

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.27 OF 2023

DISTRICT : SOLAPUR

SUB : SUSPENSION

1. Dr. Sheetalkumar D. Jadhav)
Age : 47 Yrs, Occu.: District Health)
Officer (under suspension), District)
Health Officer, Z.P. Solapur.)
R/at Plot No.45, Gangadhar Nagar,)
near Govind Park, Solapur 413 224.)...**Applicants**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department, 10th floor)
New Mantralaya, G.T. Hospital)
Premises, Lokmanya Tilak Road,)
Mumbai 400 001.)
2. The Commissioner, Health Services)
and Director of National Health)
Mission, Arogya Bhavan, St.George's)
Hospital Compound, P.D'Mello Road,)
Mumbai 400 001.)
3. The Director, Commissionerate of)
Health Services, Arogya Bhavan, St.)
George's Hospital Compound,)
P.D'Mello Road, Mumbai 400 001.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Smt.Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 26.04.2023

JUDGMENT

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Smt.Kranti Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the suspension order dated 28.12.2022 whereby the Government suspended him in contemplation of D.E. invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. While the Applicant was serving as District Health Officer, ZP, Solapur, the District Collector and Chairperson, District Disaster Management Committee, Solapur submitted report dated 02.02.2022 to the Government alleging that Applicant has failed to take necessary steps to complete refilling units of oxygen so as to meet the supply of oxygen in Covid-19 pandemic situation, discarded executive's instructions given to him time to time, failed to remain present in the meetings called by the committee and thereby committing negligence in discharging duties as District Health Officer. Consequent to it, the Government by order dated 28.12.2022 suspended the Applicant stating that he failed to complete the project of submission of masterplan of new health mission in consonance with 2011 census and failure to complete the oxygen unit functional within deadline. The Applicant has challenged the suspension order dated 28.12.2022 *inter-alia* contending that the suspension is made only on the basis of announcement made by the Minister of the department in the assembly while giving answers to the questions (LAQ) raised by the member of the legislative assembly. He further contends that there was no such failure on his part to comply the directions much less negligence or misconduct so as to warrant action of suspension.

4. The Respondents resisted the O.A. *inter-alia* contending that in view of report submitted by the District Collector, Solapur dated 02.02.2022, the action of suspension was found necessitated and it is not a case of suspension only on the basis of announcement made in the assembly.

5. When the matter is heard for quite some time having found that the Respondents have not initiated D.E. within three months from the date of suspension nor took review of the suspension, learned Counsel for the Applicant submits that there being blatant violation of mandate given by the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Ors.)**, the Applicant is required to be reinstated immediately with pay and allowances from the date of expiration of three months period of suspension.

6. Learned P.O. also fairly stated that Government has not taken review of suspension nor initiated D.E. in contemplation of which Applicant was suspended. All that she stated that initiation of D.E. is under consideration of the Government.

7. In view of the submission advanced, now it is not necessary to examine sufficiency of material for suspension of the Applicant to see legality of suspension order as submitted by learned Counsel and O.A. deserves to be allowed partly by directing the Respondents to reinstate the Applicant in view of their failure to comply the mandate given by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

8. In **Ajay Kumar Choudhary's** case, the Hon'ble Supreme Court directed that currency of a suspension order should not extend beyond three months, if within this period the memorandum of charges/charge-sheet is not served upon the delinquent officer/employee; if the memorandum of charges/charge sheet is served, a reasoned order must be passed for the extension of suspension. In present case, though the period of more than three months is over from the date of suspension, the Applicant is subjected to prolong suspension without initiating D.E. or review of suspension. As such, suspension period should not extend beyond three months particularly when it is in contemplation of D.E. If D.E. is initiated within three months, a reasoned order needs to be passed for extension of suspension having regard to the fact and circumstances or gravity of the charges. In other words, there should not

be blanket order of suspension to remain in force for period more than three months. Indeed, in compliance of the decision of the Hon'ble Supreme Court, the Government of Maharashtra had also issued circular dated 09.07.2019 thereby giving specific instructions to all the department to ensure that D.E. is initiated within three months and review is taken so that Government servant is not subjected to prolong suspension. In G.R. it is further emphasized that in case of failure to do so there would be no option except to reinstate a Government servant in service. In present case, Respondents allowed to continue the suspension in blatant violation of mandate of Hon'ble Supreme Court.

9. In this view of the matter, ex-facie prolong suspension is impermissible and the Applicant is required to be reinstated in service immediately. He is also entitled to pay and allowances after the expiration of three months period. Hence, the following order :-

ORDER

- (A) Original Application is allowed partly.
- (B) The suspension of the Applicant stands revoked with immediate effect. He be reinstated in service within a week and pay and allowances after the expiration of three months period from the date of suspension be paid within a month from today.
- (C) Since the post occupied by the Applicant at the time of suspension is still vacant, the Government may consider to reinstate him on the same post.
- (D) The Respondents are, further directed to take decision about initiation of D.E. within a month from today and if it decides to initiate D.E. in that event D.E. should be completed within three months from the date of initiation of D.E. in accordance to law.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

