

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

PRACHI PRANESH
NANDIWADEKAR

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WRIT PETITION NO.1212 OF 2020

Ashok Fulchand Jadhav
Aged 47 years, Occ. Service
R/o. Bibewewadi, V. No.162,
Near Suhas Mangal Karyalay,
Datta Mandir, Pune

.. Petitioner

Versus

1. DIG, State Reserve Police Force
Pune

2. The State of Maharashtra
To Principal Secretary
Home Department, Mantralaya,
Mumbai (notice to be served on CPO)

.. Respondents

Mr. Atish S. Kaningdhvaj for the petitioner.
Mr. B.V. Samant, Addl. G.P. a/w Mr. R.P. Kadam, AGP for respondent nos. 1
& 2-State.

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

DATE : 8th February 2024

Judgment (Per Jitendra Jain, J.) :-

. Rule. Mr. Samant, learned Additional Government Pleader
waives service for respondent nos. 1 & 2-State. By consent of the parties,
the petition is heard finally.

2. By this petition under Article 226 of the Constitution of
India, the petitioner challenges an order of the Maharashtra

Administrative Tribunal ("Tribunal") dated 17th October 2019 whereby the Tribunal has refused to condone the delay prayed for in filing the Original Application No.577 of 2019 and consequently the Original Application is dismissed.

3. Brief facts are as under :-

- (i) The petitioner was working as a Constable with the respondents.
- (ii) On 29th December 2004, in a departmental enquiry against the petitioner, charges were framed and a suspension order was passed. The said suspension order was quashed by the Tribunal vide order dated 25th February 2004. Thereafter, an offence under Section 376 of the Indian Penal Code (IPC) was registered against the petitioner and he was again suspended. Against the said order of the dismissal, the petitioner filed an appeal which was dismissed by an order dated 19th December 2005. The said order was challenged in revision which came to be rejected by the State Government.
- (iii) Meanwhile, the criminal proceedings against the petitioner which were subject matter of the proceedings before the Sessions Judge convicted the petitioner and the said conviction order was challenged before this Court and this Court in Criminal Appeal No.278 of 2006 vide order dated 18th March 2019 allowed the

appeal of the petitioner and acquitted him on the ground that a false criminal case was filed against the petitioner.

- (iv) The petitioner thereafter, challenged the order passed by the respondents in revision proceedings on 19th May 2016 pursuant to the departmental enquiry before the Tribunal. The Original Application was filed after a period of 3 years and 2 months on 20th June 2019. The petitioner filed Miscellaneous Application No.316 of 2019 in Original Application No.577 of 2019 praying for condonation of delay in filing the Original Application.
- (v) The Tribunal dismissed the Miscellaneous Application on the ground that the order of the High Court allowing the petitioner's criminal appeal had no nexus with the review order challenged before the Tribunal and therefore, the reason given by the petitioner that the delay was on account of he awaiting the order of the High Court in criminal appeal was rejected. It is on this backdrop, the present petition is filed before this Court.

4. We have heard the learned counsel for the petitioner and the respondents and with their assistance have perused the documents annexed to the petition.

5. In our view, the Tribunal was not justified in refusing to

condone the delay on an erroneous basis that the reason given by the petitioner that he was awaiting the High Court's order in criminal appeal before filing the Original Application before the Tribunal. The Tribunal came to a conclusion by observing that the charges in departmental enquiry were not related to an offence under Section 376 of the IPC and therefore, the reason given by the petitioner was not accepted.

6. We have perused the show cause notice dated 5th February 2005 initiating departmental enquiry against the petitioner and also the appellate order and revision order passed thereon. Admittedly in the departmental enquiry, there is no charge framed with regard to registration of an offence under Section 376 of the IPC. However in the operative part of the revisional order dated 15th July 2016, there is a reference to the conviction for the offence under Section 376 of the IPC. Therefore in our view, the petitioner was justified in awaiting the order of this Court in the criminal appeal against the order of conviction passed by the Sessions Judge with respect to the offence under Section 376 of the IPC. This Court acquitted the petitioner for the offence under Section 376 of the IPC vide order dated 18th March 2019 and thereafter immediately on 20th June 2019, the petitioner challenged the order of dismissal in departmental proceedings by filing Original Application before the Tribunal.

7. In our view, the petitioner was justified in explaining the delay in filing the Original Application by relying upon the decision of this Court wherein he was acquitted for the offence under Section 376 of the IPC. To reiterate, since in the revision order, there is a mention of the said offence while in the departmental enquiry, no charge was framed on this count, the petitioner rightly awaited the outcome of his criminal appeal.

8. In view of the above, we pass following order :-

- (i) The order passed by the Maharashtra Administrative Tribunal on 17th October 2019 dismissing Miscellaneous Application No.316 of 2019 on the ground of delay is set aside.
- (ii) The delay in filing the Original Application stands condoned.
- (iii) The proceedings of the Original Application No.577 of 2019 is restored to file of the Tribunal for adjudication on merits.
- (iii) Original Application shall be entertained on merits and decided in accordance with law.

9. Rule is made absolute in aforesaid terms. The petition is disposed of. No order as to costs.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.

The judgment is modified as per specking to the minutes of the order dated 21st March 2024.