

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 248 OF 2023
(Subject – Suspension)**

DISTRICT : PARBHANI

Laxman s/o Shankar Chavhan,)
Age : 35 Yrs., Occu. : Service (as Asstt. Teacher,))
presently under suspension),)
R/o : Namaskar Chowk, (Bramhasing Nagar,))
Maruti Mandir, Nanded.)

.... **APPLICANT**

V E R S U S

1. **The Commissioner,**)
Social Welfare, M.S., Pune,)
Social Welfare Commissionerate,)
3 Church Road, Pune-01.)
2. **The Assistant Commissioner,**)
Social Welfare, Dr. Babasaheb Ambedkar)
Samajik Nyay Bhavan, Jayakwadi)
Vasahat, Karegaon Road, Parbhani.)

... **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Counsel for
Applicant.

: Shri N.U. Yadav, Presenting Officer for
respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **18.12.2023.**

O R A L - O R D E R

1. Heard Shri Avinash Deshmukh, learned counsel appearing for the applicant and Shri N.U. Yadav, learned Presenting Officer appearing for respondent authorities.

2. Being aggrieved by the prolonged suspension, the applicant has approached this Tribunal by filing the present Original Application.

3. Brief facts giving rise to the Original Application are as follows :-

(i) On 25.03.2013, the applicant entered the service as an Assistant Teacher upon being so appointed by the respondent No. 1 on contractual basis for a period of three years. Later on, after completion of three years, respondent No. 1 was pleased to issue an order on 09.09.2016, thereby regularly appointing the applicant as an Assistant Teacher.

(ii) In the year 2018, when the applicant was working at Government Residential Boys School, Akoli in Jintoor Taluke, Dist. Parbhani, the respondent No. 1 was pleased to issue an order on 25.10.2018 placing him under suspension with retrospective effect from 06.05.2018 in view of the fact that the applicant was detained in police custody from the date till 14.08.2018 in connection with Crime No. 27/2016 registered at Mandvi Police Station, Tq. Kinwat, Dist. Nanded. Annexure A-1 is the copy of said order of suspension of the applicant and the said action

appears to have been taken by the respondent No. 1 on the basis of recommendation made by the respondent No. 2 vide letter dated 03.10.2018. The applicant was placed under suspension by respondent No. 1 in contemplation of departmental disciplinary action against him.

(iii) On 11.10.2021 i.e. practically after three years from the date of suspension, respondent No. 1 was pleased to issue a memorandum of charge initiating a Departmental Enquiry against him under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In due course of time, the respondent No. 1 appointed an Enquiry Officer to conduct the above referred Departmental Enquiry against the applicant. In the month of September-October, 2022 the said Departmental Enquiry proceedings were nearing completion. However, the final order in the Departmental Enquiry against the applicant is not yet issued by the respondent No. 1, though as per the applicant's information, the Enquiry Officer had submitted the final report to respondent No. 1 in or about October, 2022. In the month of August, 2019 i.e. after about one year from the date of he being placed under suspension, the applicant had submitted a request application to

respondent No. 2 on 27.08.2019 for reinstating him in service and upon said request application, respondent No. 2 was pleased to send a letter of recommendation to respondent No. 1 on 07.01.2019 requesting that the applicant be reinstated in service. However, nothing happened thereafter at the level of respondent No. 1. The applicant has thereafter made repeated representations to the respondent No. 1 from mid-2022 onwards requesting for being reinstated in service having completed period of more than four years under suspension.

(iv) The applicant even has referred the decision rendered by the Nagpur Bench of this Tribunal on 12.04.2022 in O.A. No. 461/2022. Same is marked as Annexure A-6. One similarly situated employee viz. Ankush Pralhad Rathod, who is also working in the Social Welfare Department of the State Government was placed under suspension by the respondent No. 1 in view of the registration of same Crime No. 27/2016 at Mandvi Police Station, in which the name of the present applicant was also included. Learned Member of this Tribunal at Nagpur Bench has allowed the said O.A. No. 461/2022 and quashed and set aside the order of suspension with the direction to the respondents to

issue consequential order within 30 days. In terms of the order passed by the Tribunal as aforesaid, the respondent No. 1 was pleased to issue an order on 16.12.2022 reinstated the above referred employee A.P. Rathod in service. Furthermore one more Government employee of the Social Welfare Department, who was also arraigned as an accused in connection with the same Crime No. 27/2016 also approached to this Tribunal at Nagpur Bench by filing O.A. No. 93/2022 and this Tribunal at Nagpur Bench also quashed and set aside the order of suspension with the same direction to the respondent No. 1. In terms of the said order, the respondent No. 1 on 16.12.2022 has been pleased to issue an order of reinstatement in favour of said employee viz. Shrimanwar. The applicant therefore, constrained to approach this Tribunal. Hence, the present Original Application.

4. Learned counsel submits that inaction of respondent No. 1 in ending applicant's suspension and reinstating him in service and on the contrary continuing the applicant under suspension even after more than 04 years is against the basic principles of justice, equity and good conscience. It is also illegal, arbitrary, irrational and illogical and also result of total non-

application of mind. Learned counsel submits that the applicant was suspended with retrospective effect from 06.08.2018 and when he completed three months under suspension, during which period he was not served with memorandum of charge of the Departmental Enquiry in contemplation of which he was suspended by respondent No. 1.

5. Learned counsel submits that inaction of respondent No. 1 in revoking applicant under suspension and reinstating him in service is contrary to and in violation of the Rule and ratio laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India**, reported in **2015(2) JT 487/ AIR 2015 SC 2389**.

6. Learned counsel submits that the applicant's continuous suspension even after period of more than 04 years is running contrary to the view taken by this Tribunal at Nagpur Bench in cases of A.P. Rathod and A.M. Shrimanwar, Government employees of the Social Welfare Department, who are also arraigned as an accused in connection with the same Crime No. 27/2016. Learned counsel submits that the present Original Application deserves to be allowed by directing the respondent No. 1 to forthwith revoke the order of suspension of

the applicant and consequently reinstate him in service in light of the rule and ratio laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary** (cited supra) as followed by this Tribunal while deciding O.A. No. 35/2018 in Dilip Jagannath Ambilwade's case.

7. Learned Presenting Officer submits that the applicant was taken into custody by the Police at Mandvi Station on 06.05.2018 on the allegations that the applicant had helped the candidates to enter and pass the exam with the help of dummy candidates by manipulating photographs and by fabricating hall tickets or admission cards using a computer. The applicant and other acquitted persons were charged with the offences under Sections 167, 171, 193, 197, 198, 201, 202, 213, 214, 218, 221, 419, 420, 467, 468, 471 and 120B read with Section 34 of the I.P.C., as well as, offences under Sections 8 and 13 of the Prevention of Corruption Act in connection with the said Crime N. 27/2016. Since then, the applicant has been suspended. Further on 11.10.2021, the Commissioner of Social Welfare, Pune issued a charge sheet against the applicant, initiating Departmental Enquiry and the Enquiry Officer has been appointed on 08.03.2022.

8. Learned Presenting Officer submits that G.R. dated 14.10.2011 provides for periodical review of the suspension of a Government servant suspended on account of registration of a serious offences and also provides detailed instructions and guidelines about the matters to be considered while deciding the review and reinstatement of a Government servant. As per clause 3 of the said G.R., when the suspension is on account of registration of a serious crime, such matters are required to be placed before the Review Committee or competent authority after completion of one year from the date of suspension. The respondent in the present case has made efforts to ensure compliance of the G.R. dated 14.10.2011, as well as, Government policy. On 24.04.2023, the respondent has forwarded the applicant's request to the Divisional Commissioner of Revenue, Aurangabad to review the suspension, however, the Divisional Commissioner sent the above mentioned mater for compliance on 13.07.2023 and on 24.07.2023, a letter was sent to expedite the review process. Learned P.O. submits that after receiving order from the Divisional Commissioner, the appointing authority may determine whether to reinstate the suspended employee or not. Learned P.O. submits that the applicant is already getting subsistence allowances without any work and as such, there is

no urgency in the present matter. There is no substance in the O.A. and the same is liable to be dismissed.

9. Admittedly, the applicant was suspended on 25.10.2018 with retrospective effect from 06.05.2018 in view of the fact that Crime No. 27/2016 came to be registered against him at Madvi Police Station, Tq. Kinwat, Dist. Nanded. It is also not disputed that the applicant was placed under suspension by respondent No. 1 in contemplation of disciplinary action against him by invoking the power under rule 4(1)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979. It is also part of the record that practically after three years from the date of suspension, on 11.10.2021 the respondent No. 1 was pleased to issue memorandum of charge initiating Departmental Enquiry against him under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979 (Annexure A-2 collectively). It is a sordid state of affair that the applicant is still under suspension without following mandate of the G.R. dated 14.10.2011 and also G.R. dated 09.07.2019, which G.R. came to be issued in terms of the ratio laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary** (cited supra), dated 16.02.2015. It is therefore utmost essential to refer the ratio laid by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary**

Vs. Union of India, reported in **2015(2) JT 487/ AIR 2015 SC 2389**. In para No. 14, the Hon'ble Supreme Court has made the following observations and laid down ratio to the effect that the currency of a suspension order should not extend beyond three months, if within this period of memorandum of charges / charge-sheet is not served on the delinquent officer/employee, which reads as under :-

“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.”

10. On the basis of the aforesaid judgment of the Hon'ble Apex Court, the State of Maharashtra issued G.R. dated 09.07.2019 and issued following directives. The relevant portion of the said directives are reproduced under :-

“२. मा.सर्वोच्च न्यायालयाने वरीलप्रमाणे दिलेल्या दि. १६.०२.२०१५ च्या निर्णयाचे अनुषंगाने केंद्र सरकारचा दि. २३ ऑगस्ट, २०१६ रोजीचा कार्यालयीन आदेश सोबत जोडला आहे. मा. सर्वोच्च न्यायालयाचा निर्णय व केंद्र सरकारचा कार्यालयीन आदेश पाहता निलंबित शासकीय कर्मचा—यांना ९० दिवसांच्या मुदतीत दोषारोप पत्र बजावून त्यांच्या निलंबनाच्या आढाव्या संदर्भात तरतुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय:—

१. या अनुषंगाने शासकीय कर्मचाऱ्यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

i) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेऊन निलंबन पुढे चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिकाऱ्यांच्या स्तरावर घेण्यात यावा.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरू करून दोषारोप पत्र

बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता/खबरदारी घेण्यात यावी.

iii) फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरू करून दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.

या आदेशातील तरतुदीमुळे या विषयावरील संदर्भ १ व २ येथील आदेशांतील तरतुदी या आदेशाच्या मर्यादित सुधारण्यात आल्या आहेत असे समजण्यात यावे.”

11. In view of the aforesaid G.R., it is clear that if the Departmental Enquiry is not commenced against the delinquent/employee by serving upon him charge-sheet within a period of 90 days, there would be no alternative but to revoke the suspension.

12. In a case of **Shri Dilip Jagannath Ambilwade vs. The State of Maharashtra and Anr.** in O.A. No. 35/2018, the Chairman of this Tribunal at Mumbai has relied upon the view taken by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary** (cited supra) and in terms of principle laid down in para No. 14 of the said judgment, has disposed of the O.A. by order dated 11.09.2018 with the directions that the continuation of suspension is disregarded and the applicant (in that case) shall be deemed to have been reinstated after completion of 90 days of actual suspension and all consequential benefits thereof shall follow.

13. In a case of **Suresh s/o Mashnajirao Hakke Vs. The State of Maharashtra and Ors.** in O.A. No. 349/2023, the Vice Chairman of Maharashtra Administrative Tribunal, Bench at Aurangabad has referred the ratio laid down in the case of **Ajay Kumar Choudhary** (cited supra) by the Hon'ble Apex Court and further by referring G.R. dated 09.07.2019 disposed of the Original Application by the order 03.08.2023 with the similar directions.

14. It is also pertinent to note here that in connection with the same Crime No. 27/2016 registered against two Government employees of the same Social Welfare Department viz. A.P. Rathod and A.M. Shrimanwar, the Nagpur Bench of this Tribunal in their O.As. Nos. 416/2022 & 93/2022 respectively has quashed and set aside their suspension orders with the identical facts as of the present case by referring the ratio laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary** (cited supra), so also G.R. dated 09.07.2019. It is further part of the record that in terms of the aforesaid order, the respondent No. 1 herein has reinstated the said two Government employees. In spite of this, the respondents have not reviewed the suspension order of the present applicant and as a result thereof, the applicant is still under suspension.

15. Thus considering the facts involved in the present case and in view of the ratio laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary** (cited supra) and in terms of the G.R. dated 09.07.2019, the suspension of the applicant being illegal and liable to be quashed and set aside forthwith with consequential benefits. Hence, the following order :-

ORDER

- (i) The Original Application is hereby allowed in terms of prayer clause 12 (A) & (B).
- (ii) There shall be no order as to costs.
- (iii) The Original Application stands disposed of in the aforesaid terms.

PLACE : Aurangabad.
DATE : 18.12.2023

(Justice V.K. Jadhav)
Member (J)