

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 349 OF 2023**

**DISTRICT:- LATUR**

Suresh S/o Mashnajirao Hakke,  
Age: 57 years, Occu. Service  
(as Senior Assistant-presently under  
suspension), R/o: Tehara Nagar,  
Near Arvind Nagar Society,  
District Nanded.

.. **APPLICANT**

**V E R S U S**

1. The State of Maharashtra,  
Through The Commissioner,  
(Medical Education,)  
Medical Education & Research,  
Mumbai, 4<sup>th</sup> floor, Govt. Dental  
College & Hospital, St. George's  
Hospital Campus, D. Mello Road,  
Fort, Mumbai-01.
2. The Director,  
Medical Education & Research,  
Government Dental College &  
Hospital Building,  
4<sup>th</sup> floor, Govt. Dental  
College & Hospital, St. George's  
Hospital Campus, D. Mello Road,  
Fort, Mumbai-01.
3. The Dean,  
Government Medical College &  
Hospital, Latur.

.. **RESPONDENTS**

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APPEARANCE : Ms. Preeti R. Wankhade, learned counsel  
for the applicant.

: Mr. V.R. Bhumkar, learned Presenting  
Officer for the respondent authorities.

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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN**

**DATE : 30.08.2023**  
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**ORAL ORDER**

Heard Ms. Preeti R. Wankhade, learned counsel for the applicant and Mr. V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

2. The applicant has challenged the order dated 21.6.2019, whereby he has been suspended in contemplation of the departmental enquiry against him. Though in exception to the said order several other grounds are also raised by the applicant, the main ground of the applicant is that till date of filing of the application though the period of about 4 years has lapsed the applicant has not been served with the statement of charge in relation to the alleged departmental enquiry allegedly contemplated against him. The respondents were given due opportunities for filing affidavit in reply, however, no reply has been filed. In the circumstances, the matter has proceeded without reply of the respondents.

3. Learned P.O appearing for the respondent authorities submitted that it is not the case that no steps are taken. He has pointed out that enquiry committee has been constituted

and further steps are being taken. Learned P.O., however, has not explained why the statement of charge has not yet been served upon the applicant though the period of 4 years has lapsed after order of suspension has been passed against the applicant.

4. In the case of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary & Anr., [(2015) 7 SCC 291]**, the Hon'ble Supreme Court has given the following directions in paragraph No. 14 of the said judgment: -

*“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.”*

5. On the basis of the aforesaid judgment of the Hon'ble Apex Court the State of Maharashtra has issued the Government Resolution dated 9.7.2019. I deem it appropriate to reproduce the said Government Resolution as it is in vernacular: -

“महाराष्ट्र नागरी सेवा (शिस्त व अपील) १९७९  
निलंबित शासकीय सेवकांना ९० दिवसांच्या  
कालावधीत दोषारोप पत्र बजावणेबाबत

महाराष्ट्र शासन  
सामान्य प्रशासन विभाग  
शासन निर्णय क्र. निप्रआ-१११८/प्र.क्र.११/११अ  
मंत्रालय, मुंबई.४०० ०३२  
दिनांक : ०९ जुलै, २०१९

वाचा :-

- १) शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक निप्रआ-११११/प्र.क्र. ८६/११-अ दिनांक १४ ऑक्टोबर, २०११.
- २) शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक अभियो-१३१४/प्र.क्र. ८६/११-अ
- ३) Office Memorandum F. No. 11012/04/2016-Estt(A) Government of India Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training Establishment A-III Desk Dated August 23, 2016

**शासन निर्णय:-**

निलंबित शासकीय अधिकारी/कर्मचा-यांच्या निलंबनाची कारणे व त्यांचे गांभीर्य यानुसार त्यांच्या प्रकरणांचा आढावा घेण्यासंदर्भात शासनाने वेळोवेळी वर संदर्भामध्ये दर्शविल्यानुसार शासन निर्णय निर्गमित केले आहेत. श्री. अजयकुमार चौधरी विरुद्ध युनियन ऑफ इंडिया (सिव्हिल अपिल क्र. १९१२/२०१५) मध्ये मा. सर्वोच्च न्यायालयाने दि. १६/०२/२०१५ रोजी दिलेल्या निर्णयाच्या परिच्छेद १४ मधील आदेश खालील प्रमाणे आहेत.

*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.”*

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 संदर्भातील तरतुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

#### **शासन निर्णय:-**

१. या अनुषंगाने शासकीय कर्मचा-यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

i) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेउन निलंबन पुढे चालू ठेवावयाचे असल्यास

त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिका-याच्या स्तरावर घेण्यात यावा.

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

३. सदर शासन निर्णय महाराष्ट्र शासनाच्या [www.maharashtra.gov.in](http://www.maharashtra.gov.in) या वेबसाईटवर उपलब्ध करण्यात आला असून त्याचा सांकेतांक २०१९०७०९१५२०४०५२०७ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

सही/-  
(संजू क. गुप्ते)  
उप सचिव, महाराष्ट्र शासन”

6. In the present matter it is undisputed that no statement of charge has yet been issued to the applicant. Issuance of the statement of charge is very first step towards initiation of the departmental enquiry. It is thus evident that the departmental enquiry has not commenced though in contemplation of the

said departmental enquiry the applicant was suspended in the year 2019 vide order dated 21.6.2019. In view of the direction given by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary & Anr.** (cited supra), if the charge sheet is not served on the delinquent within the period of three months from the date of his suspension, the suspension order cannot be extended beyond the said period of three months. In the present matter, the charge-sheet has not been issued even after four years of the order of suspension. In the G.R. referred to hereinabove also it has been expressly mentioned that if the departmental enquiry is not commenced against the delinquent by serving upon him the charge-sheet within the period of three months there would be no alternative except to revoke the suspension. Considering the facts involved in the present matter in light of the direction issued by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary & Anr.** (cited supra) and having regard to G.R. dated 9.7.2019 the suspension of the applicant cannot be permitted to be continued henceforth and deserves to be revoked forthwith. It is informed by the learned counsel that no one has been appointed in place of the applicant during meanwhile period

and the said post is still vacant. For the reasons stated above, the following order is passed: -

**ORDER**

- (i) The order dated 21.6.2019, whereby the applicant has been suspended stands revoked.
- (ii) The respondents are directed to reinstate the applicant forthwith on the post from which he was suspended.
- (iii) O.A. stands allowed in the aforesaid terms. There shall be no order as to costs.

**VICE CHAIRMAN**