

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 893 OF 2017 (S.B.)

Dr. Anil S/o Namdeorao Wankhede,
Aged about : 49 years, Occ. Service, R/o Sub District Hospital,
Dharni, Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
G.T. Hospital Complex Building
10th Floor, New Mantralaya Fort,
Mumbai-01.
- 2) Deputy Director of Health Services,
Akola Region, Lady Hospital
Compound, Akola.
- 3) Civil Surgeon,
General Hospital, Amravati.

Respondents

Shri N.D.Thombre, the Id. Adv. for the applicant.

Shri S.A.Sainis, the Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Member (A).**

JUDGMENT

(Delivered on this 24th day of August, 2018)

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

2. The Id. counsel for the applicant submitted that applicant Dr. Anil S/o Namdeorao Wankhede is working in the cadre of Civil Surgeon, Maharashtra Medical and Health Services, Group-A, since 29/05/2003. He is M.B.B.S. and M.D. in Medicine. Recently, he was posted in Amravati District at Hospital Dharni as a Medical Superintendent, since 10/10/2016.

3. By this O.A. No. 893/2017, the applicant has challenged communication by Civil Surgeon, Amravati at P.B., Pg. No. 20, letter No. tk-dz@l k: v@vklFA@eoSvkI @MbkU[M@fuycu@ @17 with dated 31/10/2017 of his suspension order at P.B., Pg. No. 19 (Annexure-A-1), letter No. foHkpk&2017@i z d z 110@l dk&4c with dated 30/10/2017.

4. The affidavit-in-reply is submitted by respondent no. 2, Deputy Director, Health Services, Akola at P.B., Pg. No. 58 and State of Maharashtra, affidavit-in-reply of respondent no. 1 at P.B., Pg. No. 67.

5. In the impugned order at P.B., Pg. No. 19 (Annexure-A-1), letter No. foHkpk&2017@i z d z 110@l dk&4c with dated 30/10/2017 explains neither any facts nor has mentioned any documents or attached. In affidavit-in-reply of respondent no. 2, in its para no. 5, it has mentioned about following details at P.B., Pg. No. 58 at Para No. 5:- "There was

repeated complaints against applicant in the Office of the respondent no.2, the respondent no.2 by the communication dated 06.09.2017 had sent proposal in respect of misconduct at working place, which falls under Tribal Region of Melghat District Amravati been a very sensible hospital. It was the duty and responsibility of the applicant to serve his patients in very attentive manner but from his complaints received from Civil Surgeon, Amravati. It is brought to the notice the he was always under the influence of liquor due to his repetitive irresponsible attitude towards performing his duties behavior the respondent no.2 has responsible for the general supervision of the divisions to ensure by constant supervision that the all work in his jurisdiction are properly and efficiently dealt with by the officers in the Hospitals and Divisions under his jurisdiction or not. In view of the above the respondent no.2 has by the communication date 24.10.2017 leads to his inefficiency in work and also affected the treatment to the medical and poor patients of Dharni submitted report to the respondent no.1. It is submitted that the applicant is senior most officer had been negligent in not performing his duties in a satisfactory manners and therefore stringent action in accordance with the provisions of the Maharashtra Civil Services Rules ought to have been taken against the applicant. The applicant has willfully dereliction the order of the superior authority and therefore no fault can be found in the action of the respondent no.1 for issuing suspension order. The applicant cannot now turn around and call in question the suspension order when he himself is responsible for action taken by this respondent no.1. The applicant is barred by estoppel to question the suspension order, which is strictly as per law and issued on a motion made by the applicant. The applicant has been suspended on his own willfully dereliction duties and order of the superior authority, hence question of any revenge/malice does not arise at all. It is denied that there are no exceptional or

special reasons for the suspension of the applicant. The suspension order has been issued by the respondent no.1 being a Competent Authority and is well within framework of law."

6. However, there is no documents supplied to substantiate any charge mentioned in the affidavit-in-reply about the facts mentioned in above para no. 5. No preliminary enquiry report has been done. The respondent nos. 1 & 2 have not placed on record any documents which either shows any preliminary enquiry against the applicant or any explanation given by the applicant. They have only tried to justify the impugned order at P.B., Pg. No. 19 (Annexure-A-1), letter No. H/10/2017@i7dz110@l dk&4c with dated 30/10/2017 related to suspension of the applicant. The suspension order was issued on 30/10/2017. Now, even after more than nine months, no chargesheet has been served and placed on record.

7. The Id. counsel for the applicant has placed reliance in the Judgment delivered by this Tribunal at Mumbai Bench in O.A. 611/2017 on 23/10/2017 and the Judgment delivered by this Tribunal at Nagpur in O.A. No. 716/2016, it is 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 taking 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 Writ Petition No. 9660 of 2014 decided on 01/12/2014.

Hon'ble High Court, Mumbai has also observed as under:-

(b) Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, R.

4(1)(a) - *Suspension of an employee – Order of suspension is not immune from judicial scrutiny – Can be challenged by an employee alleging that it is actuated by mala fides, arbitrariness or that it is issued with an ulterior purpose- Suspension order should ordinarily be passed when there is a strong prima facie case against delinquent and if charges are proved, it would warrant an imposition of major penalty. 2014 (1) SCJ 115, Ref. (Paras 10 and 11)*

(c) Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, R.

4(1)(a) - *Suspension of an employee – Action of suspension should not be used for mala fide purpose and for ulterior motive – Question whether power of suspension is used for extraneous and mala fide reasons and by way of victimization, will depend on facts of each case. (Para 15)*

9. The applicant case is squarely covered by the Judgment of the Hon'ble Supreme Court in "*Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr. (2015) 2 SCC (L&S) 455 : (2015) 7 SCC 291*".

10. Apart from this, it is also seen from the record, the suspension order was issued at P.B., Pg. No. 19 (Annexure-A-1), letter No. Hkpk&2017@i7dz110@l dk&4c with dated 30/10/2017. Even, after nine months, nothing appears from the record, that chargesheet has been served to the applicant or any enquiry proceeding have been started. It appears that there is failure on the part of respondents to issue such chargesheet continuing suspension without following the procedure of set procedures is incorrect. Hence the following order:-

ORDER

1. The O.A. is allowed.
2. Impugned order of suspension at P.B., Pg. No. 19 (Annexure-A-1), letter No. for Hk&2017@i:dz:110@l dk&4c with dated 30/10/2017 stands quashed and set aside.
3. The respondent no. 1 is directed to reinstate the applicant immediately and in any case within three weeks from the date of this order.
4. No order as to costs.

Dated :- 24/08/2018

aps

**(Shree Bhagwan)
Member (A).**