

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 773 OF 2015

DISTRICT : SOLAPUR

Shri Nijaguneppea R. Karimungi)
Working as Executive Engineer,)
Small Scale Irrigation [Water)
Conservation], Division Solapur)
R/o: Tulsi Vihar, Vijapur Road,)
Solapur.)
Add for service of notice)
R/o: Tulsi Vihar, Vijapur Road,)
Solapur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Water Resources Department,)
Having office at Mantralaya,)
Mumbai 400 032.)
2. The State of Maharashtra,)
Through Principal Secretary,)
Water Conservation Department)

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- Having office at Mantralaya,)
Mumbai 400 032.)
3. The District Collector,)
Solapur, having office at)
Solapur.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 06.04.2016

ORDER

1. Heard Shri Shri A.V Bandiwadekar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging his suspension order dated 2.9.2015.

3. Learned Counsel for the Applicant argued that Applicant has been placed under suspension by order dated 2.9.2015 by the Respondent no. 1. The Applicant

belongs to Water Resources Department, but he was posted on the establishment of the Respondent no. 2, Water Conservation Department as Executive Engineer. As per Rule 14 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, the borrowing department should have issued order of suspension. As such, the order issued by the Respondent no. 1, who is not the borrowing authority is bad in law. If the appointing authority wanted to issue suspension order, the Applicant should have been repatriated to the parent Department. Learned Counsel for the Applicant argued that the Applicant has not been found to be involved in execution of any of the works, which were found to be of sub-standard quality. The works were actually executed by his subordinates, and he has been held guilty of slack supervision. Learned Counsel for the Applicant argued that this charge is not so grave or serious as to result in suspension of the Applicant. Learned Counsel for the Applicant argued that the quality of cement concrete work may be found to be substandard as the Department does not follow standards prescribed by the Bureau of Indian Standards (B.I.S). Though B.I.S has prescribed M-15 concrete for such works, the Department insists on concrete of lower quality, i.e. M-10. Learned Counsel for the Applicant argued that though the Applicant was suspended by order dated 2.9.2015, no charge sheet has yet been issued to him. He relied on the judgment of Hon'ble Supreme Court in the case of D.B GOHIL Vs.



UNION OF INDIA & ORS reported in (2010) 12 SCC 301 to counter the arguments of the Respondents that the Applicant has not exhausted all the remedies before approaching this Tribunal. He also cited judgment of Hon'ble Bombay High Court in Writ Petition no 9660 of 2014.

4. Learned Presenting Officer argued on behalf of the Respondents that the Applicant had an alternative remedy to challenge the order of suspension by filing an appeal against the same. However, without filing an appeal, the Applicant has approached this Tribunal. The Applicant has not filed any representation also, seeking review of his suspension order. Learned Presenting Officer argued that reliance of the Applicant on the judgment of Hon'ble Supreme Court and Bombay High Court is misplaced as the facts in those cases were entirely different. By no stretch of imagination, it can be held that Hon'ble Supreme Court or High Court have held that all suspended Government employees can challenge their suspension by approaching this Tribunal without exhausting available alternate legal remedies.

5. It is seen that in the affidavit in reply filed by the Respondent no. 1 on 30.11.2015 it has been clearly stated that Rule 18 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 provides for appeal against the order of suspension. The claim of the


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Applicant that such Original Application can be entertained is nodoubt correct. That will depend on the facts and circumstances of each case. To claim that the Appeal will have to be filed before Hon'ble Governor who will nominate a Minister, which entails delay cannot be accepted. If the Appeal is not decided within six months, the Applicant can approach this Tribunal.

6. I have carefully perused the judgment of Hon'ble Supreme Court in Gohil's case supra. It is stated in para 5 that:-

“The use of words “Tribunal shall not ordinarily admit an application unless it is satisfied that the Applicant had availed of all the remedies available to him under the rules” in section 20(1) of the Act makes it evident that in exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal.”

It is quite clear that the judgment of Hon'ble Supreme Court cannot be cited to support filing of an Original Application without exhausting alternate remedies unless there are exceptional circumstances. In the present case, I do not find any exceptional circumstances, which would entitle the Applicant to approach this Tribunal without availing of the available alternate remedies.



7. Similarly, in W.P no 9660 of 2014, Hon'ble High Court has upheld the decision of this Tribunal in admitting Original Application in view of the history of litigation instituted by the Respondent including the orders passed by the Tribunal indicated that the action against the Respondent was by way of victimization. There are no such circumstances in the present Original Application.

8. As the Applicant has not exhausted all the remedies available to him, this Original Application is not maintainable and stands dismissed with no order as to costs. However, in case the Applicant makes a representation, within one week before the Respondent no. 1, the same may be decided within two weeks thereafter as he is retiring shortly. The decision may be communicated to the Applicant one week thereafter.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 06.04.2016

Dictation taken by : A.K. Nair.