

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 570 / 2020 (S.B.)**

Vikas Shankarrao Totawar,
Aged about 57 years, Occ:Service
(At present under suspension)
R/o Venkatesh Nagar, Umarched,
Tahsil Umarched, District:Yavatmal.

Applicant.**Versus**

- 1) The State of Maharashtra,
Through it's Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) Superintendent of Police,
Yavatmal.

Respondents

Shri S.P.Palshikar, the Id. Advocate for the applicant.

Shri A.M.Ghogre, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

Judgment is reserved on 19th October, 2020.

Judgment is pronounced on 22nd October, 2020.

Heard Shri S.P.Palshikar, Id. counsel for the applicant and Shri A.M.Ghogre, Id. P.O. for the respondents.

2. The facts of the case is that the applicant entered into the Government Service as Police Sub Inspector on 27th July, 1988. Thereafter, in the year 2007 he was further promoted as Assistant Police Inspector (A.P.I.), thereafter in the year

2008 he was promoted as Police Inspector and in the year 2014 he was further promoted as Assistant Commissioner of Police. The applicant had joined the present posting as Sub Divisional Police Officer (S.D.P.O.) Umerkhed on 13th March, 2019. While working as S.D.P.O., Umerkhed a F.I.R. was launched on 15.03.2020 (04:19) for offence punishable under Section 7 and 12 of the Prevention of Corruption Act. The F.I.R. was registered under Crime No. 0126/2020 on 15.03.2020 (04:19) and nothing has happened thereafter and applicant continued to work as S.D.P.O. even after registration of F.I.R.. The applicant was placed under suspension vide order dated 17th June, 2020 (Annexure-A-2, P.B., Pg. No. 20) by Respondent no. 1. Applicant vide his representation dated 10.02.2020 submitted to Respondent no. 1 through Respondent no. 2, however, nothing has happened till now. While perusal of records and order sheet dated 19.10.2020 in para no. 4 following facts are mentioned:-

4. The learned counsel for the applicant has also pointed out last para of the preliminary inquiry dated 29/6/2020 (Annex-R-2, P.B., Pg. No. 63) which has been attached along with the reply of the respondent no. 2 dated 16/10/2020. This para reads as follows-

^ rjh fodkl rWlokj] mifolKxh; ikyI vf/kdkih mej[M ; kfo#/n iFke [kcjh f'lok; dskrlgh iQVmk; d ijlok iFked plG'hnjE; ku mi yC/k>kykulgh glp vlepkvfllk; vl u iqhy dk; bglLro I nj iFked plG'hvgoky I knj dj.; kr ; s vlgS**

In view of above opinion *prima facie* applicant is not required to be punished as he has been punished vide impugned order dated 17.06.2020 (Annexure-A-2, P.B. Pg. No. 20). Aggrieved with this suspension order dated 17th June, 2020, the applicant has approached to this Tribunal.

3. As per para no. VI (P.B., Pg. No. 06) of the O.A., the submission is made that as on date there is no full-fledged departmental enquiry is initiated against the applicant, no charge sheet for the offence punishable under Section 7 and 12 of the Prevention of Corruption Act is filed before the Competent Court of Law. This further substantiates relief sought by applicant.

4. The Respondent no. 2 has filed reply and justified continuity of suspension as per the Review done by the Committee mentioned in para no. 05 of the reply. The Review Committee Meeting was called by the Bench and it has been submitted as Annexure-R-1, P.B., Pg. No. 53. Nothing substantial reasons have been

mentioned in this Minutes of the Meeting dated 14.09.2020 for continuity of suspension.

5. The legal position is that Hon'ble Apex Court, Hon'ble High Court Mumbai, Bench at Nagpur and M.A.T., Principle Bench Mumbai have passed various Judgments on this issue and Legal position have been almost settled by Government Resolution of Government of Maharashtra, G.A.D., dated 09.07.2019 which are below:-

(i) The Apex Court in Civil Appeal No. 1912 of 2015 (arising out of SLP No.31761 of 2013) in the case of Ajay Kumar Chaudhary Vs. Union of India through its Secretary and another in its Judgment dated 16/02/2015 in para no. 14, it has observed that :-

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.

(ii) The Hon'ble Apex Court in its Judgment in Civil Appeal No. 8427-8428 of 2018 (Arising out of S.L.P. (Civil) No. 12112-12113 of 2017) in the case of **State of Tamil Nadu Vs. Pramod Kumar IPS and Anr. delivered on 21/08/2018** in its para no. 23 had observed as follows:-

*23. This Court in **Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291** has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.*

(iii) The Principal Bench of Maharashtra Administrative Tribunal Mumbai Bench in O.A. No. 35/2018 Judgment delivered on 11/09/2018 has also rejected continuation of suspension beyond 90 days.

(iv) The Government of Maharashtra has issued G.R. dated 09/07/2019 (Annexure-A-4, Pg. No. 34). The Id. Counsel for the applicant has relied on para no. (ii) of the said G.R. on Pg. No. 35.

(ii) fuyfcr 'kkI dh; I o dkk; k T; k i d j .kh 3 efgU; kpk dkyko/khr foHkkxh; pkid' kh I q d: u nskkjki i = ctko.; kr vkysukgh] v'kk i d j .kh ek- I o d p U; k; ky; kpsvknsk i kgrk] fuyæu I ektr dj.; kf'kok; vU; i; k; jkgr ukgh- R; keGsfuyfcr 'kkI dh; I o d kkr foHkkxh; pkid' khph dk; bkgh I q d: u nskkjki i = ctko.; kph dk; bk; h fuyæuki kl u 90 fnol kh; k vkr dkVdki i .ksdyh tkby; ; kph n{krk@ [kcjnkjh ?s; kr ; koh-

(v) The Hon'ble High Court of Bombay, Bench at Nagpur in W.P. No. 7506/2018, Judgment delivered on 17.07.2019 (Annexure-A-6, Pg. No. 47), was also on same principle. It has observed in para no. 2 that facts of this case are squarely covered by Government Resolution G.A.D. dated 09/07/2019 which is quoted in above para.

6. In view of discussions in foregoing paras, the impugned order dated 17.06.2020 is not justifiable legally and it does not get legal backing. Therefore, O.A. requires to be allowed. So, following order:-

ORDER

1. The order dated 17th June, 2020 (Annexure-A-2, P.B. Pg. No. 20) is here by quashed and set aside.
2. The Respondents are also directed to issue suitable posting order to the applicant as per observations made by The Hon'ble Apex Court in its Judgment in Civil Appeal No. 8427-8428 of 2018 (Arising out of S.L.P. (Civil) No. 12112-12113 of 2017) in the case of **State of Tamil Nadu Vs. Pramod Kumar IPS and Anr. delivered on 21/08/2018** in its para no. 23 it has been observed as follows:-

*23. This Court in **Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291** has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced*

that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.

3. Respondents are further directed to pay salary after deducting subsistence allowance which has already been paid for suspension period of applicant.
4. No order as to costs.

(Shri Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.
Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 22/10/2020.
and pronounced on

Uploaded on : 23/10/2020.