

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

ORIGINAL APPLICATION NO. 29 OF 2022

(Subject – Suspension)

DISTRICT : PARBHANI

Dr. Ravindra s/o Kishanrao Deshmukh,

Age : 51 years, Occu. : Service as Medical Officer)

PHC, Pimpaldari, Tq. Gangakhed, Dist. Parbhani.)

R/o. PHC, Pimpaldari, Tq. Gangakhed,)

Dist. Parbhani.) **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Principal Secretary,)
Department of Public Health,)
10th Floor, Gokuldas Tejpal Rugnalaya)
Sankul Imarat, Mantralaya, Mumbai-32.)

2. The Commissioner or Director,)
National Health Program,)
Public Health Services, Saint George)
Hospital, Arogya Bhavan, Mumbai.)

3. The Director,)
Public Health Services,)
Public Health Services, Saint George)
Hospital, Arogya Bhavan, Mumbai.)

4. The Chief Executive Officer,)
Zilla Parishad, Parbhani,)
Tq. & Dist. Parbhani.) **...RESPONDENTS**

APPEARANCE : Shri V.B. Dhage, Advocate for the Applicant.

: Shri D.R. Patil, Presenting Officer for
Respondent Nos. 1 to 3.

: Shri Vivek Bhavthankar, Advocate for
respondent No. 4 (**Absent**).

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

DATE : **26.09.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned suspension order of the applicant dated 13.12.2021 (Exhibit-D) issued by the respondent No. 4 i.e. the Chief Executive Officer, Zilla Parishad, Parbhani.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant is having qualification of MBBS and DCH. He is working as Medical Officer at various places in the State of Maharashtra. His service record is unblemished and blotless. Presently he is working as Medical Officer at PHC, Pimpaldari, Tq. Gangakhed, Dist. Parbhani since 24.09.2021. He is kept under suspension vide impugned order dated 13.12.2021 (Exhibit-D).

(b) It is the contention of the applicant that some false complaints were made against the applicant and in view of that the respondent No. 4 issued show cause notice dated 18.11.2021 (Exhibit-A) to the applicant thereby alleging that the performance of the applicant pursuant to the

Covid-19 vaccination at Primary Health Centre, Pimpaldari, Tq. Gangakhed, Dist. Parbhani was being poor and not satisfactory amongst other allegations. The applicant submitted his reply dated 02.12.2021 (Exhibit-B) to the respondent No. 4 denying the allegations and contenting that all the instructions as regards the vaccination were being followed and contending further that in first stage 67.15% vaccination was done, whereas in second stage 39-92% vaccination was done. It was also stated that the PHC Pimpaldari is in remote and hilly area and all the due care is taken to reach to all the eligible persons requiring vaccination.

(c) It is further submitted that vide transfer order dated 17.09.2021 (Exhibit-C) the applicant is being transferred to his present post. After joining on the said post, the applicant made representation dated 01.10.2021 (page No. 44 of the paper book) to the respondent No. 4 seeking modification in the transfer order seeking transfer to PHC Sonpeth, Tq. Sonpeth. That was not considered. In the month of October 2021, there was visit of Maharashtra Rajya Vidhi Mandal Andaj Samiti. However, Smt. Meena Latpate, Medical Officer Primary Health Unit, Suppa, Smt.

Kundgir-ANM and one Smt. Pradnya Mundh-ANM working there were found absent during the said visit. Hence, the applicant gave them show cause notice dated 28.10.2021 (page No. 49A and 50A of the paper book). In view of that action, the applicant and his family was being harassed. Moreover the respondent No. 4 also harassed the applicant by demanding extraneous consideration. The applicant took some administrative measures as regards completion of vaccination. Moreover, by earlier transfer order dated 13.07.2018, the applicant was transferred from Gangakhed, Dist. Parbhani to Hingoli District. He challenged the said order by filing O.A. No. 523 of 2018 before this Tribunal. By the order dated 23.01.2019 (Annexure-E) the said transfer order was quashed and set aside in view of cancellation of transfer order vide subsequent order dated 01.01.2019. The said order of transfer was issued by the respondent No. 2 i.e. the Director of Health Service, Mumbai and the respondent No. 3 i.e. the Deputy Director of Health Services, Aurangabad, who were not the competent to issue the transfer order. While disposing of the said O.A., this Tribunal directed the Chief Secretary, Government of Maharashtra of the

respondent No. 1 for taking appropriate action against the respondent Nos. 2 and 3, who had issued the transfer order of the applicant without jurisdiction. The respondents were aggrieved by that also. In the circumstances as above, it is the contention of the applicant that the impugned order of suspension is not legal and proper and it is liable to be quashed and set aside.

3. The affidavit in reply is filed on behalf of respondent No. 4 by one Shri Vidyasagar Ramrao Patil, working as Administrative Officer, Health Department, Zilla Parishad, Parbhani, thereby he denied all the adverse contentions raised in the original Application and specifically contended that the impugned suspension order was issued in accordance with law. It is further submitted that in the year 2018, when the applicant was working as Medical officer in Sub District Hospital at Gangakhed, there were allegations against the applicant of absentism, misbehavior with patients, colleagues and ladies staff. In view of the same, committee was constituted for enquiring into the allegations made against the applicant. At that time, statements of various witnesses were examined and committee gave finding of proving of charges against the applicant vide enquiry report dated 11.07.2018 (Exhibit R-2). The applicant was also

suspended at that time vide order dated 23.10.2018 (Exhibit R-3). It is further submitted that even one Zilla Parishad Member was having grievance against the applicant that the applicant was not performing his duties properly at PHC Pimpaldari. He filed complaint dated 05.12.2021 (Exhibit R-4). Even staff members have also filed written complaint dated 06.12.2021 (Exhibit R-5) of misbehavior against the applicant. The applicant was given show cause notice for not performing his duties properly, arrogant behavior with the staff members and implementation of vaccination program. The applicant gave explanation, but the same is not satisfactory. In the circumstances as above, it is stated that the impugned suspension order is legal and proper and the present O.A. is liable to be dismissed.

4. I have heard the arguments advanced at length by Shri V.B. Dhage, learned Advocate for the applicant on one hand and Shri D.R. Patil, learned Presenting Officer for respondent Nos. 1 to 3 on the other hand. Shri Vivek Bhavthankar, learned Advocate for respondent No. 4, **absent**.

5. The present Original Application is filed on or about 20.12.2021 challenging the impugned order of suspension of the

applicant dated 13.12.2021 (Exhibit-D) issued by the respondent No. 4 i.e. the Chief Executive Officer, Zilla Parishad, Parbhani. Perusal of the above-said order of suspension would show that the respondent No. 4 i.e. the CEO, Zilla Parishad, Parbhani has issued the said order as empowered under Rule 14(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which is as follows :-

“14. Provisions regarding Officers lent to any Government in India, Local authority, etc. -(1) *Where the Services of a Government servant are lent by one department of Government to another department of Government or to any other Government in India or to an authority subordinate thereto or to a local or other authority (including any Company or corporation owned or controlled by Government) (hereinafter in this rule referred to as "the borrowing authority") the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:*

Provided that, the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.”

6. Rule 4(1) of the said Rules, 1979 would be relevant and as such it is reproduced as follows :-

“4. Suspension.- (1) *The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by*

general or special order may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.”

7. Considering the Rule 14(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 when the facts of present case is considered, it can be seen that the respondent No. 4 i.e. the CEO, Zilla Parishad, Parbhani being borrowing authority is empowered to issue suspension order of the applicant. Moreover, the suspension order is marked to the respondent No. 1 i.e. the Secretary, Public Health Department, Mantralaya, Mumbai to seek *ex-post facto* approval thereby complying with the provisions of Rule 14(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

8. Moreover, perusal of the impugned order would show that the same is issued in view of the contemplation of disciplinary

action against the applicant for his alleged misconduct by way of behaving arrogantly with the patients and the staff members and not implementing the vaccination program in accordance with law.

9. No doubt, the applicant has demonstrated that show cause notice dated 18.11.2021 (Exhibit A) was issued to him by the respondent No. 4 and he filed his explanation on 03.12.2021 (Exhibit B). However, it is well within the discretionary power of respondent No. 4 even to take disciplinary action against the applicant after considering the reply. Only on the basis of explanation given by the applicant, it cannot be said that the allegations leveled against the applicant are totally false and baseless and insufficient to initiate disciplinary action against the applicant. This Tribunal in its limited jurisdiction at this preliminary stage cannot proceed to weigh sufficiency or otherwise of material for issuance of suspension order of the applicant, as the suspension order can be issued in contemplation of disciplinary proceeding against the Government servant. The said disciplinary action can be said to have been contemplated in view of the show cause notice dated 18.11.2021 issued by the respondent No. 4. In view of the same, in my

considered opinion, this is not a fit case to revoke the suspension on that ground alone.

10. That apart, the present Original Application is filed on or about 20.12.2021 challenging the suspension order of the applicant dated 13.12.2021 (Exhibit D). This matter is pending for more than three months from the date of suspension of the applicant on 13.12.2021. Admittedly, till advancing arguments by both the sides in the present O.A., charge-sheet in D.E. is not served upon the applicant.

11. No doubt, the applicant has relied upon the decision of co-ordinate Bench of this Tribunal at Mumbai in O.A. No. 247/2020 in the matter of Shri Pramod Bhaurao Godambe Vs. The Chief Executive Officer, Raigad Zilla Parishad, Alibag, Dist. Raigad and two others. In the said case, the applicant's services were lent to the Zilla Parishad and the suspension order was issued by the respondent No. 1 therein i.e. the Chief Executive Officer, Raigad Zilla Parishad, Alibag, Dist. Raigad. In that case, the suspension order was issued by the CEO, Zilla Parishad by invoking Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 only. There is no reference of invoking powers under Rule 14 of the said Rules, 1979 as in the present case. In view of the

same, view taken in the said decision that the impugned suspension order is not legal and proper would not be applicable in the present case. The facts of the present case are definitely different.

12. It is a fact that by passage of time the present matter is required to be considered in the background of the decision 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. 1912/2015 (Arising out of SLP @ No. 31761 of 2013)** decided on 16.02.2015 and more particularly the observations made in para No. 14 of the said judgment, which is as follows :-

“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.”

13. It is a fact that in view of the ratio laid down in the **Ajay Kumar's case** (cited supra), the Government of Maharashtra issued G.R. dated 09.07.2019. The relevant para No. 1 of the said G.R., is as follows :-

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

14. In the circumstances as above, the present O.A. can be disposed of by giving requisite directions to the respondents to place the case of the applicant before the requisite reviewing authority for taking appropriate decision / consideration in accordance with law strictly as per the mandate of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary**' (cited supra) and requisite G.R. dated 09.07.2019 issued by the General Administration Department, Maharashtra State immediately. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 29/2022 is disposed of in following terms :-

- (A) The respondents are directed to prepare and submit the detailed and complete proposal in respect of suspension of the applicant before the reviewing committee for taking appropriate decision / consideration in accordance with law strictly as per the mandate of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary**' (cited supra) and requisite G.R. dated 09.07.2019 issued by the General Administration Department, Maharashtra State in accordance with law within a period of one month from the date of this order and communicate the decision therein to the applicant in writing.
- (B) With the above direction, the O.A. stands disposed of with no order as to costs.

PLACE : AURANGABAD.

DATE : 26.09.2022.

(V.D. DONGRE)

MEMBER (J)