
(2016) 07 BOM CK 0181
In the Bombay High Court
Case No : Writ Petition No. 12578 of 2015

Sharda

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Police Rules (Manual), 1999 — Rule 78(6)

Citation : (2017) 2 ALLMR 726

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. D.V. Bodhankar, Advocate, for the Petitioner; Mr. S.D. Kaldate, A.G.P, for the Respondent/State

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Petition takes exception to the impugned order dated 4th May 2009 issued by Respondent No.3. There is further prayer to issue directions to the Respondents to reinstate the petitioner in the service and grant continuity of service, back wages, and other ancillary benefits.

2. The learned counsel appearing for the petitioner submits that the impugned order passed by Respondent No.3 on 4th May, 2009, thereby terminating the services of the petitioner is without adherence to the provisions of Rule 78(6) of the Maharashtra Police Rules (Manual), 1999. The said Rule clearly provides that one month's notice before removal of service is mandatory or before removal of service departmental enquiry should be conducted against the government servant. But in the instant case before issuing order dated 4th May, 2009, no procedure laid down in the above rule and sub-rule is followed by the Respondents. In fact the petitioner completed near about continuous more than 10 years service, and therefore, he is entitled for the pensionary benefits. The learned counsel invites our attention to the notes of arguments, which are placed on record and submits that the Petition deserves to be allowed.

3. On the other hand, the learned A.G.P. appearing for the Respondent/State, relying upon the various orders passed by the Maharashtra Administrative Tribunal, High Court and the impugned order, submits that on 5th June, 1999 in view of the interim order passed by the Maharashtra Administrative Tribunal to reinstate the petitioner in service in Misc. Application No. 37 of 1999, the petitioner was reinstated in service with clear understanding that the said order of reinstatement is issued subject to outcome of the Original Application/Appeal filed by the petitioner for temporary period. Therefore, there was no question of issuing notice to the petitioner before terminating her services, when such reinstatement was made subject to outcome of pending proceedings before Competent Forum.

4. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned A.G.P. appearing for the Respondent-State. With their able assistance, we have perused the pleadings in the Petition, written notes of arguments and annexures thereto.

5. Upon careful perusal of the copies of the documents placed on record, it emerges that the petitioner's services were terminated by Respondent No.3 w.e.f. 20th June, 1996. The said order was challenged before the Maharashtra Administrative Tribunal by way of filing Original Application. However, the Maharashtra Administrative Tribunal rejected the said Original Application. Thereafter, the petitioner filed Writ Petition No. 3820 of 2006 (Sharda d/o Jayram Bhalerao v. The State of Maharashtra and another) before the High Court and the High Court dismissed her Writ Petition on 6th December, 2006. Being aggrieved by the judgment and order of the High Court in the said Writ Petition, the petitioner filed Special Leave Petition before the Supreme Court and the said Special Leave Petition was dismissed by the Supreme Court on 30th April, 2007.

6. It is true that during pendency of the Original Application, the petitioner was acquitted from the criminal case, and therefore, the Tribunal while deciding the Misc. Application No. 37/1999 granted interim relief in favour of the petitioner, directing the Respondents to reinstate the petitioner on the post of Lady Police Constable. In pursuance of the said interim order, the Superintendent of Police (Rural), Aurangabad on 5th June, 1999 issued the order for reinstatement of the petitioner, however, subject to outcome of the pending proceedings before the Maharashtra Administrative Tribunal on temporary basis.

7. As already observed, the Maharashtra Administrative Tribunal dismissed the said Original Application by the judgment and order dated 4th April, 2006. Thereafter, the petitioner's Writ Petition was dismissed and Special Leave Petition filed before the Supreme Court was also dismissed. Therefore, there is no substance in the contention of the learned counsel appearing for the petitioner that before issuing the impugned order, one month's notice is mandatory or before removal of service departmental enquiry should have been conducted as per sub-rule (6) of Rule 78 of the Maharashtra Police Rules (Manual), 1999. By virtue of interim order, the petitioner continued to be in

service for some period, however, her appointment was on temporary basis, and even the original termination order was during the period on which the petitioner was appointed on temporary basis and at the relevant time had not completed three years.

8. In the light of the discussion in foregoing paragraphs, we are unable to persuade ourself to grant any relief to the petitioner. Hence the Petition stands rejected. No costs.