

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 716 of 2016 (SB)**

Dr. Anil S/o Babulal Zamarkar,
Aged about 41 years,
R/o Medical Officer's Quarter,
Primary Health Centre, Asegaon Purna,
Tq. Chandur Bazar, District : Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Public Health Department, 10th floor, Gokuldas
Tejpal Hospital, Campus, Mumbai-01.
- 2) Director of Public Health,
Government of Maharashtra,
St. Georges Hospital,
Compound Arogya Bhawan,
CST, Mumbai-01.
- 3) Deputy Director of Health Services,
Akola Region, Lady Hospital Compound,
Akola.
- 4) Civil Surgeon,
General Hospital, Amravati.
- 5) Medical Superintendent,
Rural Hospital, Chandur Bazar,
Dist. Amravati.

Respondents

Shri N.D. Thombre, Advocate for the applicant.

Shri P.N. Warjurkar, learned P.O. for respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 19th day of July,2018)

Heard Shri N.D. Thombre, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicant was initially appointed as Medical Officer and was working on the said post since 02/02/2000. Thereafter he was selected to Group-A through MPSC.

3. The allegations against him was that one patient died because of the improper treatment given in the Hospital and also that one MLA Shri Bacchu Bhau Kadu visited the Hospital and at that time the applicant was not present in the Hospital. On 19/7/2016 the applicant reported to the respondent no.3 and he was directed to work at Public Health Centre (PHC), Asegaon Purna, District Amravati and since then the applicant is working there.

4. Thereafter, vide order dated 19/09/2016 the applicant was placed under suspension and changed his head-quarters at District Hospital, Yavatmal. Being aggrieved by the said order of suspension, the applicant has filed this O.A. He has prayed that the suspension order dated 19/09/2016

(Annex-A-4) issued by the respondent no.1, i.e., the Secretary, Public Health Department be quashed and set aside.

5. The respondent nos. 1 and 2 resisted the claim and alleged that the applicant was found absent from duty without permission from 28/05/2016 and the work of the Hospital was hampered due to his absence. He was responsible for causing death of a child as proper treatment was not given to the child. The MLA Shri Bacchu Bhau Kadu also visited the Hospital, Chandur Bazar and at that time the applicant was not found on duty. After the inquiry, the applicant was kept under suspension.

6. The respondent no.3, i.e., the Deputy Director of Health Services, Akola also tried to justify the order of suspension. He has also placed on record the documents whereby the applicant's explanation was called.

7. The learned counsel for the applicant submits that the applicant has been kept under suspension vide communication dated 19th Sept.,2016 issued by the respondent no.1, i.e., the State and it was decided to initiate departmental inquiry against the applicant. It is admitted fact that till today no departmental enquiry has been initiated

against the applicant. No offence has been registered against the applicant for his alleged negligence. The learned counsel for the applicant has also placed reliance in the Judgment delivered by this Tribunal at its Mumbai Bench in O.A.611/2017 on 23/10/2017. The Hon'ble Tribunal has observed in para no.7 onwards as under :-

"7. Admittedly till the date of hearing the charges are not framed and those are not served on the applicant.

8. For urging that the suspension be quashed at once, learned Advocate for the applicant has placed reliance on following two judgments:

(i) Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr. (2015) 2 SCC (L&S) 455 : (2015) 7 SCC 291.

(ii) Dr. Narender Omprakash Bansal Vs. The State of Maharashtra & Ors. Writ Petition No.11987 of 2015 decided on 11.3.2016 by the Hon'ble Bombay High Court.

9. It is now well settled by virtue of judgment in Ajay Kumar Choudhary (supra) that notwithstanding the language as may have been employed in the conditions of service, now it is not open to the Government to continue the suspension beyond three months as a mandatory rule of precedent.

10. Therefore, in the peculiar facts and circumstances recorded hereinbefore the alternative remedy is hereby dispensed with.

11. By following the precedent as laid down in Ajay Kumar Choudhary (supra) this Tribunal has no other choice but to quash and set aside the order of suspension dated 21.10.2016 which is at Exhibit 'A' page 18 of the OA.

12. Hence, the OA is allowed and the impugned suspension order dated 21.10.2016 is hereby quashed and set aside.

13. In so far as the aspect of cost is concerned the Ld. Advocate for the applicant argues that State Government ought to have withdrawn the suspension order at the earliest, suo motu, by takings review of suspension considering disciplinary authority's inability to serve charge sheet. The Government ought to have employed equal degree of expectation which was shown by disciplinary authority while issuing the order of suspension of the applicant. In this peculiar situation any highest and largest amount of costs too shall be inadequate to compensate the sufferance of the applicant. Therefore according to the Ld. Advocate for the applicant exemplary cost be ordered.

14. Ld. PO in reply submits that the action of the State is not by way of failure to take action but is a simple case of scrutiny decision and consideration of applicant's case on merits.

15. In the background that despite failure to serve charge sheet suspension is continued, it is not withdrawn by reviewing as regards need of its continuation, itself exhibits patent neglect and non application of mind by committee members who were adorning the seat in the review committee. The said committee had duty to judiciously decide the aspect of need of continuation of suspension, though not judicially. With the attitude that is exhibited, the State has failed to bring any extenuating circumstances to avoid the liability to payment of cost."

8. In view of the aforesaid observations, the applicant's case is squarely covered by the Judgment of the Hon'ble Supreme Court and hence the following order :-

ORDER

The O.A. is allowed. The impugned order of suspension of the applicant stands quashed and set aside. The respondent no.1 is directed to reinstate the applicant immediately and in any case within three weeks from the date of this order. No order as to costs.

Dated :- 19/07/2018.

dnk.

**(J.D. Kulkarni)
Vice-Chairman (J).**