

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

**ORIGINAL APPLICATION NO. 536 OF 2022  
(Subject – Suspension)**

**DISTRICT : BEED**

**Syed Saleem Syed Yakub,** )  
Age : 56 years, Occu. : Service )  
(as Jr. Planning Assistant, Nagar Panchayat, )  
Patoda), R/o. Karanja Tower Road, Beed. )

.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Urban Development Department, )  
M.S. Mantralaya (Main Building), )  
3<sup>rd</sup> Floor, Madam Kama Road, Hutatma )  
Rajguru Chowk, Mumbai –32. )
2. **The Commissioner-cum-Director,** )  
Municipal Administration, Directorate )  
Of Municipal Administration, Shaskiya )  
Parivahan Seva Imarat, 3<sup>rd</sup> Floor, )  
Sir Pochkhanwala Road, Worli, Mumbai.)
3. **The District Administrative Officer,** )  
Urban Development Division, )  
Collector Office, Nagar Road, Beed. )

**...RESPONDENTS**

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**APPEARANCE** : Shri Avinash Deshmukh, Advocate for the  
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for  
Respondents.

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

**DATE** : **30.09.2022.**  
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**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 order of suspension of the applicant dated 14.06.2022 (Annexure A-3) issued by the respondent No. 2 i.e. the Commissioner-cum-Director, Municipal Administration, Directorate of Municipal Administration, Mumbai and to extend all the consequential benefits.

2. The facts in brief giving rise to this Original Application can be summarized as follows :-

(a) The applicant entered into the service of Beed Municipal Council as Tracer in the year 2001. Subsequently, he was absorbed in the Maharashtra State Government service vide order dated 17.05.2014 as a Junior Planning Assistant. Since then he became a State Government employee and has been working as such.

(b) It is further contented that by the order dated 04.02.2020 (Annexure A-1) the respondent No. 2 i.e. the Commissioner-cum-Director, Municipal Administration, Directorate of Municipal Administration, Mumbai was pleased to issue order transferring the applicant from Selu

Municipal Council in Parbhani District to Patoda Nagar Panchayat in Beed District. Since then the applicant is working at Patoda Nagar Panchayat in Beed District. It is further submitted that the respondent No. 3 thereafter issued order dated 20.09.2021 (Annexure A-2) assigning additional charge of the post of Junior Planning Assistant in the Beed Municipal Council as per the directions issued by the office of respondent No. 2 vide letter dated 16.09.2021. However, thereafter, the applicant was stunned to learn about issuance of order of his suspension dated 14.06.2022 (Annexure A-3) passed by the respondent No. 2 i.e. the Commissioner-cum-Director, Municipal Administration, Directorate of Municipal Administration, Mumbai. As seen from the said suspension order, the respondent No. 2 took this action of applicant's suspension with retrospective effect from 03.06.2022 u/r 4(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, but without specifying any of the allegations against him.

(c) It is further submitted that after receipt of the said suspension order, when the applicant tried to collect the information behind passing the said suspension order, he

came across letter dated 01.06.2022 (Annexure A-4) (wrongly stated in O.A. as 14.06.2022) issued by the Deputy Secretary of Urban Development Department, Mantralaya, Mumbai i.e. the respondent No. 1 apparently issuing direction to the respondent No. 2 to put the present applicant under suspension and to conduct the Departmental Enquiry against him. In view of the same, the suspension order of the applicant is issued only in view of the statement made by the Hon'ble Minister of State Urban Development on the floor of the Legislative Council on 21.03.2022.

(d) It is further contented that the applicant had absolutely no concern about लक्षवेधी सूचना क्र. ५२६ referred in the said letter dated 01.06.2022 (Annexure A-4). The applicant was never issued any oral or written direction by anybody to do anything in relation thereto much less was ever asked by anybody to attend the proceedings in the Legislative Council at Mumbai. Therefore, the applicant had absolutely no concern with the said letter and due to which, he was not present in the Mantralaya in the month of March 2022. In fact, the applicant made written representation dated 31.03.2022 (Annexure A-5) to the Hon'ble Minister of State

Urban Development Mumbai and pointed out this fact to him. In spite of that the applicant was put under suspension by the impugned order dated 14.06.2022 (Annexure A-3). Hence, the present Original Application.

3. The affidavit in reply filed on behalf of respondent Nos. 1 and 2 by one Shri Sambhaji Pandurang Waghmare, working as Deputy Commissioner of Municipal Administration, Commissioner and Directorate of Municipal Administration, Belapur, Navi Mumbai, thereby denying the adverse contentions raised in the present Original Application and specifically contented that the applicant suppressed the fact pursuant to the instruction of the Hon'ble State Minister of Urban Development thereby he was directed to remain present in the meeting dated 21.03.2022 for briefing the allegations regarding various problems and irregularities in Beed Municipal Council raised by the Hon'ble Member of the Legislative Council vide Legislative Assembly Question No. 526 in the Budget Session. It is further submitted that in that respect five personnel viz. Shri Utkarsh Gutte, Chief Officer of Beed Municipal Council, Shri Sudhir Jadhav, Tax Superintendent of District Administrative Office, Beed, Mr. Rahul Talke, Water Supply Engineer of Beed Municipal Council) and one Shri Yogesh Hade, Construction Engineer of

Beed Municipal Council along with the present applicant failed to remain present and thereby the Hon'ble Minister of State, Urban Development Department could not answer the queries before the Legislative Assembly on 21.03.2022. This was grave misconduct on the part of the applicant and therefore, the suspension order came to be issued. Moreover, the applicant kept his mobile switched off and as such he could not be contacted. Hence, the present Original Application is liable to be dismissed.

4. The applicant filed his affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply and reiterated contentions raised in the Original Application.

5. I have heard the arguments advanced at length by Shri Avinash Deshmukh, learned Advocate for the applicant on one hand and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents on the other hand.

6. Perusal of the proceedings would show that the applicant has filed the present Original Application by invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging his suspension order dated 01.06.2022. The suspension order is appealable

order as provided under Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is true that in the said Rule 17, the appellate authority in that respect is not specified. As per the Rule 18 of the said Rules, the appellate authorities in respect of appealable orders imposing penalties are specified. Perusal of the impugned order dated 01.06.2022 (Annexure A-2) would show that it is issued as an interim measure in contemplation of disciplinary action against the applicant. Hence, the said impugned suspension order cannot be said to be penal order. Hence, I hold that the authorities as specified under Rule 18 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 would not be of any help. However, perusal of the Rule 4(5)(c) and Rule 21 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, would be relevant for considering this aspect of the matter. The said provisions are as under :-

**“4. Suspension –**

- (1).....  
 (2).....  
 (3).....  
 (4).....  
 (5)(a).....

(b).....

(c) *An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority, which made or is deemed to have made the*

*order or by any authority to which that authority is subordinate.*

*Provided that, where a criminal offence is registered against a Government servant, the recommendation of the Supervision Review Committee constituted by the Government in this behalf, shall be obtained by the authority which has made or is deemed to have made the suspension order by or any authority to which that authority is subordinate, before revoking or modifying the order of suspension of such Government servant.”*

**21. Submission of appeals.** *-(1) Every appeal shall be submitted to the authority which made the order appealed against: Provided that:*

- (a) where such authority is not the Head of the Office in which the appellant may be serving, or*
- (b) where the appellant has ceased to be in service and such authority was not the Head of the Office in which the appellant was serving immediately before he ceased to be in Service or*
- (c) where such authority is not subordinate to any Head of Office referred to in clause (a) or (b) the appeal shall be submitted to the Head of Office referred to in clause (a) or (b) of this sub- rule accordingly, as the appellant is or is not in service; and thereupon, such Head of Office shall forward the appeal to the authority against whose order the appeal is made.*

*(2) A copy of the appeal shall also be submitted direct to the appellate authority.”*



7. Reading both the above-said provisions together would show that even if the appellate authority for challenging the suspension order made appealable under Rule 17(i) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is not specified under Rule 17 itself or even if the Rule 18 specifying appellate authorities, is not applicable to such order, procedure for submission of appeal itself is provided under Rule 21 of the said Rules, 1979 and as per that provision the departmental appeal can be presented before the authority passing suspension order, who will place it before his superior authority. The appellate authority challenging the suspension order can be inferred by plain reading of Rule 4(5)(c) of the said Rules, 1979 as reproduced hereinabove. In view of the same, I find no substance in the contentions raised on behalf of the applicant. Section 20 of the Administrative Tribunals Act, 1985 provides that the application present under Section 19 of the said Act, 1985 not to be admitted unless other remedies being exhausted. The applicant has failed to comply with the provision of Section 20 of the Administrative Tribunals Act, 1985. Hence, this case is required held to be not maintainable.

8. In this regard, however, the learned Advocate for the applicant has specifically placed reliance on the case law of the

Hon'ble Bombay High Court reported in **2015 (4) Bom.C.R. 563**

in the matter of **State of Maharashtra Vs. Subhas Dhondiram**

**Mane.** In para No. 9 of the said citation, it is held as follows :-

*“9. The first contention raised on behalf of the Petitioner State is that the Tribunal ought not to have entertained the Original Application in view of the alternate remedy available to the Respondent. Reliance was placed by Mr.Sakhare, on Section 20(1) and (2) of the Administrative Tribunals Act, 1985. According to Mr.Sakhare, as per Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, a remedy of appeal against the order of suspension has been provided. Mr.Sakhare submitted that the reason given by the Respondent for not availing of this remedy that since the order is passed in concurrence of the Chief Minister and therefore no appellate authority will give a decision against him, is an untenable reason. He submitted therefore that the discretion used by the Tribunal in entertaining the application was improper and therefore the order be set aside. We do not find any merit in this submission. Section 20(1) of the Administrative Tribunal Act does not place an absolute embargo on the Tribunal to entertain an application if alternate remedy is available. It only states that the Tribunal shall not ordinarily entertain application unless the Tribunal is satisfied that the applicant has availed the alternate remedy. This phraseology itself indicates that in a given case the Tribunal can entertain an application directly without relegating the applicant to the alternate remedy. In the present case, the Tribunal has found, on examination of various peculiar facts and circumstances, that, it will be futile to drive the Respondent to an alternate remedy. The Tribunal found that the order of suspension was based on the same grounds as the order of transfer, which was stayed and the order of suspension was an act of victimization. Having convinced that strong case for entertaining an application was made out, the Tribunal entertained the application. It was within the discretion of the Tribunal to do so. No absolute bar was shown, neither it exists. We are not inclined, at this stage, to accede to the*

*submission of Mr.Sakhare, and set aside the impugned order on this ground alone.”*

In view of above ratio, if the present case is considered, it is seen that alternatively it is contended on behalf of the applicant that the impugned suspension order is bad and untenable. Learned Advocate for the applicant in this regard also submitted that the impugned order of suspension said to have been issued on the direction of the Hon'ble Minister and as such, even if the departmental appeal was being filed, that would have been futility in exercise. He also submitted that in fact before issuance of the said suspension order dated 01.06.2022 (Annexure A-2) the applicant was already transferred from his post of Chief Officer of the Beed Municipal Council by the transfer order dated 27.05.2022 and as such, the applicant is being victimized. In these circumstances, in my considered opinion, the case of the applicant would be covered under the ratio laid down in the above-said citation of the Hon'ble Bombay High Court reported in **2015 (4) Bom.C.R. 563** in the matter of **State of Maharashtra Vs. Subhas Dhondiram Mane**. Hence, I hold that the present O.A. filed by the applicant without exhausting remedy of filing departmental appeal is maintainable.

9. Perusal of the record would show that nothing is being produced on record by respondents to show that on particular date the applicant was directed to remain present in Mantralaya on any of the specified dates including 21.03.2022. Perusal of the impugned suspension order of the applicant dated 14.06.2022 (Annexure A-3) would show that it is made applicable retrospectively w.e.f. 03.06.2022 without making out the case of deemed suspension. No specific date of alleged incident is also mentioned in the said suspension order. It is true that at the relevant time, the applicant was holding the additional charge of the post of Junior Planning Assistant in the Beed Municipal Council. When the applicant specifically stated that he was never called by anybody in any meeting to give any information, onus was upon the respondents to produce documentary evidence in that regard. However, except bare statement made in the affidavit in reply, no documentary evidence is produced on record to substantiate the allegations made in the impugned suspension order. I have already observed that the allegations behind contemplated disciplinary action are vague without any specification. In this regard, the learned Advocate for the applicant placed reliance on the citation of the Hon'ble Apex Court in the case of **State of Orissa Vs. Bimal Kumar Mohanty**

reported in **AIR 1994 SC 2296**. In para Nos. 12 and 13 of the said judgment, it is laid down as follows :-

*“12. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid*

*to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.*

*13. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.”*

10. In the circumstances as above, in my considered opinion, if the facts of the present case are examined in the background of the law laid down by the Hon'ble Apex Court in the matter of **State of Orissa Vs. Bimal Kumar Mohanty reported in AIR 1994 SC 2296** (cited supra) it is seen that the nature of allegations made against the applicant cannot be said to be so serious, which would warrant to put the applicant under suspension. The impugned order of suspension is blatantly disproportionate to the misconduct alleged against the applicant and it can be said to have been issued in mechanical way. In these circumstances, in my considered opinion, the order of suspension would not be sustainable in the eyes of law and the

same is required to be quashed and set aside. I therefore, proceed to pass the following order :-

**ORDER**

The Original Application No. 536/2022 is allowed in following terms:-

- A. The impugned order of suspension of the applicant dated 14.06.2022 (Annexure A-3) issued by the respondent No. 2 i.e. the Commissioner-cum-Director, Municipal Administration, Directorate of Municipal Administration, Mumbai is hereby quashed and set aside.
- B. The respondents are directed to extend to the applicant all consequential benefits upon quashing and setting the said impugned order of suspension.
- C. There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 30.09.2022.**

**(V.D. DONGRE)**  
**MEMBER (J)**