

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

ORIGINAL APPLICATION NO. 425 OF 2022

(Subject – Suspension / Revocation of Suspension)

DISTRICT : AURANGABAD

Shri Ramdas Hanumantrao Lohakare,)
Age : 55 years, Occu. : Service as)
Sanitary Inspector, (At present Suspended),)
R/o. C-12, GHATI Govt. Quarter,)
Aurangabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Secretary,)
Medical Education and Research)
Department, Mantralaya, Mumbai-32.)
2. **The Director/Commissioner,**)
Medical Education and Research,)
Govt. Dental College & Hospital)
Building, 4th Floor, Fort, Mumbai.)
3. **The Reader,**)
Rural Health Training Centre,)
Paithan, Dist. Ahmednagar.)

...RESPONDENTS

APPEARANCE : Shri K.B. Jadhav, Advocate for the Applicant.

: Shri N.U. Yadav, Presenting Officer for
Respondents.

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

DATE : **16.12.2022.**

ORDER

1. The present Original Application is filed challenging the impugned suspension order of the applicant dated 03.02.2022 (part of Annexure A-3 collectively) issued by the respondent No. 2 i.e. the Director / Commissioner, Medical Education and Research, Mumbai placing the applicant under suspension from the post of Sanitary Inspector and seeking revocation of said suspension order and to reinstate the applicant to the post of Sanitary Inspector in the office of respondent No. 3 and to pay him salary and allowances from the date of suspension.

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

(i) The applicant came to be appointed on the post of Sanitary Inspector on 01.11.1995. He was transferred from time to time. While working in the office of respondent No. 3, one frivolous and false complaint was lodged against the applicant and Crime No. 10/2022 (Annexure A-1) was registered on 10.01.2022 at Paithan Police Station, Dist. Aurangabad under Section 7 of Prevention of Corruption Act, 1988. The applicant was arrested in the said crime on 10.01.2022 and he was released on bail as per the order

dated 11.01.2022 (Annexure A-2). The respondent No. 2 i.e. the Director / Commissioner, Medical Education and Research, Mumbai issued order dated 03.02.2022 (part of Annexure A-3 collectively) putting the applicant under suspension with retrospective effect of 10.01.2022. The said deemed suspension is not sustainable in the eyes of law and therefore, it is liable to be quashed and set aside.

(ii) It is contended that the applicant has not remained in custody for more than 48 hours being released on bail on 11.01.2022 after his arrest on 10.01.2022. No any Departmental Enquiry was conducted against the applicant nor opportunity of hearing was given to the applicant before passing the impugned suspension order. The applicant has filed departmental appeal dated 22.02.2022 (Annexure A-4) before the respondent No. 1 i.e. the State of Maharashtra through Secretary, Medical Education and Research Department, Mumbai against the impugned order of suspension dated 03.02.2022. The said departmental appeal is still pending.

(iii) It is further submitted that even after completion of 90 days from the deemed date of suspension from

10.01.2022, no charge-sheet in criminal prosecution was filed. The applicant therefore, filed representation dated 11.04.2022 (Annexure A-5) seeking revocation of suspension on that ground.

(iv) It is submitted that in view of the decision of the Hon'ble Apex Court of India in the matter of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** reported in **(2015)7 Supreme Court Cases 291.** (Annexure A-6) and G.R. dated 09.07.2019 issued by the GAD, the applicant is entitled for reinstatement after revocation of suspension. Hence, the present Original Application.

3. The present Original Application is resisted by filing the affidavit in reply on behalf of respondent Nos. 1 to 3 by one Dr. Seema Sharad Salve, working as Dental Surgeon in the office of respondent No. 3 i.e. Reader, Rural Health Training Centre, Paithan, Dist. Aurangabad, thereby she denied all the adverse contentions raised in the O.A. It is specifically contended that the applicant was put under suspension in the background of being caught by Anti-Corruption Bureau while accepting bribe of Rs. 10000/-. The said suspension order is passed under Section

4(1)(c) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The suspension order dated 03.02.2022 is issued in view of the arrest of the applicant on 10.01.2022 in crime registered at the instance of Anti-Corruption Bureau and more particularly the applicant being caught while accepting bribe of Rs. 10000/-. It is contended that the applicant was released on bail in the said crime on 11.01.2022. The suspension order is also issued in contemplation of disciplinary action against the applicant. The review of suspension order can be taken by the review committee constituted as per the G.R. dated 14.10.2011. In criminal case, ACB has already filed charge-sheet against the applicant. The Departmental Enquiry is also initiated against the applicant. The review of suspension can be taken as per the G.R. dated 14.10.2011. Criminal prosecution and disciplinary action are still pending. Hence, the present Original Application is devoid of merits and the same is liable to be dismissed.

4. The affidavit in rejoinder is filed by the applicant thereby denying the adverse contentions raised in the affidavit in reply. It is specifically stated that till today memorandum of charges in Departmental Enquiry is not served upon the applicant, as well as, the charge-sheet in criminal case is also not filed.

5. I have heard the arguments advanced at length by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer on the other hand.

6. Upon perusal of the facts and documents on record, it is evident that the applicant is put under suspension by the impugned order dated 03.02.2022 (part of Annexure A-3 collectively) in the background of registration of crime under prevention of Corruption Act for demand and acceptance of bribe and in contemplation of disciplinary action. The said suspension order is made effective with retrospective effect of 10.01.2022. The applicant was arrested in the said crime on 10.01.2022 and released on bail on 11.01.2022. The order of suspension is issued under Rule 4(1)(c) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The deemed suspension is contemplated under Rule 4(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which is as follows :-

“4. Suspension.-(1).....

2. A Government servant shall be deemed to have been placed under suspension by an order of appointing authority –

(a) with effect from the date of his detention, if he is detained in police or judicial custody,

whether on a criminal charges or otherwise, for a period exceeding forty-eight hours;

- (b) with effect from the date of his conviction, if he is event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.*

Explanation.- The period of forty-eight hours referred to in Clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.”

In order to have deemed suspension with retrospective effect from the date of his detention, it is required that the Government servant is detained in police or judicial custody, whether on a criminal charges or otherwise, for a period exceeding forty-eight hours. In this case, from the documents produced on record by the applicant such as remand application and order of bail at Annexure A-2 would show that the applicant was arrested in Crime No. 10/2022 registered under Section 7 of Prevention of Corruption Act, 1988 at Paithan Police Station, Dist. Aurangabad on 10.01.2022 and he was released on bail as per the order dated 11.01.2022 upon furnishing cash security of Rs. 15000/-, which he deposited on 11.01.2022. In view of the

same, it is evident that the applicant was detained, but he was released within 48 hours. In view of the same, order of deemed suspension with retrospective effect of 10.01.2022 is not sustainable in eyes of law. Hence, the suspension order dated 03.02.2022 (part of Annexure A-3 collectively) will be having prospective effect of 03.02.2022.

7. That apart, even if deemed date of suspension of 10.01.2022 is considered for computing period for filing of charge-sheet as contemplated as per the citation of the Hon'ble Apex Court of India in the matter of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** (cited supra), the period of filing of charge-sheet would be up to 09.04.2022 and from the date of suspension three months would come to an end on 02.05.2022. The applicant has contended that the charge sheet in criminal case or memorandum of charges in D.E. were not served upon the applicant till he sworn in the affidavit in rejoinder on 30.08.2022. No doubt, the respondents categorically stated in their affidavit in reply that the charge sheet in criminal case and memorandum of charges in D.E. are already served upon the applicant. However, no evidence to substantiate the same is adduced or produced by the respondents in that regard. In view of the same, it is evident that

neither the charge sheet in criminal case nor the memorandum of charges are served upon the applicant before completion of 90 days from the date of suspension dated 03.02.2022 deemed on 10.01.2022.

8. In the citation of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** (cited supra) in para No. 14 it is laid down 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.”

9. The applicant has further placed reliance on the G.R. dated 09.07.2019 (Annexure A-7) issued by the GAD, State of Maharashtra, in which the decision of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** (cited supra) has been referred. The relevant clause No. 2 of the said G.R. is as follows

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“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 प्राधिकाऱ्याच्या 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.”

10. In view of above, it is crystal clear that the impugned order of suspension of the applicant is liable to be revoked upon expiry of 3 months from the date of suspension i.e. 03.02.2022. For the reasons stated hereinabove, deemed suspension w.e.f. 10.01.2022 is not sustainable in the eyes of law and the suspension is to be treated w.e.f. 03.02.2022. In the circumstances, the applicant shall be deemed to have been reinstatement after completion of prescribed review period of 90

days of actual suspension and all consequential benefits thereof shall follow treating that suspension ceased to exist 90 days after the date of suspension. Hence, I proceed to pass the following order :-

ORDER

The Original Application No. 425 of 2055 is partly allowed in following terms :-

- (i) The impugned suspension order of the applicant dated 03.02.2022 (part of Annexure A-3 collectively) issued by the respondent No. 2 i.e. the Director / Commissioner, Medical Education and Research, Mumbai deemed to have been revoked upon expiry of 3 months / 90 days from the date of suspension.
- (ii) The respondents shall pass the consequential order within a period of two months from the date of this order regarding treatment of suspension period.
- (iii) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 16.12.2022.

(V.D. DONGRE)
MEMBER (J)