

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 853/2021

Ramesh Hiralal Gupta,
Aged about 56 years, Occ-Service,
(At present under suspension),
R/o Plot No.33, Uday Nagar,
Near Ring Road, Nagpur-24.

Applicant.

Versus

- 1) The State of Maharashtra,
through Addl. Chief Secretary,
Department of Soil & Water Conservation,
Mantralaya, Mumbai-400 032.
- 2) The Chief Executive Officer,
Zilla Parishad, Nagpur.

Respondents

Shri S.P. Palshikar, Ld. counsel for the applicant.
Shri S.A. Sainis, Ld. P.O. for respondent No.1.
Shri G.K. Bhusari, Advocate holding for Shri S.N. Gaikwad,
learned counsel for respondent No.2.

Coram:- Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 27th January 2022.

Heard Shri S.P. Palshikar, learned counsel for the applicant, Shri S.A. Sainis, Ld. P.O. for respondent No.1 and Shri G.K. Bhusari, Advocate holding for Shri S.N. Gaikwad, learned counsel for respondent No.2.

2. In this application, the applicant has impugned the order of his suspension dated 25.8.2021 (Annexure A-6).

3. Case of the applicant is as follows:-

On 1.11.2020, the applicant was promoted as Executive Engineer / District Water Conservation Officer and posted in Zilla Parishad, Nagpur. It was his duty to look after the works being carried out on behalf of the Zilla Parishad and visit work sites for this reason. Certain works were allotted to M/s Nanak Construction Company, Katol through its partner Roshan Patil. The applicant visited the site where work was being carried out by M/s Nanak Construction Company. He found that the work was not upto the mark. Because of his visit, Roshan Patil was annoyed. He wanted to take revenge. The applicant found many illegal activities indulged in by M/s Nanak Construction Company. Therefore, he lodged F.I.R. (Annexure A-1) against Roshan Patil and three others whereupon an offence was registered against them U/ss 467, 468, 471 and 420 r/w section 34 of the Indian Penal Code. Against Roshan Patil / M/s Nanak Construction Company, the applicant had also filed complaint dated 8.4.2021 (Annexure A-2) with the Superintendent of Police, Nagpur (Rural). The applicant had received threats. He apprehended that he would be trapped in a false case. He was ultimately implicated in a case under the Prevention of Corruption Act. Crime No.489/2021 (said FIR is at

Annexure A-8) was registered against him. He was arrested. By order dated 12.8.2021 (Annexure A-5), he was released on bail. Thereafter, the impugned order (Annexure A-6) was passed by the Government placing him under suspension. The applicant had filed representation (Annexure A-9) with the Additional Chief Secretary, Soil Conservation Department, Govt. of Maharashtra, Mantralaya, Mumbai for revoking his suspension. Thereafter, on 14.9.2021, he again submitted representation (Annexure A-10) to the same authority. His prayer was not granted. Hence, this application.

4. The applicant has filed pursis (Pages 78 to 80). Para 2 of the said pursis reads as under:-

(a) "It is submitted that order of suspension is dated 25.8.2021 and 90 days period comes to an end on 25.11.2021 and still the suspension of the applicant is continued. It is submitted that in view of the law laid down by the Hon'ble Apex Court in the matter of *Ajaykumar Choudhary V/s Union of India* and another reported in 2015 (2) SCALE 432, Apex Court has laid down a law that the currency of suspension should not beyond 90 days of period the said judgment is enclosed with this pursis as Annexure A-11, apart from this fact the State of Maharashtra has issued a G.R. dated 9.7.2019 in view of the aforesaid Apex Court judgment which is enclosed herewith as Annexure A-12, the Hon'ble High Court had an occasion to consider resolution dated 9.7.2019 and the Hon'ble High Court was pleased to pass an order dated 17.7.2009, the copy of the same is enclosed herewith as Annexure A-13 and this Hon'ble

Tribunal in number of cases has relied upon the judgment of the Hon'ble Apex Court, G.R. dated 9.7.2019, the copies of the order passed by the Hon'ble Tribunal are enclosed herewith as Annexure A-14 collectively."

5. It was argued by Shri S.P. Palshikar, learned counsel for the applicant that in view of legal position enumerated in Annexures A-11 to Annexure A-14, the impugned order is required to be quashed and set aside.

6. In the judgment at Annexure A-11, (Ajay Kumar Choudhary V/s Union of India), the Hon'ble Supreme Court held—

"14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges / Charge-sheet is not served on the delinquent officer / employee, if the Memorandum of Charges / Charge-sheet is served, a reasoned order must be passed for the extension of the suspension."

7. In G.R. dated 9.7.2019 (Annexure A-12), it is laid down--

"निलंबित शासकीय सेवकांच्या ज्या प्रकरणी 3 महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही, त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरु करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून 90 दिवसांचे आत काटेकोरपणे केली जाईल याची दक्षता / खबरदारी घेण्यात यावी."

8. In the judgment (Annexure A-13), the Hon'ble Bombay High Court has held—

“The Government has recently issued a Resolution dated 9.7.2019 giving detailed guidelines and directions for dealing with cases of those employees who are placed under suspension and against whom the charge-sheet has been issued. In the present case, charge-sheet has already been issued and 3 months period has been over long back and, therefore, the facts of this case are squarely covered by the G.R. dated 9.7.2019, calling for necessary intervention by this Court.”

9. Judgments passed by this Tribunal (in O.A. Nos. 312/2021. 560/2021 and 1064/2021) dated 6.5.2021, 1.9.2021 and 7.1.2022 respectively are collectively marked Annexure A-14. In these judgments, aforesaid judgments and G.R. were relied upon.

8. The legal position laid down in the aforesaid judgments fully supports the contention of the applicant that his suspension will have to be revoked, since the period of 90 days from the order of placing him under suspension has elapsed. Hence, the order.

ORDER

The O.A. is allowed in the following terms:-

- (i) Impugned order of suspension dated 25.8.2021 (Annexure A-6) is revoked.
- (ii) The respondents shall issue consequential order within 30 days from the date of receipt of this order.
- (iii) No order as to costs.

(M.A.Lovekar)
Member (J)

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