

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.281 OF 2020**

**DISTRICT : SANGLI**

Shri Satish Subhashrao Hake. )  
Age : 30 Yrs, Occu.: Food Safety Officer, )  
Having Office at Sangli and residing at )  
Flat No.1A, 'A' Building, Siddhivinayak )  
Puram Society, Datta Nagar, Vishrambag, )  
Sangli. )...**Applicant**

**Versus**

1. The Commissioner. )  
Food and Drugs Administration )  
(M.S.), Mumbai and having office at )  
Survey No.341, 2<sup>nd</sup> Floor, )  
Bandra-Kurla Complex, Bandra (E), )  
Mumbai – 400 051. )

2. The State of Maharashtra. )  
Through Principal Secretary, )  
Medical Education & Drugs Dept., )  
Mantralaya, Mumbai – 400 032. )...**Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 21.10.2021**

**JUDGMENT**

1. The Applicant has challenged the legality of suspension order dated 12.03.2020 issued by Respondent No.1 – Commissioner, Food &

Drugs Administration, Mumbai, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is serving as Food Safety Officer, Group 'B'. On 12.03.2020, an offence under Section 7 of Prevention of Corruption Act, 1988 came to be registered against him. Consequent to it, the Applicant was arrested on the same day and was released by learned Special Judge on 13.03.2020. The Respondent No.1 – Commissioner, Food & Drugs Administration by order dated 16.03.2020 suspended the Applicant with retrospective effect from 12.03.2020 specifically invoking and quoting Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). Later, the Applicant has been reinstated by order dated 18.05.2021. However, since the Applicant has challenged the legality of suspension order on the ground of competency of Respondent No.1 – Commissioner, Food & Drugs Administration and impermissible deemed suspension, the O.A. is heard on merit.

3. The O.A. was filed on 23.06.2020 and thereafter enough chances were given to the Respondents to file Affidavit-in-reply, but the same is not filed. Therefore, ultimately by order dated 23.02.2021, it was directed to hear O.A. without reply. Even thereafter also, no efforts were made to file Affidavit-in-reply which clearly indicates indifferent attitude of the Respondents in litigation. It is on this background, the O.A. is heard today.

4. Shri Bandiwadekar, learned Advocate for the Applicant sought to assail the legality of suspension order *inter-alia* contending that admittedly, the appointing authority of the Applicant is Government (Respondent No.2), and therefore, the Respondent No.1 – Commissioner, Food and Drugs Administration is not competent to suspend the Applicant. Secondly, the suspension is in view of registration of crime

invoking Rule 4(1)(c) of 'Rules of 1979', and therefore, deemed suspension from the date of arrest is *ex-facis* illegal since the Applicant was admittedly not in custody for more than 48 hours to apply theory of deemed suspension as contemplation under Rule 4(2) of 'Rules of 1979'.

5. The learned Presenting Officer though did not file Affidavit-in-reply sought to contend that the Government by order dated 22.05.2020 (Page No.24 of P.B.) has given *ex-post facto* sanction to the suspension order dated 12.03.2020, and therefore, suspension is legal and valid. She further canvassed that even subordinate authority is competent to suspend a Government servant. As regard suspension with retrospective effect, she admits that it is not a case of suspension under Rule 4(2) of 'Rules of 1979', but sought to support the impugned order of suspension in view of *ex-post facto* sanction by the Government.

6. 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 and answer is in emphatic negative.

7. 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]

8. 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 is subordinate or disciplinary authority or any other authority empowered in this behalf by the Government by special or general order.

9. Admittedly, the disciplinary authority and appointing authority of the Applicant is Government. This being the position, in absence of empowerment by special order in favour of Respondent No.1 – Commissioner, Food & Drugs Administration, he cannot be said competent to suspend the Applicant. Needless to mention where order is issued by authority not competent in law, it is totally bad in law and null and void.

10. Even assuming for a moment that Respondent No.1 - Commissioner, Food & Drugs Administration was competent to suspend the Applicant, in that event also, there could be no suspension with retrospective effect i.e. from the date of arrest since admittedly, the suspension is not under Rule 4(2) of ‘Rules of 1979’. True, the Applicant

was arrested on 12.03.2020, but he was released on Bail immediately on next day. It is for this reason, he was not suspended under Rule 4(2)(a) of 'Rules of 1979' of 'Rules of 1979' which empowers competent authority to suspend a Government servant with retrospective effect. There is material difference between deemed suspension contemplated under Rule 4(2) and suspension under Rule 4(1) of 'Rules of 1979'. The concept of deemed suspension from the date of arrest arises where a Government servant is detained in Police or Judicial custody for exceeding 48 hours or convicted and sentenced to term exceeding 48 hours. This being the position, the suspension order issued by Respondent No.1 – Commissioner, Food & Drugs Administration thereby suspending the Applicant with retrospective effect i.e. from 12.03.2020 is *ex-facia* illegal.

11. True, it appears that the Government by order dated 22.05.2020 accorded *ex-post facto* sanction to the suspension order. The learned P.O. could not point out any such provision permitting *ex-post facto* sanction to the suspension order. In the light of provisions contained in Rule 4(2) of 'Rules of 1979', the suspension has to be strictly in accordance with this provision and there being no such provision for *ex-post facto* sanction, the approval by the Government by letter dated 22.05.2020 will not render the suspension order legal and valid.

12. Apart, even presuming for the sake of argument that on account of approval by the Government, the suspension order is legal and valid, in that event also, basically suspension order being with retrospective effect by way of deemed suspension, which is not at all applicable in the present case, the approval by Government will not cure, legal defect which goes to the root of the matter.

13. The learned Advocate for the Applicant has referred to the decision rendered by the Tribunal in **O.A.No.247/2020 (Prmod B. Godambe Vs. Chief Executive Officer, Z.P, Raigad & Ors.) decided on 23.06.2020** where in similar situation, on the point of competency and

impermissible retrospective suspension, the Tribunal quashed and set aside the suspension order. The learned Advocate for the Applicant has pointed out that the said order was challenged by the Government before Hon'ble High Court but withdrew the **Writ Petition No.ASDB-LD-VC-190 of 2020 (State of Maharashtra through Addl. Chief Secretary, Rural Development Department Vs. Pramod Godambe) decided on 30<sup>th</sup> July, 2020** and thereby the order passed by this Tribunal has attained finality. The copy of order of Hon'ble High Court is also placed on record during the course of hearing.

14. Mrs. K.S. Gaikwad, learned P.O. made feeble attempt canvassing that as per proviso to Rule 4(1) of 'Rules of 1979', the Respondent No.1 submitted report to the Government (appointing authority) and in turn, the Government has accorded ex-post facto approval to the suspension order. In other words, according to her, 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 'Rules of 1979' that itself does not cure legal defect of competency of Respondent No.1. 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 Respondent No.1. This being the position *ex-facie* the order of suspension issued by Respondent No.1 is without jurisdiction and bad in law.

15. The totality of aforesaid discussion leads me to conclude that the impugned suspension order dated 12.03.2020 is totally bad in law in law and facts and liable to be quashed.

**ORDER**

- (A) The Original Application is allowed.
- (B) The suspension order dated 12.03.2020 is quashed and set aside.
- (C) The Applicant is held entitled to the consequential service benefits of the suspension period.
- (D) No order as to costs.

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

Mumbai

Date : 21.10.2021

Dictation taken by :

S.K. Wamanse.

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