

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 140 OF 2021
(Subject – Suspension)**

DISTRICT : BEED

Vishnu S/o Marutirao Misal,)
Age : 52 years, Occu. : Service,)
R/o Adarsh Nagar, D.P. Road, Beed,)
Tq. and Dist. Beed.) **... APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through, The Principal Secretary,)
Agriculture Department, M.S.)
Mantralaya, Mumbai.)
- 2) **The Commissioner of Agriculture,**)
Agril. Commissioner Office,)
Maharashtra State, Pune, Central)
Building, 3rd Floor, Pune – 411 001.)
- 3) **The Joint Director,**)
(Establishment) Agril. Commissioner)
Office, Maharashtra State, Pune, Central)
Building, 3rd Floor, Pune – 411 001.)
- 4) **The Divisional Joint Director of Agriculture,))**
Aurangabad.)
- 5) **The District Superintendent Agriculture)**
Officer, Beed, Dist. Beed.)
- 6) **The Superintendent Agriculture Officer,))**
(Vigilance Squade) Commissioner of)
Agri., Maharashtra State, Pune, Central)
Building, 3rd Floor, Pune – 411 001.)
- 7) **The Desk Officer,**)
Dept. of the Agriculture, M.S. Mantralaya,))
Mumbai.)

.. RESPONDENTS

APPEARANCE : Shri R.D. Khadap, learned Advocate holding
for Shri S.S. Thombre, learned Advocate for
Applicant.
: Shri I.S. Thorat, learned Presenting Officer
for Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**
DATE : **20.12.2021.**

ORDER

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed by the applicant seeking to quash and set aside his impugned suspension order dated 04.12.2020 (Annexure A-16) issued by the respondent No. 7 and to reinstate him in service in his original post.

2. The facts in brief giving rise to this Original application, are as under :-

(i) Since 01.08.2017 the applicant is working as Sub-Divisional Agriculture Officer, Beed. During the said tenure, the applicant was having charge of the post of District Superintendent Agriculture Officer, Beed from

19.08.2017 to 21.02.2018. From 30.08.2018, he was also having additional charge of the post of Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed. The documents in that regard are at Annexure A-2 collectively.

(ii) It is submitted that the State Government introduced and implement the scheme viz. Jalyukta Shivar Scheme (जलयुक्त शिवार योजना). As per the Government Resolution dated 05.12.2014 (Annexure A-1), the then Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed, issued e-tender notice, as well as, 40 work orders (Annexure A-3 collectively) to the Majur Societies, unemployed Engineers for which the applicant was given additional charge on 13.08.2018 of that post. The then Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed had placed the demand for these works vide its letters dated 30.03.2017 and 12.09.2017 (Annexure A-4 collectively).

(iii) It is further submitted that on or about 18.05.2020 one Vasant Sampatrao Munde filed complaint to the Deputy Lokayutka, thereby making allegations sought and sought an enquiry in respect of Jalyukta Shivar Scheme implemented in the Parali Taluka. In view of enquiry

report, thereby 24 agricultural employees and other officers were suspended and offence was also registered against them. Subsequently, again complaint was made. Three members committee headed by the respondent No. 6 enquired into the said allegations and the said committee submitted preliminary enquiry report dated 24.02.2020 (Annexure A-5 collectively) to the respondent No. 3 vide its letter dated 18.05.2020 (Annexure A-5). It is further submitted that during the said preliminary enquiry, the applicant received notice dated 02.01.2020, to which the applicant submitted his reply dated 13.01.2020. The said notice and reply are at Annexure A-6 collectively. The applicant again submitted his reply dated 25.02.2020 (Annexure A-7). In spite of that, the respondent No. 3 issued two show cause notices dated 20.07.2020 (Annexure A-8 Collectively), whereby one was issued in respect of charge of the post of District Superintendent Agriculture Officer, Beed, whereas another notice was issued in respect of charge of the post of Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed and the applicant was thereby directed to deposit an amount of Rs. 2,82,742/-. The applicant submitted his reply dated 04.08.2020 to the said

show cause notices with document showing that he was not concerned with the discharge of duties of the said posts for the period concerned. The said reply dated 04.08.2020 along with charge reports dated 03.08.2018 are at Annexure A-9 collectively. There is a letter dated 06.10.2020 (Annexure A-10) issued by the Sub-Divisional Agriculture Officer, Ambajogai showing that the persons holding the charge during the period of 01.04.2014 till 07.10.2020. That shows that the applicant is holding the charge from 13.08.2018 onwards of the post of Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed.

(iv) It is further submitted that the applicant was having additional charge of the post of District Superintendent Agriculture Officer, Beed from 19.08.2017 to 21.02.2018 vide letter dated 06.02.2018 (Annexure A-11) and in that capacity he issued fund release order to all the Sub-Divisions in Beed District for the years 2016-17 and 2017-18 in respect of works, which are already completed and before releasing the works/funds, entire work to be inspected through the Class-2 officers. Similarly during that period in that capacity he release funds in the same footing vide its order dated 22.09.2017, 19.09.2017 and

18.01.2020 (Annexure A-12 collectively). In spite of that the respondent No. 4 issued letter dated 05.10.2020 (Annexure A-13) to get registered an offence against the applicant and other officers. The applicant submitted his detailed say on 07.10.2020 (Annexure A-14) to the Commissioner of Agriculture, Maharashtra State, Pune denying the allegations and establishing his innocence. The applicant also challenged the said order dated 05.10.2020 (Annexure A-13) by filing W.P. No. 8056/2020 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad. The Hon'ble High Court by the order dated 17.12.2020 (Annexure A-15) was pleased to grant interim relief to the effect that further steps may not be taken against the applicant pursuant to the said impugned communication dated 15.10.2020 (Annexure A -13). It is further submitted that the respondent No. 7 placed the applicant under suspension vide order dated 04.12.2020 (Annexure A-16) contemplating disciplinary action against him and the applicant is still under suspension. Thereafter, the applicant submitted representation dated 21.12.2020 (Annexure A-17) to the respondent No. 1 through the respondent No. 2 thereby requesting to cancel his

suspension order and to reinstate him in service. However, no steps are taken by the respondents to revoke the suspension of the applicant. The impugned suspension order is not in accordance with law, as the applicant was not involved in all the illegality or irregularities alleged during the period in which, he was not holding the charge of the posts of District Superintendent Agriculture Officer, Beed and Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed. In view of the same, the impugned suspension order is liable to be quashed and set aside and the applicant is entitled for reinstatement.

3. The affidavit in reply on behalf of respondent Nos. 1 to 7 is filed by one Shri Umesh S/o Shivcharan Gajbhiye, Administrative officer in the office of respondent No. 4 i.e. the Divisional Joint Director of Agriculture, Aurangabad, thereby he denied the adverse contentions raised by the applicant in the present Original Application. He however did not dispute the documents placed on record by the applicant. The specific contentions raised by him are in paragraph Nos. 10 to 12 and 15, which are as follows :-

“10.At the outset, the Respondents submits that, as the irregularities were found in the works in inspection, it was directed to get all works inspected by officer of the rank of Class-II. It was duty of the applicant to check whether the grants are going to be distributed to the same works as mentioned in the grants distribution order after verification by class-II officer. And the works have been done as per the norms and completed fully in all manner as mentioned in the work orders. However, the applicant has willfully neglected to perform his duty and caused huge loss to the government. It is not sufficient to give directions to the subordinate officers to inspect the works.

11. the applicant has committed negligence and carelessness while carrying out his duties and is liable for administrative action for breach of duty. The action of registering offence against the applicant by letter dated 05.10.2020 is legal and as per the provisions of law.

12.the contents of the Para No. 14 of the present application cannot be accepted only on the ground that, the Sub-Divisional Agriculture Officer, Ambejogai is to verify the work and disburse the amount. The applicant shall not deny his responsibilities by simply assigning his duty to subordinate officers. It is pertinent to note that, as per contentions of the applicant in the present original application, the applicant has nowhere denied misappropriation of funds and irregularity in the

work. He is clearly avoiding his responsibilities of the said misappropriation and irregularities done in the works and disbursement of the funds.

15.It would not be lawful to take any decision on the issue under dispute till the final outcome of the said writ petition. Hence, the respondents have not taken any action on the representations of the Applicant. Furthermore, it is correct to say that, the e-tender notices and the work orders issued prior to the additional charge taken by the applicant. However, it is pertinent to note that, it was responsibility of the applicant to distribute the grants of the said works only after verification of works up to the satisfactions in terms of and conditions mentioned in work orders.”

4. I have heard arguments advanced by Shri R.D. Khadap, learned Advocate holding for Shri S.S. Thombre, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on other hand.

5. Learned Advocate for the applicant strenuously urged before me that the contentions raised by the respondents in paragraph No. 15 of the affidavit in reply that it would not be lawful to take any decision on the issue under dispute till the final outcome of the W.P. No. 8056/2020 is misconceived, as the interim relief order dated 17.12.2020 (Annexure A-15) is only

restricting to direction issued by the respondent No. 4 i.e. the Divisional Joint Director of Agriculture, Aurangabad to the respondent No. 5 i.e. the District Superintendent Agriculture Officer, Beed, Dist. Beed for taking necessary steps of getting registered offence against the applicant and some other officers as per the letter dated 05.10.2020 (Annexure A-13) and the same would not come in the way of considering the revocation of the suspension order in accordance with law.

6. Learned Advocate for the applicant further submitted that the impugned suspension order is dated 04.12.2020 (Annexure A-16). Even after lapse of 90 days thereafter, no any disciplinary action against the applicant is initiated by the respondents and therefore, as per the ratio laid down in the case law of the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India Through Its Secretary and Anr. in Civil Appeal No. 1912 of 2015 (Arising out of SLP No. 31761 of 2013)** decided on 16.02.2015, the suspension order is liable to be revoked. He also submitted that the respondents have failed to implement their own G.R. dated 09.07.2019 issued by the General Administration Department based on the decision of the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case.

7. Per contra, learned Presenting Officer for the respondents submitted that the applicant has already challenged the contemplated criminal proceedings to be initiated against him and the interim protection is given in favour of the applicant by the order dated 17.12.2020 (Annexure A-15) in W.P. No. 8056/2020 and therefore, no further steps could be taken by the respondents, pertaining to the suspension order issued in contemplation of the disciplinary proceedings against the applicant for his alleged misconduct while discharging duties holding additional charge of the posts of District Superintendent Agriculture Officer, Beed and Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed. Moreover, there are serious allegations against the applicant about his functioning and discharging duties, which has caused monetary loss to the Government. In view of the same, the impugned suspension order and its continuation is justifiable.

8. The applicant has challenged the impugned suspension order dated 04.12.2020 (Annexure A-16), which is issued in contemplation of the disciplinary action against him. The applicant has sought to demonstrate that the allegations leveled against him are baseless and period for which irregularities are shown was not of the period for which the applicant was holding

the charge of the post of District Superintendent Agriculture Officer, Beed from 19.08.2017 to 21.02.2018 and additional charge of the post of Sub-Divisional Agriculture Officer, Ambajogai, Dist. Beed from 30.08.2018 onwards.

9. Sufficiency or otherwise of the material for issuing the impugned suspension order against the applicant cannot be much gone into by this Tribunal while exercising limited jurisdiction. Perusal of the impugned suspension order dated 04.12.2020 (Annexure A-16) shows that the same was issued in contemplation of disciplinary action against him. The record also show that the letter dated 05.10.2020 (Annexure A-13) was issued by the respondent No. 4 directing the respondent No. 5 to take necessary steps of getting registered offence against the applicant and some other officers, in respect of which already crime was registered against some 24 Agricultural employees and other officers, who were also suspended.

10. In order to examine the impugned suspension order, the ratio laid down in the case law of the Hon'ble Apex Court in the **Ajay Kumar Choudhary's** case is of paramount importance. In that regard the contents of para Nos. 8, 9 and 14 of the said

judgment of the Hon'ble Apex Court would be useful for determining the case in hand, which are as follows:-

“8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will

sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time..." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law"

14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the

universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

In view of the law laid down by the Hon’ble Apex Court, the continuation of suspension beyond the period of 3 months in the case where the memorandum of charges/charge sheet for disciplinary action against the delinquent is not filed is to be examined and is not to be extended further. However, initiation of Departmental Enquiry within stipulated period would render its extension for reasoned order.

11. In the case in hand, no doubt there is interim order of the Hon’ble High Court dated 17.12.2020 (Annexure A-15) in W.P. No. 8056/2020, however it is in respect of contemplation of registration of crime against the applicant and other officials pursuant to the letter dated 05.10.2020 (Annexure A-13) issued by the respondent No. 4 giving direction to the respondent No. 5.

The initiation of disciplinary action may not only be dependent on the registration of crime and it can be proceeded independently. In view of the same, in my considered opinion, the contentions of the respondents that because of the said interim order dated 17.12.2020 (Annexure A-15) in W.P. No. 8056/2020, the respondents are not able to deal with the matter in accordance with law is misconceived to some extent.

12. In the background of the law laid down by the Hon'ble Apex Court in **Ajay Kumar Choudhary's** case and requisite G.R. dated 09.07.2019 issued by the General Administration Department, the respondents are duty bound to review the suspension order beyond the period of three months, when no disciplinary action is initiated against the applicant. In view of the same, in my considered opinion, the present Original Application can be disposed of by giving suitable directions to the respondents to take review of the impugned order of the suspension dated 04.12.2020 (Annexure A-16) in accordance with law and more particularly in view of the law laid down by the Hon'ble Apex Court in the case law of the **Ajay Kumar Choudhary's** case. I, therefore, proceed to pass following order :-

ORDER

The Original Application is allowed partly in following terms :-

- (i) The respondents are directed to review the impugned suspension order dated 04.12.2020 (Annexure A-16) in accordance with law by following the principles laid down by the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary Vs. Union of India Through Its Secretary and Anr. in Civil Appeal No. 1912 of 2015 (Arising out of SLP No. 31761 of 2013)** decided on 16.02.2015 and the contents of G.R. dated 09.07.2019 issued by the General Administration Department thereof, within a period of two weeks from the date of this order and to communicate the decision thereof immediately to the applicant in writing.
- (ii) There shall be no order as to costs.

**PLACE : AURANGABAD.
DATE : 20.12.2021.**

**(V.D. DONGRE)
MEMBER (J)**