

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.100 OF 2020

DISTRICT : PUNE

Shri Nilesh Guruling Deshmukh.)
Age : 46 Yrs., Occu.: Govt. Service as)
Chief Officer, Class-II with last posting at)
Mangalvedha Municipal Council,)
District : Solapur and residing at Flat No.)
602, Building No.A/2, Regency Cosmos)
Hsg.Soc., Baner Road, Pune.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
Urban Development Department,)
Mantralaya, Mumbai – 400 032.)...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 03.02.2020

JUDGMENT

1. In the present O.A, the challenge is to the suspension order dated 16th February, 2019 whereby the Applicant was kept under suspension in contemplation of D.E. on the ground that though by order dated 4th

December, 2018 he was transferred on the post of Chief Officer, Kinvat Municipal Council, District Nanded, he did not join there.

2. The Applicant has also simultaneously filed O.A.103/2020 challenging the transfer order dated 4th December, 2018 along with M.A.78/2020 for condonation of delay.

3. The Applicant was serving on the post of Chief Officer, Municipal Council, Mangalvedha, District Solapur and by order dated 4th December, 2018, he was transferred to the post of Chief Officer, Municipal Council, Kinvat, District Nanded. However, he did not join at Kinvat, and therefore, he suspended by order dated 16th February, 2019.

4. The Applicant has made representation against suspension on 16th March, 2019 but the same is not responded, and therefore, the Applicant has challenged the order of suspension contending that the prolong suspension of more than 11 months is illegal.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that the suspension more than 90 days is impermissible in view of the decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. He has further pointed out that despite clear instructions in G.Rs. dated 14.10.2011 and 09.07.2019, no review is taken.

6. Per contra, the learned Chief Presenting Officer submits that the subject of review is under consideration and decision will be taken soon.

7. Needless to mention that the issue of prolong suspension is no more *res-integra* in view of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary** (cited supra) which *inter-alia* mandates that the suspension should not exceed 90 days and competent authority is

required to pass reasoned order for its continuation or revocation, as the case may be.

8. Indeed, by G.Rs. dated 14.10.2011 and 09.07.2019, specific instructions are issued by Government to take periodical review of suspension. As per G.R. dated 09.07.2019, where the Government servant is suspended in contemplation of D.E, the competent authority is under obligation to ensure that the D.E. is initiated within 90 days. In G.R. dated 09.07.2019, the Government had acknowledged the mandate laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case that the suspension beyond 90 days would be impermissible and instructions are issued to ensure that the D.E. is initiated within 90 days and failing to which, there would be no option except to revoke the suspension.

9. Despite the aforesaid position, the Respondents have failed to take review of suspension of the Applicant. The learned Advocate for the Applicant pointed out that till date, no D.E. is initiated. As such, it is a case of prolong suspension without bothering to initiate the D.E. as mandated in law.

10. In view of above, the O.A. deserves to be disposed of at this stage itself by issuing suitable directions. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to place the matter before Review Committee and to take decision about the revocation of suspension of the Applicant within four weeks from today.
- (C) The decision, as the case maybe, shall be communicated to the Applicant within two weeks thereafter.

- (D) If the Respondents failed to take decision of review within four weeks from today, the suspension shall deemed to be revoked and Applicant will be entitled to reinstatement.
- (E) No order as to costs. Stono-copy is allowed.

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

Mumbai

Date : 03.02.2020

Dictation taken by :

S.K. Wamanse.

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