2022 and pass the subsequent order dated 07/06/2022 thereby dismissing the Petitioner from service. The Original Application therefore came to be dismissed.

4] Shri Satyavrat Joshi, the learned Counsel for the Petitioner submitted that the Tribunal was not factually correct in recording a finding that the order dated 12/04/2022 passed by the Appellate Authority allowing the appeal preferred by the Petitioner against the

order of dismissal from service was not served on the Petitioner and hence it could have been reviewed. After this order was served on the Petitioner, his services were reinstated and the order dated 13/05/2022 came to be issued posting him at Police Headquarters Sangli. On the basis of this order, the Petitioner reported for duty on 06/06/2022. It was only thereafter that on 07/06/2022 that the Appellate Authority proceeded to re-visit the earlier order dated 12/04/2022 and dismissed the appeal. Since the appellate order dated 12/04/2022 had been implemented by reinstating the Petitioner, it was not permissible to modify the said order in exercise of review jurisdiction. The Tribunal erred in refusing to interfere with the order dated 07/06/2022 especially when this order was passed without any notice to the Petitioner. Moreover, the name of the Petitioner was not shown in the charge-sheet that was filed pursuant to registration of FIR No.116 of 2022. Hence the order passed by the Tribunal ought to be set aside.

5] Shri V.M. Mali, the learned Assistant Government Pleader for the Respondents supported the order passed by the Tribunal. According to him, the Tribunal was justified in holding that since the order dated 12/04/2022 had not been acted upon it was open for the said authority

to re-consider the matter and thereafter modify the punishment order. Considering the conduct of the Petitioner no case was made out to exercise jurisdiction under Article 226 of the Constitution of India. It was submitted that the writ petition was liable to be dismissed.

6] We find that there is sufficient material on record that was not considered by the Tribunal to conclude that the order dated 12/04/2022 directing reinstatement of the Petitioner subject to withholding his increments for a period of three years with cumulative effect had been acted upon. Pursuant to that order, on 13/05/2022 an order of posting was issued and the Petitioner on 06/06/2022 joined at that post pursuant to his reinstatement. The joining request bears the endorsement of the inward clerk from the office of the Police Superintendent, Sangli dated 06/06/2022. The said joining report has not been denied by the Respondents. Hence, the basis on which the Tribunal proceeded to hold that the order dated 12/04/2022 was not served on the Petitioner is found to be factually incorrect.

7] On 14/03/2024 after hearing learned Counsel we had observed in para 2 of the order passed on that date as under:-

“2] The question to be considered is, when the Appellate Authority had partly allowed the appeal on 12/04/2022 which order was thereafter sought to be implemented on 13/05/2022, whether power of review could have been exercised by the Appellate Authority that too without giving any notice to the Petitioner thereby resulting in confirmation of the order of dismissal?”

8] In response to the aforesaid, an additional affidavit has been filed on behalf of Respondent No.2. In paragraph 3 of the said affidavit in reply it has been stated as under:-

“3. I further say and submit that, power of review is mentioned under section 27 B of Maharashtra Police Act. However from the official record of Special Inspector General of Police office, It is seen that the order dated 12.04.2022 is reviewed by Special Inspector General of Police by order dated 07.06.2022 and the then Special Inspector General of Police, Kolhapur Range, Kolhapur has exercised power of review. I further say and submit that from Special Inspector General of Police office record it appears that before exercising power of review, the then Special Inspector General of Police has not given any show cause notice to the present Petitioner. But before exercising power of review it appears that there was discussion between the Review Committee formed by the then Special Inspector General of Police. However on perusal of official records and concerned file & order dated 12/04/2022 of the Special Inspector General of Police office it is seen that, concern rule is not mentioned on the record.”

9] From the aforesaid, it becomes clear that the order dated 07/06/2022 has been passed by the Special Inspector General of Police in exercise of power of review under Section 27B of the Maharashtra Police Act, 1951 (for short, Act of 1951) but without granting any opportunity to the Petitioner. Though a power to review an order passed earlier is available with the Special Inspector General of Police, such power could be exercised only after giving notice to the party likely to be affected alongwith a reasonable opportunity of making a representation against the penalty proposed. Since this basic requirement of giving notice to the Petitioner before exercising power under Section 27B of the Act of 1951 has not been complied with, it is evident that the order dated 07/06/2022 cannot be sustained since that order has been passed in breach of principles of natural justice.

10] Consequently, as a result of foregoing discussion, the following order is passed:-

(i) The order passed by the Maharashtra Administrative Tribunal dated 04/07/2023 in Original Application No.1052 of 2022 as well as the order dated 07/06/2022 passed by the

Special Inspector General of Police are set aside.

(ii) The Petitioner shall be reinstated in service in terms of the order dated 12/04/2022 passed by the Special Inspector General of Police within a period of two weeks of receiving copy of this order. Needless to state that the said Authority is free to exercise power under Section 27B of the Act of 1951, if so advised, in accordance with law.

(iii) The Petitioner would be entitled to the benefit of continuity of service pursuant to the order dated 12/04/2022. However, in the facts of the case since the Petitioner has not worked during the interregnum, arrears of salary from 07/06/2022 till reinstatement are not granted.

11] Rule is made absolute in the aforesaid terms with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]