

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.271 OF 2019

DISTRICT : NASHIK

Shri Jalindar H. Sawant.)
Age : 56 Yrs., Working as Principal, District)
Institution of Educational Training, Nashik and)
Residing at Ved Residency, Flat No.10,)
Shradhha Vihar Colony, Nashik.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
School Education & Sports Department,)
Mantralaya, Mumbai 400 032.)...**Respondent**

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

Mrs. A.B. Kololgi, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.06.2019

JUDGMENT

1. The challenge is to the impugned order dated 28.01.2019, whereby the Applicant has been kept under suspension in contemplation of Departmental Enquiry (D.E.) invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity).

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

The Applicant was serving as Principal, District Institution of Educational Training, Sindhudurg w.e.f.09.09.2016. On 21.03.2018, Smt. Renuka Jadhav, Lecturer working in the said Institution had lodged complaint with Director, Maharashtra State of Council of Educational Research and Training (Academic Authority), Pune against the Applicant alleging sexual harassment by sending inappropriate messages on her mobile phone. On receipt of complaint, the Applicant was directed to proceed on compulsory leave. Thereafter, on request, the Applicant was transferred to Nashik by order dated 14.06.2018. The complaint made by Smt. Jadhav was referred to Local Committee constituted under Section 6 of Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'Act of 2013' for brevity). Accordingly, the Local Committee conducted the enquiry and submitted report dated 29.06.2008 holding the Applicant guilty and forwarded the report to the disciplinary authority for appropriate action. On receipt of it, the Director, M.S.C.E.R.T, Pune by letter dated 11.01.2019 withheld next increment temporarily till the decision of D.E. to be initiated against the Applicant. Simultaneously, the Respondent (State of Maharashtra) by order dated 28.01.2019 suspended the Applicant invoking Rule 4(1)(a) of 'Rules of 1979' in contemplation of D.E. which is under challenge in the present O.A.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.54 to 65 of Paper Book) *inter-alia* contending that in view of positive report of Local Committee holding the Applicant guilty for sexual harassment of the employee, the Government thought it fit to suspend the Applicant in contemplation of regular D.E. Thus, the Respondent sought to justify the suspension in view of serious allegations made by Smt. Renuka Jadhav vetted by Local Committee to maintain discipline in the Department. The Respondent further contends that, in terms of G.R. dated 14.10.2011, a review of suspension

will be taken at appropriate time for reinstatement of the Applicant in service, if found suitable and appropriate.

4. The material development taken place after the filing of O.A. is that the Respondent had issued charge-sheet dated 28.05.2019, which has been served upon the Applicant on 30.05.2019. Thus, after about four months from the suspension order, the charge-sheet has been issued for initiation of regular D.E. against the Applicant.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to challenge the impugned suspension order mainly on the following grounds.

- (i) The alleged incidents of sexual harassment to Smt. Renuka Jadhav had taken place during the Applicant's tenure at Sindhudurg, and thereafter, he was transferred to Nashik by order dated 14.06.2018. Therefore, there is no question of tampering of witnesses or record at Sindhudurg.
- (ii) The Local Committee has already enquired into the alleged allegations made by Smt. Renuka Jadhav and submitted the report on 29.06.2018. Therefore, there was no necessity to initiate the regular D.E. under 'Rules of 1979' much less necessity of suspension of the Applicant in view of amendment to Rule 8 of 'Rules of 1979' by Notification dated 01.04.2010 which *inter-alia* provides where there is a complaint of sexual harassment within the meaning of Rule 22-A of M.C.S. (Conduct) Rules, 1979, the Complaint Committee established in each Department or Office for enquire into such complaints shall be deemed to be an enquiring authority appointed by the disciplinary authority for the purpose of 'Rules of 1979'.

- (iii) In terms of G.R. dated 14.10.2011, the Competent Authority was required to take review of suspension within three months and having not done so, the prolong suspension is illegal.
- (iv) The suspension should not exceed beyond three months in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India)**.

6. Per contra, Smt. A.B. Kololgi, learned P.O. sought to justify the impugned suspension order contending that, in view of the allegations of sexual harassment, the suspension was necessitated. She further submitted that the Respondent will take review of suspension at appropriate time in terms of G.R. dated 14.10.2011. Thus, the sum and substance of her submission is that, at this stage, interference in suspension order is uncalled for.

7. At this juncture, it would be material to note that, though the Applicant was kept under suspension in contemplation of regular D.E. [despite the enquiry by Local Committee about the allegations made by Smt. Renuka Jadhav], he was continued under suspension without taking further steps promptly for the conclusion of regular D.E. It is only on 28.05.2019 i.e. after more than four months from the date of suspension, the charge-sheet has been served upon the Applicant. In fact, in respect of complaint made by Smt. Renuka Jadhav, the Local Committee has already enquired in the matter and submitted the report. Significant to note that, in regular D.E., again Charge Nos.1 & 2 were framed by the Department which pertain to the same complaint of Smt. Renuka Jadhav. In addition to it, one more charge (Charge No.3) has been framed alleging that while the Applicant was serving at Nashik in earlier period on the post of Lecturer from 02.07.2007 to 14.06.2011, his behavior was adamant and insulting towards colleague viz. Shri Deore. The charge-sheet further shows that Shri Deore made complaint on 12.05.2011 against the Applicant. As such, the charge of these old and stale instances for the period from 2007 to 2011 has been framed against the

Applicant in regular D.E, which obviously does not call for suspension after such a long period of more than one decade.

8. Needless to mention that the suspension has to be resorted to in a case where the enquiry cannot be fairly and satisfactorily completed without the delinquent being kept away from the post. The perusal of report of Local Committee reveals that the Applicant has not disputed sending of messages to Smt. Renuka Jadhav. This being the position, *prima-facie*, the prolong suspension of the Applicant is not sustainable in law.

9. In fact, the Government by G.R. dated 14.10.2011 issued instructions for periodical review of suspension, so that the Government servants are not subjected to prolong suspension and agony. In this behalf, as per Clause 7 of G.R. dated 14.10.2011, where the Government servant is kept under suspension in contemplation of regular D.E, the Competent Authority is required to take periodical review firstly after three months and then again, after six months from the date of suspension. It further provides that, in case the D.E. is not completed within six months, the Competent Authority can revoke his suspension by reinstating the Government servant on non-executive post. However, in the present case, no such record is forthcoming to show that any such review after three months from suspension was taken. Till date, the Applicant has already completed more than five months in suspension, and therefore, the Respondent is obliged to consider the issue of revocation of suspension and reinstatement of the Applicant in service. Furthermore, the review is also necessitated in view of the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra), which mandates that the currency of suspension should not extend beyond three months, if charge-sheet is not served upon the delinquent and where the charge-sheet is served, a reasoned order needs to be passed for the extension of suspension.

10. In this behalf, it would be material to note the instructions laid down in Departmental Manual laying down the principle to be borne in mind while placing the Government servant under suspension, which are as follows :

“2.1 When a Government Servant may be suspended.- Public interest should be the guiding factor in deciding to place a Government servant under suspension. The Disciplinary Authorities should not suspend a Government servant lightly and without sufficient justification. They should exercise their discretion with utmost care.

Suspension should be ordered only when the circumstances are found to justify it. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against a Government servant are of a serious nature and on the basis of the evidence available there is a *prima facie* case for his dismissal or removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. In other cases, it will suffice if steps are taken to transfer the Government servant concerned to another place to ensure that he has no opportunity to interfere with witnesses or to tamper with evidence against him.

(I) By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory :-

(i) Cases where continuance in office of a Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) where the continuance in office of a Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;

(iii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i) and (ii) above) such as, for instance, where a scandal exists and it is necessary to place the Government servant under suspension to demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the

proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established.”

11. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon’ble Bombay High Court in **1987 (3) Bom.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :

“Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned.”

12. Similarly, reference was made to the Judgment of Hon’ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :

“9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted to as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post.”

13. Furthermore, reference was also made to Judgment of Hon’ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)** is imperative and the legal position is now no more *res-integra*. It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is 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.

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.*

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.”*

14. 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.

15. In view of above, I have no hesitation to sum-up that the Respondent is required to take review of the suspension of the Applicant, as the prolong suspension in the facts and circumstances of the case appears not sustainable in law. The Government is required to take decision on the objective assessment of the situation. The O.A, therefore, deserves to be disposed of by issuing suitable directions.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent is directed to take review of the suspension of the Applicant within a month from today and the decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (C) If the Applicant felt aggrieved by the decision of the Government, he may avail further remedy, as permissible in law.
- (D) No order as to costs.

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

Mumbai
Date : 04.06.2019
Dictation taken by :
S.K. Wamanse.