

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.101 OF 2023

**DISTRICT : PUNE
SUBJECT : SUSPENSION**

Shri Ajay Madhavrao Deshmukh,)
Special Auditor, Class 1, Cooperative Societies (Sugar))
Ground Floor, Sakhar Sankul, Shivajinagar, Pune)
and having residential Address at R/at Flat No.101,)
Zenistry, A wing CHS, SN 38 New DP Road,)
Near Pan Card Club Road, Baner, Pune.)... **Applicant**

Versus

1) The Hon'ble His Excellency the Governor,)
of Maharashtra, Through His Secretariat,)
Malabar Hill, Mumbai – 400 035.)

2) Government of Maharashtra,)
Through Principal Secretary,)
Cooperation Department, Mantralaya,)
Mumbai – 400 032.)... **Respondents**

Shri Makarand D. Lonkar, learned Advocate for the Applicant.

Smt. Archana B. Kololgi, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 24.04.2023.

JUDGMENT

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The Applicant has challenged suspension order dated 26.12.2022 issued by Government whereby he was suspended in contemplation of D.E. invoking the Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. Shortly stated undisputed facts giving rise to this O.A. are as under:-

The Applicant was serving as Special Auditor, Class 1, Co-operative Societies (Sugar). Government had issued circular dated 22.09.2022 to register offence against the Director / Chief Executive Officer of the sugar factory who started crushing season before 15.10.2022. In terms of that circular directions were issued to start crushing season only after 15.10.2022 with prior license from the Government. Applicant was entrusted with enquiry to find out whether Sugar factory namely Baramati Agro Ltd. Tal. Indapur, Dist. Pune has started crushing season before 15.10.2022 since, the Government came to know that the said sugar factory has started crushing season before the cut-off date i.e. 15.10.2022. The Applicant accordingly completed enquiry and submitted report on 07.12.2022 to the Government. Ongoing through report Government however found that the Applicant tried to mislead the Government by supporting sugar factory. The Government formed opinion that the Applicant has committed misconduct by furnishing misleading enquiry report. It is on this background the Applicant came to be suspended by order dated 26.12.2022 and his headquarter was kept at Aurangabad.

4. In sofaras change of headquarter at Aurangabad is concerned, the Tribunal by order dated 25.01.2023 directed to keep headquarter at the same place of duty where the Applicant was serving at the time of suspension in view of Government circular dated 19.03.2008.

5. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail suspension order *inter-alia* contending that the Applicant is victimized because of change of Government and secondly though period of more than three months is over neither review is taken nor D.E. is initiated against the Applicant as mandatory in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. On this line of submission he urged that

prolong suspension of the Applicant is totally impermissible and the Applicant is entitled to reinstatement with pay and allowances after the expiration of three months period from the date of suspension.

6. Per contra, learned P.O. in reference to Affidavit-in-Reply sought to justify the suspension stating that the Applicant misled the Government by giving incorrect report so as to support sugar factory, and suspension was justified. However, she fairly concedes that neither D.E. is initiated nor review is taken by the Department. She submits that review will be taken within reasonable time.

7. Admittedly, the Applicant was suspended in contemplation of D.E. alleging that he submitted incorrect report to support sugar factory. Law mandates initiations of D.E. coupled with review so that Government servant is not subjected to prolong suspension. Hon'ble Supreme Court in **Ajay Kumar Choudhary's case (cited supra)** directed that the that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges is not served on the delinquent officer, and if the memorandum of charges is served, a reasoned order must be passed for the extension of the suspension. Notably, in deference to the decision of Hon'ble Supreme Court, Government has also issued circular dated 09.07.2019 giving clear instruction to all Departments and to ensure initiation of D.E. as well as review within three months. In circular it is further stated that if it is not complied with there would be no other option except to reinstate the Government servant.

8. Despite law laid down in **Ajay Kumar Choudhary's case (cited supra)** as well as instruction issued by circular dated 09.07.2019 there is complete failure on the part of Respondent to adhere to it as a result to which the Applicant is subjected to prolong suspension. Respondents were under legal obligation but they fail to do so. No explanation much less justifiable is forthcoming for not initiating D.E. or not taking review

of the suspension. Suffice to say prolong suspension of the Applicant is in blatant violation of law and the Applicant is required to be reinstated in service immediately with pay and allowances after extension of 90 days. Hence, the order

ORDER

- A) The Original Application is allowed.
- B) Suspension of the Applicant is revoked. He be reinstated in service within 10 days from today.
- C) The Applicant be paid pay and allowance after the expiration of period of 90 days from suspension order dated 26.12.2022 and it be paid to him within a month from today.
- D) Respondents are at liberty to initiate D.E. and to complete it within reasonable time in accordance to law.
- E) Respondents may consider to reinstate the Applicant on the same post since the post occupied by the Applicant before Suspension is still vacant.
- F) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 24.04.2023
Dictation taken by: N.M. Naik.

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