IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.240 OF 2020

DISTRICT : SOLAPUR

Shri Amol Ganpatrao Bhosale.)
Age : 36 Yrs., Worked as Deputy)
Superintendent of Land Records,)
Tal.: North Solapur, District : Solapur)
and residing at Trimurti Niwas,)
Ganesh Nagar, A/p. Sakharwadi,)
Tal.: Phaltan, District : Satara.)**...Applicant**

Versus

The Settlement Commissioner and)
Director of Land Records, [M.S.],)
Pune, having office at Pune.)**...Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.
Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

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

DATE : 29.10.2020

JUDGMENT

1. The Applicant has challenged the suspension order dated 03.01.2020 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under:-

The Applicant was working as Deputy Superintendent of Land Records, North Solapur, District : Solapur. On 21.12.2019, the Anti-Corruption Bureau registered offences under Section 7 and 12 of Prevention of Corruption Act, 1988 vide Crime No.951/2019 and arrested the Applicant on the same day. He was detained in Police Custody for more than 48 hours. Consequent to it, the Respondent – Settlement Commissioner and Director of Land Records, Pune suspended the Applicant by order dated 03.01.2020 invoking powers under Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) as deemed suspension. The Applicant made representations to the Respondent on 26.04.2020 and 05.05.2020 contending that he is falsely implicated by ACB and requested for reinstatement in service, but in vain. In representations, he further urged that he is subjected to prolong suspension without filing charge-sheet in Criminal Case or initiating D.E. Ultimately, he approached this Tribunal by filing the present O.A. contending that the impugned order dated 03.01.2020 is illegal mainly on the ground that his appointing authority is Government of Maharashtra and Settlement Commissioner and Director of Land Records is not competent to suspend him invoking Rule 4(2)(a) of 'Rules of 1979' amongst other grounds.

3. The Respondent resisted O.A. by filing Affidavit-in-reply (Page Nos.39 to 45 of Paper Book) *inter-alia* denying that the impugned suspension order suffers from any illegality. Admittedly, till date, no charge-sheet is filed in Criminal Case nor D.E. is initiated against the Applicant. The Respondent sought to justify the impugned suspension order contending that the powers are delegated to him in terms of G.R. dated 22.11.1966. As regard invoking Rule 4(2)(a) of 'Rules of 1979', the Respondent contends that it is deemed suspension by operation of law, and therefore, even without formal order of suspension, he is to be treated under suspension, and therefore, the question of competency of

Respondent is not relevant. In this behalf, it would be apposite to reproduce Para Nos. 10 and 11 of reply, which are as follows:-

> "**10.** With reference to contents of paragraph nos.6.9, 6.10 & 6.11, it is submitted that as per the government resolution no IPE-1166/104243-d, dated 22/11/1966, powers of suspension of District Inspector of Land Records are delegated to Settlement Commissioner and Director of Land Records [M.S], Pune. As per government resolution dated 18/08/1994, the nomenclature of post District Inspector of Land Records was changed to Taluka Inspector of Land Records and then as per the Government Resolution dated 28/06/2010 the nomenclature of post 'Taluka Inspector of Land Records' is changed Deputy Superintendent of Land Records.
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> **11.** With reference to contents of paragraph no.6.12, it is submitted that, as the Respondent has powers to suspend the applicant and applicant is already declared as suspended as per Maharashtra Civil Services Rules 4(2)(a) and there was no need to issue separate suspension order under proviso 4(1)(c) of said rule and applicant is deemed to have been suspended as per Maharashtra Civil Services Rules 4(2)(a). Hence, it is submitted that even without a formal order he is under suspension in compliance of the condition in the Rule."

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned suspension order on the following grounds :-

(i) G.R. dated 22.11.1966 referred by the Respondent pertains to delegation of power to Settlement Commissioner and Director of Land Records for suspension in contemplation of D.E. only and it does not speak about delegation of power of deemed suspension contemplated under Rule 4(2)(a) of 'Rules of 1979'.

(ii) G.R. dated 22.01.1966 loses its efficacy or enforceability in view of coming into force of 'Rules of 1979' and in terms of Rule 4(2)(a) of 'Rules of 1979', the powers of deemed suspension vests with the appointing authority viz. State Government, and therefore, suspension order passed by Respondent is without jurisdiction and *non-est* in law.

(iii) Alternatively, the suspension beyond 90 days without taking any steps to take review of suspension is impermissible in view of decision of Hon'ble Supreme Court in ***(2015) 17 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Ors.)***.

5. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer sought to justify the impugned suspension order and vehemently urged that even if G.R. dated 22.11.1966 is ignored, admittedly, the Applicant having remained in Police Custody for more than 48 hours, he is deemed to be placed under suspension by operation of law in terms of Rule 4(2)(a) of 'Rules of 1979' and further submits that for such deemed suspension, there is no requirement of issuance of formal order by appointing authority. In order to substantiate the same, she placed reliance on the decision of **Full Bench of MAT in O.A.No.60/2000 (Vijay Belge Vs. State of Maharashtra & Ors.), O.A.No.68/2000, O.A.No.123/2000 and O.A.No.402/2000 decided on 12.01.2001** by common Judgment and the decision of Hon'ble Supreme Court in ***(2003) 6 SCC 516 (Union of India Vs. Rajiv Kumar)***.

6. In so far as G.R. dated 22.02.1966 (Page No.57 of P.B.) is concerned, it is restricted to delegation of powers to Settlement Commissioner and Director of Land Records to suspend the Government servant where D.E. is in contemplation. It states that "Government is pleased to delegate to the Settlement Commissioner and Director of Land Records powers to order and hold D.Es against Officers in the cadre of District Inspector of Land Records [which is equivalent to Deputy Superintendent of Land Records] and to suspend them pending D.Es, subject to final order in regard to removal or dismissal being passed by the Government.

7. As such obviously, the G.R. dated 22.11.1966 does not speak about delegation of powers to the Settlement Commissioner and Director of Land Records to exercise powers of deemed suspension contemplated

under Rule 4(2)(a) of 'Rules of 1979'. The learned CPO fairly concedes this position.

8. Apart, the enforceability and efficacy of G.R. dated 22.11.1966, no more survives after the enforcement of 'Rules of 1979' which came into force on 12th July, 1979. Suffice to say, the G.R. dated 22.01.1966 is no more relevant and suspension has to be in consonance with the provisions contained in 'Rules of 1979'.

9. Material question is whether the suspension of the Applicant is illegal in absence of formal order of appointing authority. Admittedly, the appointing authority of the Applicant is State Government and no such formal suspension order as contemplated under Rule 4(2)(a) of 'Rules of 1979' is passed by the appointing authority.

10. At this juncture, it would be apposite to reproduce relevant portion of Rule 4(2)(a) of 'Rules of 1979', which is as follows :-

> **"(2)** A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-
>
> **(a)** with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours."

11. The learned CPO sought to place reliance on the observations made by Full Bench of the Tribunal in Judgment dated 12.01.2001 (cited supra). In that mater, reference was made to Full Bench as to whether failure of the subordinate authority to make report to the appointing authority would render suspension illegal. The orders of suspension were issued by authorities subordinate to the appointing authority and there was no report forthwith to the appointing authority, as required under proviso to Rule 4(1) of 'Rules of 1979' and proviso of Rule 3 (1-A)(i) of Maharashtra Police (Punishment & Appeal) Rules 1956 (hereinafter referred to as 'Rules of 1956" for brevity) which are in *pari materia*. The

Full Bench of the Tribunal held that the failure to make report to the appointing authority would not render suspension order illegal. As such, the issue before the Full Bench was of interpretation of proviso of Rule 4(1) of 'Rules of 1979' and which is in *pari materia* with Rule 3(1-A) (i) of 'Rules of 1956'. However, the perusal of Judgment reveals that in O.A.60/2000, the suspension of Police Personnel was on account of detention in Police Custody for more than 48 hours. It is in that context, the Tribunal considered the provision of Rule 4(2)(a) of 'Rules of 1979' which *inter-alia* provides for deemed suspension on account of detention in Police or Judicial Custody for a period exceeding 48 hours and made following observation in Para No.8, which are as under :-

> *"**8.** We do not think a separate order of suspension is needed in view of the deeming provision and if at all such an order is issued it is essentially for the purpose of regulating matters like payment of subsistence allowance and imposing certain restrictions about movement, etc. Consequently, the question as to whether a suspension order was issued by an authority subordinate to the appointing authority will not even arise in this case."*

12. The learned C.P.O. further placed reliance on the observation made by Hon'ble Supreme Court in Para Nos.14 & 15 of the decision of ***Rajiv Kumar's*** case (cited supra), which is as under :-

> *"**14.** Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness. Rules 10(3) and 10(4) operate conceptually in different situations and need specific provisions separately on account of interposition of an order of Court of law or an order passed by the Appellate or reviewing authority and the natural consequences inevitably flowing from such orders. Great emphasis is laid on the expressions "until further orders" in the said sub-rules to emphasise that such a prescription is missing in Sub-rule (2). Therefore, it is urged that the order is effective for the period of detention alone. The plea is clearly without any substance because of Sub-Rule 5(a) and 5(c) of Rule 10. The said provisions refer to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under Sub-Rule (2). The said provision under Rule 10(5)(a) makes it crystal clear that the order continues to remain in force until it is modified or revoked by an authority competent to do so*

while Rule 10(5)(c) empowers the competent authority to modify or revoke also. No exception is made relating to an order under Rules 10(2) and 10(5)(a). On the contrary, specifically it encompasses an order under Rule 10(2). If the order deemed to have been made under Rule 10(2) is to loose effectiveness automatically after the period of detention envisaged comes to an end, there would be no scope for the same being modified as contended by the respondents and there was no need to make such provisions as are engrafted in Rule 10(5)(a) and (c) and instead an equally deeming provision to bring an end to the duration of the deemed order would by itself suffice for the purpose.

[underline supplied]

15. *Thus, it is clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10(5)(c) and until that order is made, the same continues by the operation of Rule 10(5)(a) and the employee has no right to be reinstated to service."*

13. Thus, in above mentioned ***Rajiv Kumar's*** case, the issue before the Hon'ble Supreme Court was pertaining to interpretation of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 which is in *pari materia* with Rule 4 of 'Rules of 1979'. The question agitated before Hon'ble Supreme Court was whether deemed suspension on account of detention in Police or Judicial Custody exceeding 48 hours is restricted in its point of duration and efficacy to the period of actual detention only or whether it continues to be operative unless modified or revoked under Rule 10(5)(c) of Central Services Rules, 1965. It is in that context, in Para No.14, the Hon'ble Supreme held as reproduce above.

14. The learned CPO on the basis of aforesaid decisions submits that under Rule 4(2)(a) of 'Rules of 1979', it being deemed suspension by operation of law, even formal order of suspension by appointing authority is not *sine-qua-non* and the moment, the concerned public servant completes 48 hours' detention, he is deemed to be suspended by legal fiction.

15. Per contra, Shri Bandiwadekar, learned Advocate for the Applicant sought to distinguish the aforesaid decisions contending that these decisions cannot be termed as a precedent, as the issue in question in

these decision was not relating as to whether for deemed suspension, the specific order of appointing authority is required in law. According to him, the question in issue in these decisions was different, and therefore, the observations made in these Judgment are obiter dicta and not binding precedent.

16. Shri Bandiwadekar, learned Advocate for the Applicant in support of his contention about the law of precedent relied upon the decision of Hon'ble Supreme Court ***2016(1) Maharashtra Law Journal (Chauharya Tripathi & Ors. Vs. Life Insurance of India)*** wherein it has been held "a case is only an authority for what actually decides and not what logically follows from it. He referred Par No.15 of the Judgment, which is as follows :-

> *"**15.** In our considered opinion, the decision in R. Suresh (supra) cannot be regarded as the precedent for the proposition that a Development Officer in LIC is a 'workman'. In fact, the judgment does not say so but Mr. Vasdev, learned senior Counsel would submit that inferring such a ratio, cases are being decided by the High Courts and other authorities. Though such an apprehension should not be there, yet to clarify the position, we may quote few lines from Ambica Quarry Works etc. v. State of Gujarat : AIR 1987 SC 1073:*
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> *It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathern, 1901 AC 495)."*

17. Shri Bandiwadekar, learned Advocate for the Applicant also referred following Paragraph from the decision of Hon'ble Supreme Court in ***Appeal (Criminal) No.650/1999 (State of Haryana Vs. Ranbir @ Rana) decided on 05.04.2006***, which is as follows :-

> *"A decision, it is well-settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a view point or sentiments which has no binding effect. See Additional District Magistrate, Jabalpur etc. v. Shivakant Shukla etc. (1976) 2 SCC 521]. It is also well-settled that the statements which are not part of the ratio decidendi*

constitute obiter dicta and are not authoritative. [See Division Controller, KSRTC v. Mahadeva Shetty and Another [(2003) 7 SCC 197]"

18. Shri Bandiwadekar, learned Advocate for the Applicant also placed reliance on the observation made by Hon'ble Supreme Court in Para No.39 of the Judgment ***AIR 1993 SC 43 (Commissioner of Income Tax Vs. M/s. Sub Engineering Works (P) Ltd.)***, which is as follows :-

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

19. In view of the submissions and the decisions referred by the parties, the question is whether in case of deemed suspension, the formal order of appointing authority suspending the concerned employee is required to be drawn by appointing authority or in view of legal fiction, there is automatic deemed suspension of the concerned employee and order by appointing authority only is not *sine-quo-non*.

20. An obiter dictum means an observation made on legal point in a decision but not arising in such manner as to require decision. The statements which are not part of the ratio decidendi are not authoritative. Whereas, a precedent is a statement of law found in the decision of a superior Court which decision has to be followed by subordinate Courts.

21. As blackstone puts it "Judges are sworn to determine not according to their own private Judgment, but according to the known law and custom of the land, not delegated to pronounce a new law, but to

maintain and explain the law not to make the law". Thus, according to blackstone Judges discover the law, they find the law rather than make the law. A Judge applies an existing rule but very often he widens and extend a rule of law and also develops rules on analogy and by deduction.

22. True, in the decisions rendered by the learned CPO, the issue in question was different but there is no denying that specific and categorical observations were made about non-requirement of formal order of deemed suspension by appointing authority in Full Bench Judgment of MAT as well as in ***Rajiv Kumar's*** case by Hon'ble Supreme Court. It is also equally true that the observations made in that behalf are obiter dictum as distinguished from the ratio *decidendi,* however, same are of considerable weight as held by Hon'ble Supreme Court in ***(2002) 4 SCC 638 (Director of Settlement, A.P. and Os. Vs. M.R. Apparao & Anr.)*** wherein it has been held as under :-

> "*An obiter dictum as distinguished from ratio decidendi is an observation of the court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such a obiter may not have binding precedent but it cannot be denied that it is of considerable weight."*

23. Now reverting back to the facts of the present case, even if the matter in issue before the Hon'ble Supreme Court in Ajay ***Rajiv Kumar's*** case was about the interpretation of Rule 10(2) and Rule 10(5)(c) of Central Services Rules, 1965, there is no denying that the Hon'ble Supreme Court interpreted Rule 10(2) and has categorically observed that "Rule 10(2) is deeming provision and creates a legal fiction and bear reading of provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of legal fiction."

24. As such in view of language used in Rule 4(2)(a) coupled with the intention of legislature, it is quite clear that no discretion is left to the appointing authority and the moment Government servant completes

more than 48 hours' detention in Police or Judicial custody, he deemed to be suspended by legal fiction. All that, the requirement is of formal order by some authority regarding Subsistence Allowance and attendance at Head Quarter, etc. As such, once the suspension is automatic and complete by legal fiction, it cannot be undone on the technical ground of incompetency of the authority which passed the order. Otherwise, the very purpose of law would be defeated and such interpretation canvassed by the learned Advocate for the Applicant would render law nugatory. As regard implication and interpretation of provision creating a legal fiction, the learned CPO rightly referred to ***(2004) 6 SCC 59 (State of West Bengal Vs. Sadan K. Bormal and Anr.)*** where in Para No.25, it has been held as under :-

> "***25.*** *So far as interpretation of a provision creating a legal fiction is concerned, it is trite that the Court must ascertain the purpose for which the fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. In construing a fiction it must not be extended beyond the purpose for which it is created or beyond the language of the Section by which it is created. It cannot be extended by importing another fiction. These principles are well settled and it is not necessary for us to refer to the authorities on this subject. The principle has been succinctly stated by Lord Asquith in East End Dwelling Co. Ltd. V. Finsbury Borough Council, when he observed : (All ER p. 599 B-D)"*

25. In the present case, the suspension order has been passed by the Settlement Commissioner and Director of Land Records, who is Disciplinary Authority and Head of the Department. As such, the order passed by him in the light of deemed suspension in law will not render suspension order illegal. Once suspension is automatic due to legal fiction, it cannot be eclipsed or challenged on the ground of absence of formal order by appointing authority in view of the observation made by Hon'ble Supreme Court in Rajiv Kumar's case (cited supra) and deeming provision in Rule 4(2)(a) of 'Rules of 1979'

26. Once the aspect of legality of deemed suspension is set at rest insofar as alternative submission advanced by the learned Advocate for

the Applicant about prolong suspension is concerned, the Applicant has already undergone suspension of more than ten months. Admittedly, neither charge-sheet is filed in Criminal Case nor D.E. is initiated till date. Furthermore, no attempt is made to take review of suspension and the Applicant is subjected to prolong suspension.

27. The legal position in respect of prolong suspension is no more res-integra in view of the Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (cited supra) relied by the learned Advocate for the Applicants. Para Nos.11, 12 and 21 of the Judgment are important, which are as follows :-

> "***11.*** *Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.*
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> ***12.*** *Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*
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> ***21.*** *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. As in the case in*

hand, the Government is free to transfer the person concerned 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 prepared 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 the 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."

28. The Judgment in ***Ajay Kumar Choudhary's*** case was also followed by Hon'ble Supreme Court in ***State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21st August, 2018*** wherein it has been held that, suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for a longer period and reinstatement could not be threat for fair trial or departmental enquiry, the suspension should not continue further.

29. Shri Bandiwadekar, learned Advocate for the Applicants further referred to the decision of Hon'ble Bombay High Court in ***2002 (3) Mh.L.J. 249 (State of Maharashtra Vs. Shivram Sadawarte)***. In that case, the petition was filed to settle the position in law in the matter of suspension of Government employee under Rule 4(1)(c) and Rule 4(2) of 'Rules of 1979'. The Hon'ble Supreme Court after examining various Judgments summarized the law in Para No.14 of the Judgment, which is as under :-

"***14.*** *In the premises, we hold as under :*

(a) The order of suspension issued under Rule 4 of the rules can be sought to be reviewed or revoked by the suspended employee by way of representation under Sub-rule 5 thereof, (b) Such a representation can be

filed at any time and rejection of a representation may not operate as a bar in filing a subsequent representation for review/revocation,

(c) The representation so filed ought to be decided within a reasonable period of two to three months and by taking into consideration the nature of charges, progress in enquiry, investigations/trial as the case may be including the reasons for delay and other attending circumstances in each case as well as the policy decision of the State Government,

(d) Challenge to the order of suspension should not be ordinarily entertained by the Tribunal/Court directly unless the remedy as provided under Rule 4(5) is exhausted by the delinquent employee,

(e) if the representation filed by the delinquent employee under Rule 4(5) of the Rules is not decided within a period of two to three months or if the same is rejected, the employee has the right to approach the Tribunal and the order of the Government is subject to the judicial review,

(f) an order of suspension issued pending enquiry, investigation or trial, as the case may be, shall continue to operate till such enquiry, investigation and/or trial is completed and the suspension order cannot be quashed and set aside by the Tribunal on the basis of the circular dated September 18, 1974 or the resolutions dated December 14, 1995 and June 14, 1996. The order of suspension is subject to a judicial review by the Tribunal depending upon the facts and merits of each case,

(g) the State Government/competent authority ought to review the pending suspension cases every quarter and take the requisite steps to conclude the enquiry, investigation/trial as early as possible."

30. Suffice to say, the competent authority is under obligation to take review of suspension of the Government servant periodically and Government servant cannot be subjected to prolong suspension. Indeed, the Government of Maharashtra had issued G.R. dated 14.10.2011 which *inter-alia* provides for periodical review of suspension of a Government servant. The G.R. provides detailed instructions/guidelines about the matter to be considered while taking decision of review and reinstatement of a Government servant in periodical review. True, as per Clause 3 of G.R. where suspension is on account of registration of serious criminal offence under IPC or under Prevention of Corruption Act, such matters are to be placed before the Review Committee after completion of one year from the date of suspension. However, the Government cannot be allowed to contend that the review can be taken

only after one year in view of decision in ***Ajay Kumar Choudhary's*** case as well as in ***Shivram Sadavarte's*** case (cited supra). It is law laid down by Hon'ble Supreme Court and Hon'ble High Court would prevail over the instructions issued in G.R. As stated above, the period of about ten months is over from the date of suspension. Therefore, the directions need to be issued to the Respondent to take review of suspension of the Applicant within stipulated time.

31. The totality of aforesaid discussion leads me to conclude that the challenge to the legality of suspension order is devoid of merit but direction to the Respondent to take review as discussed above, needs to be issued. Hence, I proceed to pass the following order.

O R D E R

(A) The Original Application is partly allowed.

(B) The Respondent is directed to take review of suspension of the Applicant within six weeks from today.

(C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.

(D) If the Applicant felt aggrieved by the decision of Review Committee, he may avail legal remedy in accordance to law.

(E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 29.10.2020
Dictation taken by :
S.K. Wamanse.
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