

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**O.A.NOS. 226 AND 227 BOTH OF 2019**

**01. ORIGINAL APPLICATION NO. 226 OF 2019**

DISTRICT: - JALNA.

**Santosh S/o Eknath Savant,**  
Age-46 years, Occu. : Police Head  
Constable, R/o Yogesh Nagar,  
Ambad Road, Jalna,  
Dist. Jalna.

.. APPLICANT.

**V E R S U S**

**1. The State of Maharashtra,**  
Through the Secretary,  
Home Department,  
Mantralaya, Mumbai-32.

**2. The Superintendent of Police,**  
Jalna, Dist. Jalna.

**3. The Police Inspector,**  
Local Crime Branch,  
Jalna, Dist. Jalna.

.. RESPONDENTS.

**W I T H**

**02. ORIGINAL APPLICATION NO. 227 OF 2019**

DISTRICT: - JALNA.

**Sadashiv S/o Vinayak Rathod,**  
Age-37 years, Occu. : Police Constable,  
R/o Police Quarters, Jalna  
Tq. & Dist. Jalna.

.. APPLICANT.

**V E R S U S**

**1. The State of Maharashtra,**  
Through the Secretary,  
Home Department,  
Mantralaya, Mumbai-32.

**2. The Superintendent of Police,**  
Jalna, Dist. Jalna.

**3. The Police Inspector,**  
Local Crime Branch,  
Jalna, Dist. Jalna.

.. RESPONDENTS.

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**APPEARANCE** : Shri. S.D. Joshi, learned Advocate for the applicants in both these cases.

: Shri M.P. Gude – learned Presenting Officer for the respondents in O.A. No. 226/2019.

: Mrs. Deepali S. Deshpande – learned Presenting Officer for the respondents in O.A. No. 227/2019.

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**CORAM** : **JUSTICE A.H. JOSHI, CHAIRMAN**

**DATE** : **08.03.2019**

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### **COMMON ORDER**

Heard Shri S.D. Joshi, learned Advocate for the applicants in both these cases and Shri M.P. Gude & Mrs. Deepali S. Deshpande, learned Presenting Officers for the respective respondents in respective cases.

2. The applicants herein are Police Constables. By impugned orders they have been suspended. The language used in the suspension order is identical.

3. The imputation on which the order of suspension is founded reads as under: -

“तुम्हास नियुक्ती केलेल्या ठिकाणी स्थानिक गुन्हे शाखा व पोलीस ठाणे कदीम जालना येथे नेमणुकीस दिलेले असतांना दिनांक १४.०२.२०१९ रोजी पोस्टे कदीम जालना हद्दितील शास्त्रीय मोहल्ला जुना जालना येथे राहणारा इसम गणेश रामभाउ गोगडे यांचे घरी छापा मारला असता तुम्ही वरील सर्वजन पैसे घेउन झन्ना मन्ना नावाचा जुगार चालवित असल्याचे प्रथम दर्शनी दिसून आले आहे. तुम्ही अनेक वेळा आरोपी गणेश रामभाउ गोगडे यांचेशी मोबाईल फोनद्वारे संभाषण केल्याचेही प्रथमदर्शनी दिसून आले आहे. अशाप्रकारे शिस्त प्रिय पोलीस खात्यात राहून तुम्ही सर्वांनी अतिशय बेशिस्त, व बेजबाबदार पणाचे गैरवर्तन करून पोलीसांची जनमाणसातील प्रतिमा मलिन करण्याचे काम केले आहे.”

(Quoted from page 12 of paper book of O.A.)

4. The order further reveals that the departmental enquiry in the matter of misconduct against both applicants is contemplated.

5. The suspension is an interlocutory action. Judicial review of suspension would not be impermissible, however, permissibility is contingent upon applicants' demonstrating that the order of suspension is issued by way of gross abuse of power or colourable exercise or mala fide.

6. In the present cases the applicants have urged as ground, argued and contended before this Tribunal by challenging need & propriety of suspension and the civil and evil consequences which applicants would have to suffer due to impugned suspension.

7. Seen from any angle in each and every suspension a preliminary enquiry is not imperative. Moreover, allegation against

the applicants Police Constables is that they were seen themselves involved in act of gambling, which is a prohibited act and offence and particularly in the background that both of them were in-charge of the prevention of offences of gambling. Therefore, misconduct alleged against the applicants is of serious nature. Therefore, at this stage, it would be impermissible to concur with the applicants' submissions that the suspension is without propriety and without foundation.

8. The authority to scrutinize executive decision available before this Tribunal is in the nature of power for issue of prerogative writs and hence unlike appellate forum, who would examine not only legality but even propriety of matter, this Tribunal would decline to interfere.

9. Therefore, on facts of the case propriety requires that the applicants have to wait till the charge-sheet is served and thereafter the competent authority would take call by taking review of suspension. Moreover, if suspension is not reviewed within a reasonable time the applicants would essentially have a right to call in question the conduct of the competent authority.

10. Moreover, the competent authority is always free, as well as, bound to review the suspension. Learned Advocate for the applicants has placed reliance on the judgment delivered by the

Hon'ble Supreme Court in the case of **STATE OF ORISSA VS. BIMAL KUMAR MOHANTY** reported in **AIR 1994 (SC) page 2296.**

This Tribunal is of the view that power of competent authority is always governed by facts of the case and a geometric prototype pattern cannot be devised and used to gauge or to calibrate actions of executives, which are bound to be non-congruent as they vary from case to case. Therefore, it would not be possible and permissible to adopt a strait jacket uniform pattern to judge propriety of suspension.

11. Legality of suspension could surely be gone into however, even singular question for assailing suspension has not been raised. Therefore, this Tribunal is of the view that any interference in the order of suspension would not be justified.

12. Hence, the present OAs are dismissed. The applicants' liberty to be present or re-adjudicate the cause stands preserved and protected.

**CHAIRMAN**

**PLACE : AURANGABAD.**

**DATE : 08.03.2019**