

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 876 of 2017 (S.B.)

Dr. Ganesh son of Jairam Mukkawar,
Aged about 62 years,
Occupation : Service as Dean, Government
Ayurvedic Mahavidyalaya, Raje Raghujji Nagar,
Umred Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Medical Education Drugs Department,
Mantralaya, Mumbai-32.
- 2) The Director of Ayurved,
State of Maharashtra, Mumbai.

Respondents

S/Shri K.S. Malokar, M.M. Sudame, Advocates for the applicant.

Shri M.I. Khan, learned P.O. for the respondents.

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

JUDGMENT

(Delivered on this 21st day of March,2018)

Heard Shri M.M. Sudame, Id. counsel for the applicant and
Shri M.I. Khan, Id. P.O. for the respondents.

2. The applicant Dr. Ganesh Jairam Mukkawar has challenged, in
this O.A., the order of his suspension 10/11/2017 issued by respondent
no.1. The interim relief for stay to the order of suspension was rejected and

it was observed that it is not a fit case to grant interim relief without giving opportunity to respondent no.1 to file reply. Being aggrieved by the said order, the applicant approached the Hon'ble High Court by filing Writ Petition no.7584/2017 at Nagpur Bench. In the said Writ Petition vide order dated 15/01/2018 the Hon'ble High Court without considering the merits of the matter and recording any finding on the same, disposed of the writ petition with a direction to this Tribunal to decide the original application of the Petitioner as early as possible and positively within six weeks. In view thereof, the respondent nos.1&2 have filed reply-affidavit to which the applicant has filed rejoinder-affidavit and to the said rejoinder the respondents have further filed affidavit-in-reply on 20/02/2018.

3. From the admitted facts on record, it seems that the applicant was kept under suspension vide order dated 10/11/2017. It is stated that the admission process was undertaken for filling 100 seats in BAMS degree course in the Ayurvedic College at Nagpur and the cut off date for admission was 30/10/2016 which was subsequently extended till 15/12/2016. 96 Students were admitted in the college till 30/10/2016 and thereafter 3 students were admitted and only 1 seat remained vacant.

4. According to the applicant, the respondent no.2, i.e, the Director of Ayurveda, State of Maharashtra, Mumbai threatened to impose penalty if the seats remained vacant and therefore one Ms. Anupama A. Shelke was admitted. The said admission was however cancelled on 13/12/2016 by the Competent Authority. Being aggrieved by the order of cancellation of admission, Ms. Anupama A. Shelke approached

the Hon'ble High Court and the Hon'ble High Court vide order dated 04/07/2017 directed that Ms. Anupama A. Shelke be admitted for the course. In the meantime, the applicant received a show cause notice on 19/09/2017 whereby he was called upon to explain as to why action shall not be taken against him for breach of Rules 9 (3) (a) & (d) of the Maharashtra Civil Services Rules. The reply of the applicant was not found satisfactory and therefore the respondent no.1 kept the applicant under suspension. The said order of suspension has been challenged in this O.A.

5. The applicant has prayed that the impugned order of his suspension dated 10/11/2017 be quashed and set aside.

6. In the reply-affidavit filed on behalf of respondent nos.1&2 on 15/01/2018. The respondents tried to justify the suspension of the applicant. The preliminary objection was taken to the effect that the applicant has not exhausted the alternative remedy to file appeal against the order of suspension and therefore the application is not tenable. According to the respondents, the applicant has wrongly admitted Ms. Anupama Shelke for ulterior motive and therefore the said admission was cancelled. Even though in the writ petition before the Hon'ble High Court, i.e., bearing no. 7094/2016 the order of cancellation of admission of Ms. Anupama Shelke was set aside, the respondents filed SLP (c) no. 032453 of 2017 in which the Hon'ble Supreme Court vide order dated 20/11/2017 was pleased to condone the delay in filing appeal and stayed the operation of the order passed by the Hon'ble High Court.

7. According to the respondents, the departmental enquiry has been proposed against the applicant as regards misconduct. It is further stated that the applicant has made wild allegations against the officers without joining them as party in the O.A. As regards the applicant's antecedence, it is stated that his work was not upto the mark. Two disciplinary enquiries are already pending against the applicant and the applicant was also kept under suspension. The respondents have also given details about the departmental enquiries initiated against the applicant on earlier two occasions in para-16 of the reply-affidavit. However, the same has not been reproduced here as it may not be relevant so far as the impugned suspension order of the applicant is concerned.

8. It is alleged by the respondents that the applicant has conducted a Press Conference on his own against the officers of the respondents and such conduct is unbecoming of a government servant. Not only that he has also got the news item published on the basis of such press conference. He has also made wild allegations against the Director of Ayush, i.e., respondent no.2 without any basis. It is stated that a full-fledged inquiry is needed for which the suspension of the applicant is necessary.

9. The applicant filed rejoinder to the reply-affidavit filed by the respondents on 22/01/2018 and tried to justify the admission given to the student Ms. Anupama Shelke and reiterated that the press conference was not called by him nor he was present in the press conference. The

respondents must prove as to how the admission given by the applicant was illegal and how the suspension is justified.

10. In the reply to the rejoinder filed by the applicant, the respondents also filed affidavit on 20/02/2018. In the said affidavit it is alleged that the respondent no.2 through its office tried to serve the charge sheet upon the applicant on several occasions, but the applicant successfully avoided to receive the charge sheet. The respondents' team office of Nagpur has visited at applicant's house on 10/02/2018 to serve the charge sheet, but they found that the applicant was out of station. Again the respondent no.2 tried to serve the charge sheet upon the applicant through one Mr. Sunil Pawar on 12/02/2018, but the applicant was not at his home. Thereafter the respondent no.2 tried to serve charge sheet upon the applicant on 15/02/2018 through one Mr. Nitin Gole on the house of the applicant and again he was not found at home and thereafter on the fourth occasion the respondent no.2 tried to serve the charge sheet on 17/02/2018, but the applicant was not at home. His wife was requested to accept the applicant's charge sheet, but she refused to accept the same. The applicant deliberately avoided to receive charge sheet. It is stated that the applicant was finally served with the charge sheet in the Court on the date of hearing.

11. The learned counsel for the applicant has invited my attention to the seniority list of the Professors as on 31/12/2001 (Annex-A-18,P-158). From the said list, it seems that the applicant stands at sr. no.2, whereas, one Shri K.R. Kohli stands at sr.no.3. The learned counsel for the applicant

further invited my attention to one order dated 23/11/2012 (Exh-R-1, P-203) issued by the Secretary of Medical Education & Drugs Department (M.S.), from which it seems that Shri K.R. Kohli was promoted as Dean and was posted at Poddar Ayurveda Medical College. The learned counsel for the applicant submitted that being aggrieved by the said order of promotion of Mr. Kohli, the applicant has filed O.A.No. 444/2010 (O.A.No. 707/2008 Aurangabad Bench) before the Tribunal at Mumbai Bench and in the said O.A. vide order dated 20/07/2011 the Tribunal was pleased to quash and set aside the order of promotion of Shri Kohli and directed respondent no.1 to appoint the applicant as Dean at Directorate of Ayurveda. The learned counsel for the applicant submits that this is the reason as to why the applicant has been kept under suspension. There is a departmental rivalry between applicant and Mr. Kohli and the respondents' officers are helping Shri Kohli and therefore the applicant has been kept under suspension. It is material to note that Shri Kohli has not been joined as party in this O.A. and therefore such allegations against the person, who is not a party to the petition, cannot be considered. Even it is admitted that there might be some litigation between applicant and Shri Kohli as stated by the applicant, that itself will not mean that the impugned order of suspension is anyway malafide and therefore whether the order of suspension is legal and proper will have to be considered independently.

12. In the impugned order dated 10/11/2017 (Annex-A-9) the allegations against the applicant are that he had illegally admitted a student and this is treated as serious misconduct. The second allegation is that the

applicant has called a press conference on 17/09/2017 in the office of National Integrated Medical Association (NIMA) at Sakkardara, Nagpur and in the said conference he has made wild allegations against the officers and the Government and the said news was published in daily news papers of "Dainik Bhaskar" and "Lokmat" on 18/09/2017. It is further alleged that because of such wild allegations, the image of the Officers and the Government in public general has been lowered down and due to such misconduct, an inquiry was proposed against the applicant under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. In contemplation of such inquiry the applicant has been kept under suspension vide order dated 10/11/2017.

13. The learned counsel for the applicant submits that even though the applicant has been kept under suspension vide order dated 10/11/2017, no charge sheet was served upon him for 90 days. It is further stated that the question of giving admission to the Student for BAMS course is pending before the Hon'ble Apex Court. The admission given to Ms. Anupama Shelke though was cancelled by the competent authority, the Hon'ble High Court has justified the admission. It is, however, true that the Hon'ble Supreme Court has also granted stay to the order of the Hon'ble High Court. The learned counsel for the applicant therefore submits that the allegations of giving admission to the student for medical course, is thus subjudice and therefore the suspension is illegal.

14. The learned counsel for the applicant further submits that the applicant has never conveyed the press conference as alleged nor he was

part of the press conference and also not related with the matter published in daily news papers "Dainik Bhaskar" and "Lokmat" and that the inquiry contemplated against him is absolutely illegal and with malafide due to rivalry with Shri Kohli.

15. The learned P.O. has invited my attention to the additional reply filed by the respondents on 20/02/2018. It seems that the applicant has been kept under suspension vide order dated 10/11/2017 and the respondents tried to serve the charge sheet on the applicant on 10/02/2018, 12/02/2018, 15/02/2018 and lastly on 17/02/2018. However, the applicant avoided to receive the charge sheet and finally the charge sheet was served on the applicant in the premises of the Tribunal. The copy of the charge sheet is also placed on record from which it seems that there are number of other charges arising out of preliminary inquiry on which the applicant is facing departmental enquiry in addition to the charge that the applicant has admitted the student illegally for BAMS course and conveyed a press conference to defame the Government and officers of the Government. The applicant will get full opportunity to put his defence such as of departmental rivalry with Shri Kohli and otherwise before the competent Inquiry Officer. Since the charge sheet has now already been served upon the applicant and since the department is of the opinion that the applicant shall continue under suspension, it will be in the interest of justice and equity to allow the department to continue the departmental enquiry contemplated against the applicant. The said departmental enquiry can be directed to be completed within a stipulated period. In my opinion

this is not for this Tribunal at this juncture to see as to whether the allegations in the departmental enquiry are true or false or have been made with malafides. It is for the applicant to open all his cards before the Inquiry Officer. Considering all these aspects, I do not find any illegality in the impugned order of suspension.

16. The learned P.O. submits that the applicant has not filed appeal against the order of suspension and without exhausting the alternate remedy has approached the Tribunal and therefore the application is not tenable in view of the provisions of Section 20 of the Maharashtra Tribunals Act. Section 20 of the Act says that a 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 relevant service rules as to redressal of grievances. The said provision does not absolutely bar, the Tribunal from taking cognizance of the grievance. In the present case the learned counsel for the applicant submits that the order of suspension has been issued by the Government under the authority of the Governor and therefore there was absolutely no point in filing appeal before the Hon'ble Governor Himself against the suspension order. Since the Tribunal has considered the case of the applicant on merits, this preliminary objection regarding maintainability of the application may not hold much water. The learned P.O. also placed reliance on the Judgment decided by this Tribunal at Mumbai Bench in O.A. 814/2017 in the case of **Shri Pradeep Y. Shelar vs. State of Maharashtra & Ors.**, on 02/11/2017 and **1992 Supp (2) SCC, 312 in the case of H.B. Gandhi, Excise & Taxation Officer-cum-**

Assessing Authority, Karnal & Ors. Vs. M/s Gopi Nath & Sons & Ors., (1993) 2 SCC,327 in the case of S.A. Khan vs. State of Haryana & Ors.

As against this the learned counsel for the applicant relied on **(2004) 4 SCC, 697 in the case of Deoraj Vs. State of Maharashtra & Ors.**

17. I have carefully gone through the citations. In this particular case, it has been observed that the applicant was kept suspension vide order dated 10/11/2017 and the charge sheet was ready and the department tried to serve the charge sheet on him within 90 days of the suspension, it seems that the same could not be served on the applicant due to non availability of applicant on one count or the other or may be because the applicant tried to avoid the service as alleged by the respondents. However, finally the charge sheet has been served on the applicant. Thus the grievance that the charge sheet was not served within 90 days has no substance. The only thing is that this Tribunal can direct the respondents to complete the inquiry within a stipulated period.

18. The learned counsel for the applicant submits that for conducting the departmental inquiry there is no need of applicant being kept under suspension and the inquiry may take long period for its completion. The learned P.O. submits that the department will complete the departmental inquiry as early as possible and if the applicant remains in service, possibility of tempering cannot be ruled out. So far as duration of inquiry is concerned, direction can be issued to the respondent authorities to complete the inquiry as early as possible. The Government has issued number of circulars which are valid in the field whereby some Committees

have been formed to deal with the cases of the officers under suspension periodically. The applicant will be at liberty to file representation for revocation of his suspension before such committee and if such representation is filed, the respondent authorities may deal with his representation on its own merits and also considering the directions issued by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Ano. (2015) 7 SCC,291** and other relevant G.Rs. Hence, the following order :-

ORDER

- (i) The O.A. stands dismissed with no order as to costs.
- (ii) Since the charge sheet has been served upon the applicant in the departmental enquiry, the respondent no.1 is directed to complete the inquiry as early as possible and in any case within six months from the date of this order. No order as to costs.

Dated :- 21/03/2018.

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