

suspending him, which was communicated by the res. no. 2 on 5.10.2018, be quashed and set aside.

3. Case proceeds in following admitted facts :-

(i) Though the applicant is suspended way back in October, 2018, departmental enquiry has not been commenced.

(ii) Open enquiry as regards the alleged misconduct of the applicant is not conducted.

(iii) Review of applicant's suspension has not been taken much less decided favorably or unfavorably.

4. Learned Advocate for the applicant has placed reliance on the following judgments :-

(1) Judgment of Hon'ble Supreme Court in the case of State of Orissa Vs. Bimala Kumar Mohanty [AIR 1994 SC 2296]

(2) Judgment of Hon'ble Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]

(3) Judgment dtd. 11.3.2016 of Hon'ble High Court of Judicature at Bombay in the case of Dr. Narendra Omprakash Bansal Vs. The State of Maharashtra & Ors. (Writ Petition No. 11987/2015)

(4) Judgment dtd. 23.10.2017 delivered by the principal seat of this Tribunal at Mumbai in O.A. no. 611/2017 (Shri

Naresh Alwandar Polani Vs. the State of Maharashtra & Ors.)

(5) Judgment dtd. 11.9.2018 delivered by the principal seat of this Tribunal at Mumbai in O.A. no. 35/2018 (Shri Dilip Jagannath Ambilwade Vs. the State of Maharashtra & Ors.)

(6) Judgment dtd. 16.10.2018 delivered by the principal seat of this Tribunal at Mumbai in O.A. no. 269/2018 (Shri Hiralal Rama Jadhav Vs. the State of Maharashtra)

5. Core submissions based on the judgments relied upon by the learned Advocate for the applicant are summarized as follows:-

(i) The suspension may be ordered if the act or omission for which a Government servant is charge or is being charge-sheeted, may prima facie and in ordinary course attract major penalty in the event the misconduct is proved in the disciplinary enquiry / proceedings which may be held.

(ii) In view of judgment of Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]** the suspension ought never continue beyond 90 days.

6. This Tribunal has already taken a view deviating from view taken in O.A. no. 611/2017 (Shri Naresh Alwandar Polani Vs. the State of Maharashtra & Ors.) and O.A. no. 35/2018 (Shri Dilip Jagannath Ambilwade Vs. the State of Maharashtra & Ors.) and

took a view in O.A. no. 269/2018 (Shri Hiralal Rama Jadhav Vs. the State of Maharashtra) that the power of Government to take review of case of suspension including need of continuation of suspension depending on the seriousness of the case, stands protected / saved. This Tribunal, had therefore directed in O.A. no. 269/2018 (Shri Hiralal Rama Jadhav Vs. the State of Maharashtra) as follows :-

“17. In the event decision is not taken within two weeks from the date of this order, it shall be deemed that the suspension stands revoked and Applicant shall be deemed to have been reinstated, pending enquiry. In this eventuality Applicant shall report in the office of Inspector General of Prisons for detailed order of posting to any post, as may be chosen by the Government, which be given within ten days from date of deemed reinstatement. If posting is not given, Applicant shall continue to be posted in the office of Director General of Police and Inspector General of Prisons and shall be paid his salary and allowances from said establishment.”

(quoted from judgment dtd. 16.10.2018 delivered by the Tribunal at Mumbai in O.A. No. 259/2018 (Shri Hiralal Rama Jadhav Vs. the State of Maharashtra & Ors.))

7. In view of foregoing discussion, I pass the following order :-
- (i) The present Original Application is disposed of without any order as to costs..
 - (ii) The concerned respondents are directed to take a conscious decision as regards continuation or revocation of suspension of the applicant within 30 days from today.

(iii) In case respondents fail to take conscious decision as regards continuation of suspension of the applicant, the applicant would be deemed to be revoked and its formal compliance be done within the period of 2 weeks thereafter i.e. 6 weeks from today.

(iv) Respondents shall be free to give posting to the applicant after reinstatement in the event he get the benefit of deemed revocation.

(v) If decision to continue the suspension is taken by the respondents, the applicant is free to avail remedies available to him.

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad

Date : 8.7.2019

ARJ-O.A.NO.369-2019 S.B. (SUSPENSION)