

(2017) 08 BOM CK 0066
In the Bombay High Court
Case No : 2700 of 2006

Shri Dhanraj Punaji Chavan	Vs	APPELLANT
The State of Maharashtra, & Ors.		RESPONDENT

Date of Decision : 24-08-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Criminal

Citation : (2017) 08 BOM CK 0066

Hon'ble Judges : S. C. Dharmadhikari, Vibha Kankanwadi

Bench : DIVISON BENCH

Advocate : N. V. Bandiwadekar, M. G. Bagkar, C. P. Yadav

Final Decision : Dismissed

Judgement

1. The Petitioner challenges the Judgment and order dated 29.11.2005 passed by the Maharashtra Administrative Tribunal, Mumbai Bench in Transfer Application No. 7 of 2001 (Writ Petition No. 2738 of 1990) by invoking the powers of this Court under Articles 226 and 227 of the Constitution of India.

2. The brief facts giving rise to the Petition are that the Petitioner joined the Police Training Course at Nashik for the post of P.S.I. on 01.10.1975. He successfully completed the said training course and was given posting on 01.01.1977. It is contended that it was in a permanent, clear and substantive vacancy. He has completed the probation period of one year on 30.06.1978. Therefore, it was necessary for the Respondent to pass an order of absorption of the Petitioner to the post of P.S.I. w. e. f. 01.07.1979. He was placed at Pishor Police Station, District Aurangabad under Vaijapur SubDivision. A criminal case came to be filed against the Petitioner for the offence punishable under Sections 323, 161 of the Indian Penal Code read with Section 5(1)(d)(ii) of the Prevention of Corruption Act on 10.06.1978. The S.D.P.O, Vaijapur Division conducted the

investigation into the alleged offence. The Petitioner came to be placed under suspension by an order dated 12.06.1978 passed by the Superintendent of Police, Aurangabad. However, thereafter the Superintendent of Police took a decision to send "A Final Report" in respect of the aforesaid criminal case by an order dated 15.11.1978. The order of suspension came to be withdrawn and Petitioner was reinstated with further direction that the suspension period undergone by him shall be treated as leave due to the Petitioner. Thus, he was reinstated in the service without imposing any major or minor penalty. However, all of sudden by order dated 23.11.1978, the Superintendent of Police, Aurangabad imposed upon him minor punishment of "reprimand" in respect of C.R. No. 1 of 1978 under Section 141 of Criminal Procedure Code on the allegation that the Petitioner had adopted illegal procedure during the inquiry in respect of the offence. Thereafter, Respondent No.4 had issued an order on 13.12.1978 and fixed the pay of the Petitioner as on 15.11.1978 in the pay scale of Rs.365-15-500-20-680-Extn-20-760/- . He had submitted his Assessment Report, as per the prevalent practice at that time to S.D.P.O, Vaijapur, but no action was taken on the said report and the order regarding absorption of the Petitioner for the post of P.S.I. was not issued. The Respondent No.5 had thereafter, issued an order to initiate departmental enquiry against the Petitioner on 25.06.1980 for his alleged default when he was working in Aurangabad District. An inquiry was held and Respondent No.4 issued an order on 11.05.1982 and cancelled earlier order of reprimand dated 23.11.1978 on the ground that full fledged departmental enquiry is ordered against the Petitioner for that alleged misconduct. In fact, the Petitioner was already punished with penalty of reprimand and the Respondent No.4 had no jurisdiction or authority to cancel the punishment and initiate fresh departmental enquiry. The Petitioner's first statement was recorded on 31.08.1981 and ultimately, the Enquiry Officer viz. Respondent No.4 by report dated 31.05.1983 recommended that the Petitioner's pay may be reduced by Rs.30/per month for a period of two years; since according to the Inquiry Officer, out of the three charges levelled against the Petitioner, two were partly proved and the charge No.3 was not at all proved. The said order of punishment was passed by the Respondent No.4 on 27th/29th July 1983. The Petitioner preferred a Departmental Appeal before D.I.G.P, Aurangabad on 27.09.1983 and he had also made an Application dated 15.10.1983 requesting the Respondent No.5 for the review his order of punishment. The Respondent No.5 stayed the recovery @ Rs.30/per month from the salary of the Petitioner till the finalization of the Appeal, on his application for stay. The Respondent No.5 submitted a report regarding working of the Petitioner as probationer to DIG, Aurangabad as required under Rule 126 (10) of the Bombay Police Manual VolI. Respondent No.5 gave memo on 27.01.1985 and directed the Petitioner to attend his office on 03.05.1985 along with information of the work done by him during the period from 07.03.1979 to 31.12.1984. Petitioner had accordingly submitted the necessary information. Again, by letter dated 11.09.1985 further information was called from him for the period from 07.03.1979 to 11.09.1985. This request was also complied with by the Petitioner

but no decision was taken regarding his absorption in the post of PSI.

3. The D.I.G.P., Aurangabad Range allowed the Petitioner's Appeal by order dated 31.12.1986 and quashed the order of punishment passed by the Respondent No. 4 on 29.07.1983. However, at the same time, he had imposed minor punishment of fine of Rs.365/inspite of holding that the Respondent No. 4 had no jurisdiction to pass the order of penalty of reduction in pay which was less than Minimum Pay drawn by the Petitioner. The service record of the Petitioner was not suitably amended, even after passing the said order. He was all along been treated as regular P.S.I. and was sent on training to Special Branch by order dated 27.04.1987. The Gradation List of Unarmed Police Inspectors in the State of Maharashtra was prepared on 01.04.1987 and the name of the Petitioner was shown at No.1313 and it has also been shown that he has been appointed as P.S.I. on 01.07.1977. Inspite of all these events the order of absorption was not passed. He has been deprived of his valuable service benefits. Therefore, he made a representation to the Respondent No.1 on 30.05.1988. A copy of the same was sent to the Respondent No.2, Respondent No. 5 and D.I.G.P. Aurangabad Range, but no action was taken. Increments have been granted to the Petitioner by order dated 25.07.1989 by the Respondent No. 5. However, no credit is given for the service rendered by the Petitioner as P.S.I. from 01.07.1978 to 20.07.1983. Revised pay scale was granted on the basis of order dated 27.03.1989. It was stated in this order that date of the Petitioner's increment is stepped up equal to his Junior P.S.I. S. B. Mane. There were strong recommendations to treat the Petitioner as P.S.I. w. e. f 01.01.1979. Petitioner filed Writ Petition No. 2738/1990 praying for his entitlement for being absorbed as a regular P.S.I. from 01.07.1978 with all service benefits, when the order was not passed. After the establishment of Maharashtra Administrative Tribunal Mumbai, the said Writ Petition No.2738/1990 was transferred to the Tribunal and it was numbered as Transfer Application No.7 of 2001. Reply was filed by the Respondent Nos. 2 to 4 in the said writ petition. After considering the rival pleadings and submissions the Tribunal has dismissed the said petition Transfer Application on 29.11.2005. The present Writ Petition challenges the said order passed by the Tribunal.

4. Heard the learned counsel for the Petitioner and the learned AGP for the Respondent Nos. 1 to 5.

5. It has been vehemently argued on behalf of the Petitioner that most of the facts are not in dispute. The Petitioner was appointed as P.S.I. on 01.10.1975. He has successfully completed the training and thereafter, he was serving as probationary P.S.I. During that period an offence was registered against him, he was suspended. The probation period ought to have been held to be completed on 30.07.1978 but prior to that the criminal case was filed against him on 10.06.1978 and he was put under suspension. "A" summary was filed on 15.11.1978. The order of suspension was later on revoked. Only minor penalty was imposed on him by order dated 23.11.1978. The appeal was allowed.

However, penalty of Rs.365/was imposed on him. Therefore, even if for the sake of argument the facts are admitted the probation period should have been treated as extended at the most by 6 months. Yet no orders have been passed. Ultimately, the Petitioner was required to make a representation and it was decided after many years.

6. It has been further submitted that the Tribunal went wrong in observing that as no positive record was coming forward in respect of extension of the probation period; but taking into consideration that at least on two occasions the Applicant was involved in criminal cases for which he was suspended and thereafter in the Departmental Enquiry a fine was imposed, it cannot be presumed that the Applicant would have been absorbed from 01.07.1978. Further, the Tribunal went wrong in holding that though the actual order of absorption of the Applicant as PSI from 31.07.1983 is not coming forth and the Respondents were not in a position to produce that order before the Tribunal, the presumption that has been drawn in view of fixation of pay is correct. Even though the Petitioner was held to be involved in criminal case and in the Departmental Enquiry fine was imposed; yet on both the occasions "A" summary has been filed after the proper investigation. Therefore, the Tribunal ought to have presumed that service record of the Petitioner is clean and therefore, the prayer of the Petitioner ought to have been allowed.

7. It has been submitted on behalf of the Respondents that the Petitioner himself is accepting the fact that on two occasions he was held to be involved in a criminal case. The first was in respect of an offence punishable under Section 323, 161 of the Indian Penal Code read with Section 5 (1) (d) (ii) of the Prevention of Corruption Act and the second one was under Section 392 of IPC. Therefore, this fact shows that his record was not at all clean. Even though "A" summary has been filed, yet in the Departmental Enquiry he has been held to be guilty and therefore, the fine has been imposed though it may be of minor nature. The contents of the affidavit filed on behalf of the Respondents show that how the record of the Petitioner was not clean and therefore, the order of absorption was not passed immediately after the probation period was over. Not passing a specific order regarding extension of probation does not entitle him to claim any relief and therefore, the observations made by the Tribunal are correct and legal. The petition of the Petitioner has been rightly dismissed by the Tribunal.

8. As aforesaid the facts of the case are not much in dispute and therefore, they are not reproduced again. The Petitioner was involved in the crime that of under the Prevention of Corruption Act during the period of probation and therefore, he was suspended. Though "A" summary has been filed yet the Departmental Enquiry was conducted. Initially, the punishment of deduction of Rs.30/per month from the salary of the Petitioner was imposed which was to last for two years from the date of the order. In the appeal, though the said order was set aside, yet penalty was imposed on the Petitioner to the extent of Rs.365/that

means clean chit was not given to him.

9. Thereafter, though the Petitioner continued to work as PSI, he was later on involved in another crime in C.R. No. 82 of 1981 under Section 392 of Indian Penal Code registered with Naldurg Police Station (Dist. Osmanabad). The "A" summary was produced on 02.11.1982. It was specifically contended in the affidavit in reply on behalf of the 2nd Respondent that normally the orders of extension of probation period were issued before the expiry of probation period and in the case of the Petitioner also it could have been adhered too. However, because of the gap of time the original record with the then Deputy Inspector General of Police, Aurangabad Range was not traceable or it was abolished. Even there was attempt to get the copies of the said record regarding the probation period of the Petitioner from the Government. However, the Government also intimated that the record was not traceable. The Tribunal has therefore, rightly observed that the contention of the Respondents will have to be presumed to be true. A presumption can be easily drawn in favour of the Government or the Government Officers in respect of official correspondence to have been bonafidely made. In other words it can be presumed that as a normal rule in this case also there would have been correspondence in respect of extension of probationary period. Merely because the record is not available, the Petitioner cannot be given advantage of the same. It is also to be noted that the Petitioner had allowed nearly 11 years to elapse. He had not made any such representation on the earlier occasion i. e. immediately after the expiry of the probation period i.e. 01.07.1978 nor even after the "A" summary was filed in respect of the first offence. This inaction on the part of the Petitioner speaks for itself and he cannot derive any advantage because of his inaction. Further, it can also be seen that the Petitioner had availed 163 days leave vide on probation i. e. w.e.f. 05.07.1978 to 14.11.1978 and in the mean time he was placed under suspension with effect from 12.06.1978. Though the said period under suspension was later on held to be period of leave, the natural effect of the same would be the extension of probation. The Tribunal was justified in holding that the probation period of the Petitioner was extended from 30.06.1978 to 31.07.1983 on the basis of the material that was placed. The service record of the Petitioner was not clean. Though the Petitioner contends that there were strong recommendations, yet no presumption can be drawn that on the basis of any recommendation, the authority who was deciding whether to hold the probation as completed or not was influenced by the same. The Petitioner's undergoing "Refreshers Course" and Special Course or training was part of his job and therefore that fact alone cannot be a key factor to hold the successful completion of his probation period. There is no merit in the contentions of the Petitioner because he has not impugned or challenged the actions of the Respondents in not treating him as a permanent or confirmed employee or member of the police force even though he allegedly completed the probationary period successfully. He questioned these acts only after his fixation of pay by filing a petition on 11th April 1990. Hence, his understanding and interpretation of the Respondents' acts

and orders will not be decisive which is the precise conclusion reached by the Tribunal on facts. That is not perverse so as to call for interference in our extraordinary so also supervisory Jurisdiction. Our jurisdiction is discretionary and equitable.

10. We do not find any perversity or illegality in the judgment and order passed by the Tribunal. We do not find any merit in the present petition. Hence, we proceed to pass following order: ORDER

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