

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

WRIT PETITION NO. 8631 OF 2024

Vinodsingh Vijaysingh Chavan ...Petitioner

VERSUS

The State of Maharashtra and Ors. ...Respondents

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Ms. Shivani S. Shinde, Advocate for the Petitioner.

Ms. G. R. Raghuvanshi, AGP for the Respondent – State.

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**CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.**

DATE : 1st July, 2025

ORAL JUDGMENT (PER : N.R. BORKAR J.)

1. The facts giving rise to the present petition are as under:
2. The petitioner, a police constable was subjected to regular departmental inquiry for misconduct in relation to the incident, which took place on 30.08.2010, while he was on training at the Police Training Centre at Marol, Mumbai.
3. The charge against the petitioner was that on 30.08.2010 while he and his batchmate police constable

Sachin Gaikwad were in classroom, an altercation took place between them on some trivial issue and during the said altercation they abused each other. As the said police constable Sachin Gaikwad was abused in filthy language, he got enraged and assaulted the petitioner by wooden log, due to which the left hand of the petitioner was fractured. The petitioner was further charged that he misrepresented to the department that he sustained the fracture injury as he slipped while running. The charge reads thus :

" दिनांक ३०/०८/२०१० रोजी सकाळी ९.२० ते ९.३५ वा. चे सुमारास तुम्ही तुमचे सहप्रशिक्षणार्थी न प्र पोशि/७२८ सचिन एकनाथ गायकवाड - भरती जिल्हा जळगाव यांचेशी प्रशिक्षण वर्गामध्ये हजर असणा-या सर्व प्रशिक्षणार्थींच्या समक्ष आपआपसात एकमेकांना शिवीगाळ केलीत. तुम्ही न प्र पोशि/७२८ सचिन एकनाथ गायकवाड यास "XXXXXXXX" अशा अर्वाच्य व अश्लील शिव्या दिल्या. परिणामी न प्र पोशि/७२८ सचिन एकनाथ गायकवाड याने तुम्हास प्रशिक्षण वर्गामध्ये पडलेल्या लाकडी ठोकळा फेकून मारल्याने तुमच्या डाव्या हातात भार लागून डाव्या हाताचे हाड मोडले. सदर घटनेबाबत तुम्ही वरिष्ठांना कोणत्याही प्रकारे कल्पना न देता आपल्या विरुद्ध कारवाई होऊ नये या उद्देशाने वर्गात पळत येत असताना पाय घसरून पडल्यामुळे मार लागला असा जबाब दिलेला आहे. यावरून तुमचा बेशिस्त व जबाबदारपणा दिसून येतो.

तुमच्या या विशिष्ट व बेजबाबदार वर्तनामुळे तुम्ही, मुंबई पोलीस (शिक्षा व अपिले) नियम १९५६ मधील नियम ३ अन्वये कोणत्याही शिक्षेस पात्र ठरणार आहात."

4. The petitioner was found guilty of the alleged misconduct. Thus, by order dated 27.12.2010, the petitioner was dismissed from service.

5. Against the order of dismissal from service an appeal was filed, however, the same was dismissed. The petitioner thereafter filed a revision before the respondent No. 1 State-Government. In the revision, the punishment of dismissal was found to be disproportionate. Thus, by order dated 28.08.2014 passed by the respondent No.1 the punishment of dismissal from service was set aside and instead the punishment of withholding of increments for five years, with cumulative effect was imposed. On 18.10.2014 the petitioner was thus reinstated in service.

6. The petitioner vide representation dated 13.11.2014, sought review of the order dated 28.08.2014 to the extent of imposing the punishment of withholding of five increments with cumulative effect and further prayer was made for grant of full pay and allowances for the period during which he was out of service i.e. from 27.12.2010 to 28.10.2014. The respondent No. 1 by its order dated 06.07.2017 granted 50 percent of pay and allowances to the petitioner for the period of three years

preceding to the reinstatement of the petitioner in terms of Rule 70 (4) & (5) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules 1981 (for short the Rules of 1981).

7. The petitioner being aggrieved by the orders of respondent No. 1 dated 28.08.2014 and 06.07.2017 approached the Maharashtra Administrative Tribunal, (for short Tribunal). By order dated 14.06.2023 the learned Tribunal declined to interfere with the orders passed by respondent No. 1. Hence, this petition.

8. We have heard learned counsel for the petitioner and learned AGP for the Respondent-State.

9. The learned counsel for the petitioner has drawn our attention to the findings recorded by the inquiry officer. It is submitted that the co-delinquent police constable Sachin Gaikwad was equally responsible for the alleged incident dated 30.08.2010. It is submitted that the said co-delinquent was also subjected to an inquiry, however, only a minor punishment of recovery of one month pay was imposed upon him. It is submitted that thus the punishment imposed upon the petitioner cannot

be allowed to stand. In support of the submission the learned counsel for the petitioner has relied upon the decision of ***The Hon'ble Supreme Court in Rajendra Yadav versus State of Madhya Pradesh and Ors***¹.

10. The learned counsel for the petitioner further submits that respondent No.1 erred in denying full pay and allowance for the period during which the petitioner was out of service. It is submitted that respondent No.1 while denying full pay and allowances has relied upon Rule 70 (4) & (5) of the Rules of 1981. It is submitted that the said rule would apply when dismissal is set aside on the ground of non-compliance of Clause (2) of Article 311 of the Constitution of India and no further inquiry proposed to be held.

11. On the other hand, the learned AGP for respondents submits that considering the nature of misconduct the impugned orders may not be interfered with.

12. We have perused the inquiry report. We find that co-delinquent police constable Sachin Gaikwad was equally responsible for the incident dated 30.08.2010.

¹ (2013 (3) SCC 73).

13. ***The Hon'ble Supreme Court in Rajendra Yadav versus State of Madhya Pradesh and Ors.***

(supra) has held :

9. The doctrine of equality applies to all who are equally placed: even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

14. It is not in dispute that minor punishment of recovery of one month pay was imposed upon the co-delinquent police constable Sachin Gaikwad, even though he assaulted the petitioner by wooden log due to which the left hand of the petitioner was fractured.

15. Considering the overall facts and circumstances of the case and in view of the decision of ***The Hon'ble***

Supreme Court in Rajendra Yadav versus State of Madhya Pradesh and Ors. (supra) we were inclined to modify the punishment, similar to the punishment as imposed upon the co-delinquent Sachin Gaikwad. However, considering the nature of misconduct, we are of the view that ends of justice would be met by directing the respondents to pay full pay and allowances to the petitioner for the period during which the petitioner was out of service. The respondents are accordingly directed to pay full pay and allowances to the petitioner for the period during which he was out of service i.e. from 27.12.2010 to 28.10.2014 within a period of four months from the date of receipt of copy of this order by them. Needless to mention that the period from 27.12.2010 to 28.10.2014 shall be treated as a period spent on duty for all purposes. The order of the Tribunal is set aside and the Original Application filed by the petitioner is allowed to the aforesaid extent. The petition is disposed of in aforesaid terms.

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)