

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 645 OF 2016**

DIST. : NANDED

Sunil s/o Ramrao Barse,  
Age 40 years, Occ. Service (as Assistant  
Project Officer, Kinwat) R/o Sharadha Colony,  
H. No. 72, MHADA, Near Dhoot Hospital,  
Jalna Road, Aurangabad.

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**APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through Secretary in the  
Department of Tribal Development,  
Mantralaya, Mumbai.
2. The Commissioner,  
Tribal Development Department,  
Nashik.
3. The Additional Tribal Commissioner,  
Tribal Development Department,  
Amravati.
4. The Project Officer,  
Irrigated Tribal Development,  
Kinwat, Dist. Nanded.

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**RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, learned Advocate for  
the applicant.  
: Smt. Deepali S. Deshpande, learned Presenting  
Officer for respondents.

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**CORAM : HON'BLE SHRI J. D. KULKARNI, MEMBER (J)**

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**J U D G M E N T**

**(Delivered on this 24<sup>th</sup> day of January, 2017)**

1. The applicant is Assistant Project Officer Group . B (Direct) and was so appointed on 4.3.2013. On 30.11.2015, the Project Officer, Aurangabad retired on superannuation and, therefore, the applicant was given additional charge of the post of Project Officer. The applicant was accordingly performing his additional duty sincerely. On 31.5.2016, the applicant was transferred on his own request, but due to non availability of relieving, he could not be relieved till 5.8.2016. He ultimately jointed on the transferred post at Kinwat on 6.8.2016.

2. According to the applicant the Government of Maharashtra in its Tribal Development Department issued some guidelines vide G.R. dated 10.3.2016 for purchase and supply of food grains, educational equipments, stationery, uniforms, blankets etc. In the year 2016-17, a decision was taken to supply raincoat / umbrellas to the students of the Ashram Schools, but it was bending before the applicant. On 9.6.2016, it was decided to supply raincoats. The applicant immediately issued an advertisement on 13/14.6.2016 in daily Lokmat & daily Punya Nagri and called E-tenders for supply of Raincoats. The lowest tender of Balaji Trading Company, Nanded was accepted on 11.7.2016. The contractor was expected to supply the raincoats within 10 days, but he could not supply the same within the prescribed time i. e. 10 days and, therefore,

the applicant gave notice to the said contractor as per clause no. 15 of the work order, on 22.6.2016.

3. On 11.7.2016, Head office made some enquiry on telephone about the supply of raincoats. The applicant sent a mail to the Head Office and stated that raincoats will be supplied on or about 18.7.2016.

4. The raincoats were supplied to the students of the Ashram Schools between 3.8.2016 to 6.8.2016, but in the meantime on 5.8.2016, the applicant received a show cause notice from the res. no. 2. The said notice was having date 3.8.2016. In the said show cause notice the explanation of the applicant was called as to why a disciplinary action shall not be taken against the applicant. The applicant received the said notice on 8.8.2016. On 12.8.2016 when the applicant was not in the house, a sealed envelope containing the impugned order of suspension, was dropped inside his house. In the evening the applicant received the said suspension order, which was dated 3.8.2015.

5. The learned Advocate for the applicant submits that, though on the suspension order date is mentioned as 3.8.2015q but it must be 3.8.2016q He submits that in the said suspension order the res. no. 2 has alleged loss of trust against the applicant, but very basis of the said suspension is illegal. The information referred in the suspension order was given by one Shri Funde and not by the applicant and, therefore, the

suspension order has been issued without application of mind and hence, the same is required to be quashed and set aside.

6. The affidavit in reply has been filed on behalf of res. nos. 1 to 4. The respondents stated that vide communication dated 16.7.2016 addressed to the Secretary, Tribal Development Department, Mantralaya, Mumbai it was informed by the applicant that supply of raincoats will be done within 10 days from 11.7.2016 to the students of the Ashram Schools and, therefore, it was expected that the applicant should have ensure the supply of raincoats till 21.7.2016. The respondents again enquired the matter on 4.8.2016 and asked the applicant about supply of raincoats. The applicant communicated vide letter dated 4.8.2016 that on 3.8.2016 the process of supplying the raincoats to the students of 5 Ashram Schools was completed and accordingly 1534 raincoats were supplied to the students.

7. The respondents further submitted that on 3.8.2016 when Hon<sup>ble</sup> Minister of the Tribal Development Department made an enquiry about the supply of raincoats, the applicant told that work of tailoring is going on at Thane and supply will be completed within 2 to 4 days. The applicant has, therefore, given wrong information to the higher authorities and at one hand he communicated to the respondents that supply of raincoats was completed on 3.8.2016, whereas vide letter dated 4.8.2016 it was informed that, it will be completed within 2 to 4 days after 3.8.2016 and,

therefore, the applicant lost the trust of the Department and was found guilty for misguiding and giving false information to the senior officers of the Department by way of hiding the truth.

8. I have perused the impugned suspension order dated 3.8.2015 issued by res. no. 1. In the suspension order it is only stated that, since the departmental enquiry was contemplated against the applicant and he was placed under suspension with immediate effect. The said impugned suspension order is as under :-

%आदेश

ज्याअर्थी, श्री. सुनिल रामराव बारसे, प्रभारी प्रकल्प अधिकारी, एकात्मिक आदिवासी विकास प्रकल्प, औरंगाबाद यांच्या विरुद्ध शिस्तभंगाची कारवाई करण्याचे योजिले आहे.

त्याअर्थी, आता राज्यपाल महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम ४ (१) (अ) अन्वये प्रदान केलेल्या शक्तीचा वापर करून श्री. सुनिल रामराव बारसे यांना तात्काळ निलंबित करित आहे.

आणखी असेही आदेश देण्यात येत आहेत की, हा आदेश अंमलात असेल तेवढ्या कालावधीत श्री. सुनिल रामराव बारसे यांचे मुख्यालय अपर आयुक्त, आदिवासी विकास, अमरावती येथे राहिल आणि उक्त श्री. सुनिल रामराव बारसे यांना अपर आयुक्त, आदिवासी विकास, अमरावती यांच्या पूर्व परवानगी शिवाय मुख्यालय सोडता येणार नाही.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने.+

9. It seems that prior to issuance of the suspension order a show cause notice was issued to the applicant on 3.8.2016 by the the res. no. 2 the Commissioner of Tribal Development, Maharashtra State, Nashik. In the said show cause notice it was alleged that the applicant has intimated the Government that the process of distribution of raincoats was completed, however, on 3.8.2016 during the discussion with the Honble Minister and in presence of the Secretary of the Department, the applicant intimated that the raincoats were not distributed till that date. In the said show cause notice the only allegation was that the applicant has not distributed raincoats as per the instructions issued by the Government and the Commissionerate from time to time and, therefore, he has kept the students of the Ashram Schools away from the use of raincoats and has misguided the superior authorities.

10. The applicant has filed reply to the said show cause notice on 6.8.2016. In the said reply the applicant tried to justify his action and disclosed as to how there was delay in calling E-tenders. The reply was submitted on 6.8.2016, but all of a sudden on 12.8.2016 the order of suspension has been served on the applicant as seems from Annex. A-10 paper book pages 54 & 54 of the original application. As already stated the Applicant submitted that this order was found in the evening on 12.8.2016 in his closed house. It is material to note that the impugned order of suspension annexed with the letter dated 12.8.2016 is, however, dated 3.8.2015. As already stated, the said date seems to have been

wrongly mentioned and it must be 3.8.2016. Thus, it will be clear that on 3.8.2016, the applicant was called upon to explain as to why the departmental enquiry against him shall not be initiated. He was go give explanation within 2 days. Accordingly, the applicant submitted his explanation on 6.8.2016 but the suspension order has been issued without waiting for the applicant's reply on 3.8.2016.

11. It is not known under what circumstances the Governor came to the conclusion on 3.8.2016 itself that the applicant shall be kept under suspension. If it was already decided to place the applicant under suspension, there is no reason as to why the show cause notice was issued to the applicant on 3.8.2016 calling upon his explanation to state as to why the departmental enquiry shall not be initiated against him and such explanation was to be submitted within 2 days. It is clear that in the suspension order there is no reason for keeping the applicant under suspension except that the departmental enquiry was to be initiated against him.

12. The respondents, as already stated, have stated in their affidavit in reply that, they have lost the trust in the applicant and, therefore, the applicant has been rightly suspended. The learned Advocate for the applicant has invited my attention to the communication dated 4.8.2016, which is at paper book page 73, which is sent by the applicant to the Additional Commissioner, Tribal Development Division, Amravati.

13. The res. nos. 1 to 4 In para no. 6 of their affidavit in reply stated that when the respondents wanted to enquired the matter to the applicant on 4.8.2016 about supply of raincoats to the students of the Govt. Ashram Schools, the present applicant by his communication dated 4.8.2016 informed to the respondents that on 3.8.2016 the process of supply of raincoats to the students of 5 Government Ashram Schools was completed and accordingly 1534 raincoats were supplied to the students. It is stated that on 3.8.2016, however, the applicant informed the Honble Minister that the tailoring work is going at Thane and raincoats will be supplied within 2 to 4 days and thus, the applicant has misguided the higher authorities and given incorrect information to them.

14. It is pertinent to note that the letter dated 4.8.2016 whereby a false information alleged to have been given by the applicant is not signed by the applicant at all. The said letter has been signed by one Shri G.N. Funde, Project Officer, Integrated Tribal Development Project, Aurangabad. The applicant has stated that he has handed over the charge of his said post on 1.8.2016. The applicant has also placed on record the copy of the handing over the charge to Shri Funde and said copy is placed on record at paper book pages 87 & 88.

15. Thus, it seems that the letter on the date on which the applicant alleged to have misguided the higher authorities or alleged to have given



the false information is not signed by the applicant, but the same was signed by one Shri Funde.

16. The applicant has placed on record the rejoinder affidavit on 17.11.2016 and in the said rejoinder he has admitted the fact which he has disclosed before the Hon<sup>ble</sup> Minister. He has also stated that the impugned letter dated 4.8.2016 was not signed by him. He has also stated that he was relieved from the additional charge of the post of Project Officer on 1.8.2016 before noon and he immediately joined on his substantive post of Assistant Project Officer on 1.8.2016 itself. Thereafter, the applicant was relieved from his substantive post of Assistant Project Officer on 5.8.2016 (after noon) and then he proceeded to join his new posting on transfer.

17. From the discussion in foregoing paras, it will be thus crystal clear that the applicant has stickup to whatever the statements he has made before the Hon<sup>ble</sup> Minister. It is clear that the letter dated 4.8.2016 is not signed by the applicant and, therefore, the allegation that the applicant misguided the higher authorities by issuing letter on 4.8.2016 and thereby contradicted his own statement before the Hon<sup>ble</sup> Minister cannot be accepted.

18. The impugned order of suspension has been passed on 3.8.2011. Till today the applicant is under suspension and, therefore, almost 5 months are over. Admittedly, the so called departmental enquiry will be

pertaining to the place of posting of the applicant as a Project Officer, Aurangabad. Admittedly, the applicant was holding the additional charge of that post and now he has been relieved from the said additional charge. Admittedly, the applicant has been transferred to Kinwat and has joined at Kinwat on 6.8.2014. Therefore, in such circumstances, there may not be any reason to keep the applicant under suspension any longer.

19. The learned Advocate for the applicant has placed reliance on the judgment delivered by Hon<sup>ble</sup> the Supreme Court in the case of AJAY KUMAR CHOUDHARY VS. UNION OF INDIA [2015 (2) JT 487 : AIR 2015 SC 2389] and submits that it has become absolutely clear that in view of the said judgment it is now incumbent upon the respondent no. 1 to forthwith revoke the suspension and to reinstate the applicant without further delay in order to obey the order of the Hon<sup>ble</sup> Supreme Court. Hon<sup>ble</sup> the Supreme Court in para 14 of the judgment of Ajay Kumar Choudhary (supra) observed as under :-

¶4 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.+

20. The Government has time and again issued various circulars, whereby it has been decided to take the stock of the cases of the employees under suspension. It has also been decided to take frequent review of the said cases and to consider whether the suspension of the employees is necessary. The suspension shall be a last recourse that too in a very rare of the rarest cases and, therefore, in view thereof in the interest of justice the res. no. 1 should reconsider the case of the applicant for reinstatement in view of the circumstances already referred hereinabove. Hence, I pass the following order :-

ORDER

- (i) The original application is partly allowed.
- (ii) The res. no. 1 is directed to reconsider the case of the applicant for revocation of suspension in view of the observations made in this order as well as in view of the judgment of Hon<sup>ble</sup> the Supreme Court in the case of AJAY KUMAR CHOUDHARY VS. UNION OF INDIA [2015 (2) JT 487 : AIR 2015 SC 2389].
- (iii) The decision in this regard shall be taken within one month from the date of this order and same shall be communicated to the applicant in writing. There is no need to mention that, if the applicant is aggrieved by the decision taken by the res. no. 1 as regards his revocation of suspension, he will be at liberty to approach this Tribunal.

There shall no order as to costs.

**MEMBER (J)**