

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 386 OF 2023**

**DISTRICT:- AHMEDNAGAR**

Ganesh S/o Gorakh Waware,  
Age : 40 years, Occ: Talathi  
(Under Suspension), R/o: Sant  
Tukaram Nagar, Pathardi Road,  
9 Bunglow Colony, Shevgaon,  
Tal. Shevgaon, Dist. Ahmednagar

.. **APPLICANT**

**V E R S U S**

1. The Collector,  
Administrative Building,  
Nagar-Aurangabad Road,  
Ahmednagar,  
Tq. & Dist. Ahmednagar

2. The Sub Divisional Officer,  
Pathardi Division, Pathardi,  
Tal. Pathardi, Dist. Ahmednagar.

.. **RESPONDENTS**

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APPEARANCE : Shri V.B. Wagh, learned counsel for the  
applicant.  
: Shri M.P. Gude, learned Presenting  
Officer for the respondent authorities.

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

**DATE : 12.07.2023**  
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**O R A L O R D E R**

Heard Shri V.B. Wagh, learned counsel for the applicant  
and Shri M.P. Gude, learned Presenting Officer for the  
respondent authorities.

2. When the present matter is taken up for consideration, Shri M.P. Gude, learned Presenting Officer sought time to file affidavit in reply on behalf of the respondents. Shri V.B. Wagh, learned counsel appearing for the applicant however, submitted that in the present matter the affidavit in reply may not be even necessary, since the provisions under the law and the Government Resolutions are quite unambiguous on the issue that if any employee is put under suspension on the ground that he has been prosecuted in any criminal case and if the said employee is acquitted by the competent court, the employee concerned has to be reinstated. Learned counsel invited my attention to clause 6 of the Government Resolution dated 14.10.2011, which reads thus,

“६. न्यायालयात अभियोग दाखल झालेल्या निलंबित शासकीय अधिकारी/कर्मचा-याला सक्षम न्यायालयाने दोषमुक्त केले असेल तर सक्षम प्राधिका-याने, त्याला पुनःस्थापित करण्याबाबत निर्णय घ्यावा. कनिष्ठ न्यायालयाने दोषमुक्त केल्यानंतर शिस्तभंगविषयक प्राधिकारी यांनी वरिष्ठ न्यायालयात अपील दाखल केले असेल तरी देखील अशा प्रकरणी संबंधित अधिका-यास वरिष्ठ न्यायालयाच्या न्यायनिर्णयाच्या अधीन राहुन पुनःस्थापित करण्याची कार्यवाही करावी. असे प्रकरण निलंबन आढावा समितीकडे पाठविण्याची आवश्यकता नाही.

तथापी, ज्या प्रकरणी एखादया शासकीय अधिकारी/कर्मचा-यावर एका पेक्षा जास्त फौजदारी गुन्हे दाखल असतील व एका गुन्ह्यातुन सदर शासकीय अधिकारी/कर्मचा-यास दोषमुक्त करण्यात आले असलेतरी अन्य फौजदारी गुन्ह्याप्रकरणी कार्यवाही चालु असल्यास अशा शासकीय अधिकारी/कर्मचा-यांच्या बाबतीत वर विहित केल्यानुसार निलंबनाचा अढावा घेण्याबाबतची कार्यवाही करण्यात यावी.”

3. Learned counsel appearing for the applicant pointed out that though it is true that the departmental enquiry has also been initiated against the applicant and the same is still going on, since the suspension was not directed on the ground that

the departmental enquiry is initiated against the applicant, clause 6 of G.R. dated 14.10.2011 will be perfectly applicable in the case of the applicant. Learned counsel, in the circumstances, has prayed for allowing the present Original Application.

4. Learned Presenting Officer submitted that since the departmental enquiry is going on and the charges framed against the applicant are pertaining to default committed by the applicant while working on the post of Talathi at Bodhegaon, it may not be possible to reinstate the applicant at the same place as it will be detrimental to the enquiry proceedings initiated against him. Learned P.O. submitted that matter is already forwarded to the review committee and the review committee will take appropriate decision in the matter. Learned P.O. in the circumstances, opposed for allowing the O.A.

5. I have duly considered the submissions made on behalf of the applicant, as well as, respondents. It is not in dispute that vide order dated 18.10.2022 the applicant was suspended on the ground that a criminal case for the offences punishable under Section 12(1)(a) of the Maharashtra Prevention of Gambling Act, 1887 was registered against the applicant and in the circumstances by invoking powers under Rule 4(1)(c) of the

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short 'the Rules of 1979), the order of suspension was passed against the applicant. In the meanwhile, the department has also initiated the departmental enquiry against the applicant and the same is in progress. The memorandum of charge is placed on record which reveals that 24 defaults are alleged against the applicant and in that regard the departmental enquiry is going on. Despite the facts as aforesaid, it is undisputed that the applicant was suspended by invoking the power under Rule 4(1)(c) of the Rules of 1979 on the ground that criminal case was registered against him. It is thus, evident that the applicant was suspended not because the departmental proceedings were initiated against him, but for the criminal case registered against him. In the circumstances, after the applicant has been acquitted from the said criminal case as provided under clause 6 of the G.R. dated 14.10.2011, which I have reproduced hereinabove, the respondents do not have any other option except to reinstate the applicant in service.

6. The question arises on which post the applicant is to be reinstated. Had there been no departmental proceedings pending against the applicant, in ordinary course he would have

been reinstated on the same post from which he was suspended. In the present matter, when the departmental proceedings are still pending against the applicant, as has been observed by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary and Anr., Civil Appeal No. 1912/2015, arising out of SLP(C) No. 31761/2013**, the respondents are free to reinstate the applicant to any equivalent post in any of its office so as to sever any local or personal contact that he may have and which he may misuse for tampering the evidence likely to come against him in the departmental enquiry or may influence the witnesses which may be examined in the departmental enquiry pending against him to prove the charges leveled against him. In the result, the following order is passed: -

**ORDER**

- (i) The Original Application stands allowed.
- (ii) Respondents are directed to reinstate the applicant forthwith.
- (iii) The respondents are free to reinstate the applicant to any equivalent post in any of its office, so as to sever any local or personal contact that he may have and which he may misuse for tampering the evidence likely to come against him in the departmental enquiry or may influence the witnesses which may be examined in the departmental

enquiry pending against him to prove the charges leveled against him

(iv) There shall be no order as to costs.

**VICE CHAIRMAN**

O.A.NO.386-2023 (SB)-2022-HDD-Suspension