

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.247 OF 2020
(Subject : Suspension)**

DISTRICT : RAIGAD

Shri Pramod Bhaurao Godambe,)
Aged 57 years, Suspended from the post of)
Block Development Officer, Panchayat Samiti,)
Mahad, Zilla Parishad, Raigad,)
R/o. Mahad Residency, Kakar Tale,)
A/P/T Mahad, Dist. Raigad.)

Address for service of Notice :

Shri Arvind V. Bandiwadekar, Advocate for the)
Applicant, having office at 9, "Ram-Kripa",)
Lt. Dilip Gupte Marg, Mahim, Mumbai 400 016)

...Applicant

Versus

1. The Chief Executive Officer,)
Raigad Zilla Parishad,)
Alibag, Dist. Raigad.)
2. The District Collector,)
Raigad, Alibag, Dist. Raigad.)
3. The State of Maharashtra,)
Through Principal Secretary,)
Rural Development Department,)
Having office at Mantralaya,)
Mumbai 400 032)

...Respondents

Shri Arvind V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

Shri Ashutosh C. Gavnekar, i/b. Shri C.G. Gavnekar, learned
Advocate for Respondent No.1.

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

DATE : 23.06.2020.

J U D G M E N T

1. The Applicant has challenged the suspension order dated 30.04.2020, whereby he was kept under suspension invoking Rule 4(1)(a)(b) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline and Appeals Rules 1979' for brevity) invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the Original Application are as follows :-

Applicant was serving as Block Development Officer, Panchayat Samiti, Mahad, District Raigad. He is Class-I Officer and his appointing authority is Respondent No.3 (Government). By order dated 30.04.2020, he was suspended on the allegation that on 29.04.2020 he had celebrated his birthday by inviting more than five persons in breach of directions / Notification dated 31.03.2020, issued by the Collector for compliance of the provisions of Disaster Management Act 2005. The news of celebration of birthday was aired on Television. Respondent No.2, SDO, issued show cause notice dated 29.04.2020, to which applicant had submitted his reply on 04.05.2020 denying allegations that he had celebrated birthday in contravention of directions issued by the Government. Respondent No.1 namely, Chief Executive Officer, Zilla Parishad, Alibag however suspended the Applicant by impugned order dated 30.04.2020 in contemplation of Government enquiry.

3. The Applicant has submitted representation for revoking of suspension and reinstatement in service, but in vain. Applicant has therefore filed present Original Application for suspension dated 30.04.2020 mainly on the ground of competency of Respondent No.1

amongst others which will be adverted to during the course of discussion.

4. Respondent No.1, Chief Executive Officer, Zilla Parishad, Alibag has filed affidavit-in-reply at page 79 to 54 and Respondent No.3 Government has filed affidavit-in-reply at page 69 to 77. Respondents, inter alia, sought to justify impugned action contending that the Applicant has committed misconduct by celebrating his birth day in Office despite Covid-19 pandemic situation and Respondent No.1 is empowered and competent to pass suspension order. Respondents further contends that the suspension order issued by the Chief Executive Officer, Zilla Parishad has been approved by the Government by grant of *ex-post facto* sanction vide letter dated 05.05.2020, and therefore, challenge to suspension order holds no water.

5. Learned Advocate for the Applicant sought to assail impugned suspension order mainly on the ground of competency of Respondent No.1. He has pointed out under Rule 4(1) of 'Discipline and Appeals Rules 1979' power of suspension vests with competent authority or any authority to which competent authority is subordinate or disciplinary authority or any other authority empowered by the Government by general or special order. He has pointed out that reply filed by the Respondents on the point of competency is totally evasive and silent. He therefore submits the impugned order being without jurisdiction is liable to be set aside. He submits that alleged *ex-post facto* sanction by the Government does not validate suspension order in absence of any statutory provision of *ex-post facto* sanction to the suspension order in 'Discipline & Appeal Rules 1979'.

6. Par contra, Shri Gavnekar, learned Advocate for Respondent No.1 and Shri A.J. Chougule, learned Presenting Officer for the

Respondent Nos. 2 & 3 submits that the Applicant has committed serious misconduct by celebrating birthday in the office which is in contravention of Notification dated 31.03.2020 issued by the Collector under Disaster Management Act 2005. According to them, in view of *ex-post facto* approval of Government, the suspension is legal.

7. In view of submission advanced, the crux of the matter is whether Respondent No.1 is competent to suspend the applicant and the impugned order is legally sustainable in law.

8. It would be apposite to reproduce Rule 4 of 'Discipline and Appeals Rules 1979' for ready reference, which is as follows :-

"4. Suspension :

- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension –
- (a) where a disciplinary proceeding against him is contemplated or is pending, or
 - (b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or
 - (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial ;

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.

- (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 forth-eight hours.
 - (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not

forthwith dismissed or removed or compulsorily retired consequent to such conviction.

(3)

.....

(4)

.....”

[underline is supplied]

9. Thus, it is explicit from Rule 4(1) of ‘Discipline & Appeal Rules 1979’ that the suspension order should be passed by appointing authority or any authority to which the appointing authority, his subordinate or disciplinary authority or any other authority empowered in this behalf by the Government by special or general order.

10. In present case, admittedly, suspension order has been issued by the Chief Executive Officer, Zilla Parishad who is not appointing authority of the Applicant. The Respondents have not placed on record any material nor pointed out any provision of law to substantiate how Chief Executive Officer, Zilla Parishad is authorized and competent in law to pass the suspension order. There is nothing on record to indicate that any such authorization orders are passed in favour of Chief Executive Officer, Zilla Parishad Alibag as contemplated under Rule 4(1) of ‘Discipline and Appeals Rules 1979’. Though the Applicant has raised the point of jurisdiction and competency specifically in pleadings in O.A. there is no specific reply to the ground of competency raised by the Applicant. All that Respondents sought to contend that in view of COVID-19 pandemic situation there was prohibition for gathering of more than five persons and the applicant though entrusted with the duties to curb spread of COVID-19, he celebrated his birthday by assembling more than five persons and therefore he was rightly suspended by Chief Executive Officer, ZP, Alibaug.

11. True, in view of COVID-19, pandemic situation, Collector has issued Notification dated 31.03.2020, thereby prohibiting assembling of more than 5 persons and also prohibiting celebration of functions where there is assembly of 5 or more persons. Applicant contends that he has not celebrated birthday by assembling five or more persons. According to him birthday incidentally fall on 29.04.2020 and that day after attending work and meeting only food was provided to the persons assembled for the official work. As such, according to him persons who came from far distance were given food and nothing more happened much less celebration and birthday party.

12. As stated above, issue posed for consideration is whether Chief Executive Officer, ZP is competent to suspend the Applicant. Perusal of suspension order dated 30.04.2020 reveals that CEO, ZP had suspended the Applicant invoking Rule 4(1)(a)(b) of 'Discipline and Appeals Rules 1979' subject to approval by the Government. This aspect itself makes it clear that in law, he is not empowered to suspend the Applicant.

13. It is true that CEO,ZP, made reference to the Government about suspension of the Applicant and in terms of the order dated 05.05.2020, the Government accorded ex-post facto sanction to the suspension order issued by CEO, ZP. In so far as ex-post facto by the Government is concerned learned Counsel for Respondents could not point out any provision for such ex-post approval to the suspension order and in absence of any such provision *ex-post facto* approval by the Government does not legalize the suspension order. Law requires that suspension order should be by the appointing authority or authority empowered by the Government by special or general order. Admittedly, there is no such special or general order which empowers, CEO, ZP, Alibag to exercise for suspension of Group-A, officer.

14. Shri A.J. Chougule, learned P.O. made feeble attempt canvassing that as per proviso to Rule 4(1) of 'Discipline & Appeal Rules 1979', the C.E.O., Z.P, Alibaug forthwith made report to the Government (appointing authority) and in turn, the Government has accorded ex-post facto approval to the sanction order passed by the C.E.O, Z.P. In other words, he meant to say, there is compliance of proviso, and therefore, suspension order is sustainable. To say the least, his submission is misconceived and totally unsustainable in law. Mere forwarding of such proposal even if it is considered as report contemplated in proviso of Rule 4(1) of 'Discipline and Appeals Rules 1979' that itself does not cure legal defect of competency of CEO, ZP. What law requires is the empowerment to the authority by the Government by special or general order and in case, if such powers are exercised by such specially empowered authority, in that event, such authority needs to comply proviso to Rule 4(1) by forwarding the report forthwith to the competent authority about the circumstances in which order was made. In other words, in first place, there has to be empowerment to such authority by special or general order and then compliance of proviso. Whereas in present case, there is no empowerment by the general or special order by the Government in favour of CEO, ZP. This being the position *ex-facie* the order of suspension issued by the CEO, ZP is without jurisdiction and bad in law.

15. Apart, even assuming for a moment that Government has power to accord ex-post facto sanction to the suspension order in that event also there could be no suspension with retrospective effect in as much as, in the present matter in terms of order passed by Government on 05.05.2020, *ex-post facto* approval has been given with retrospective effect i.e. from 30.04.2020. The concept of deem suspension or retrospective effect to the suspension arises in situation where Government servant is detained in police or judicial custody for exceeding 48 hours or convicted and sentence to term exceeding 48

hours as contemplated under Rule 4(2) of 'Discipline and Appeals Rules 1979'. Admittedly, there is no application of Rule 4(2) in present situation. This being the position, the question of *ex-post sanction* to the suspension order with retrospective effect does not survive and if the Government pass any such order of retrospective effect of suspension then it is certainly in contravention of law. As such, viewed from this angle also approval accorded by Government by order dated 05.05.2020 contrary to law.

16. For the aforesaid reasons, I have no hesitation to sum up that impugned order dated 30.04.2020 as well as order of *ex-post facto* approval dated 05.05.2020 are not sustainable in law and the same are liable to be quashed and set aside. Hence, the following order.

ORDER

- (a) Original Application is allowed.
- (b) Impugned suspension order dated 30.04.2020 as well as order of *ex-post facto* approval dated 05.05.2020 are quashed and set aside.
- (c) Applicant be reinstated in services within two weeks with consequential service benefits.

Sd/-

(A.P. KURHEKAR)
MEMBER-J