

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.283 of 2020**

**District : PUNE**

Shri Shivkumar B. Kodgire, )  
Aged 52 years, working as Assistant )  
Commissioner (Food) (now under suspension) )  
R/at Meghvarsha C.H.S. B/604, Shell Petrol )  
Pump, Warje, Pune 52. )...**Applicant**

**Versus**

- 1) The Commissioner, Food & Drugs Admn.)  
(M.S.), Mumbai, having office at Survey )  
No.341, 2<sup>nd</sup> floor, Bandra-Kurla Complex,) )  
Bandra (E), Mumbai 400 051. )
  
- 2) The State of Maharashtra, though )  
Principal Secretary, Medical Education & )  
Durgs Department, O/at. Mantralaya, )  
Mumbai – 400 032. )...**Respondent**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant.  
Shri A.J. Chougule, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 08.04.2021

**J U D G M E N T**

1. The Applicant has challenged the suspension order dated 31.07.2019 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.
2. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
3. The Applicant was serving as Assistant Commissioner (Food), Satara. He was arrested by ACB allegedly accepting bribe of Rs.4,000/-. Consequently, Crime No.522/2019 was registered against him under the

provisions of Prevention of Corruption Act, 1988. He was in custody for more than 48 hours. As such, it was a case of deemed suspension as contemplated under Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal), Rules 1979 (hereinafter referred to as 'Rules 1979' for brevity). However, the Respondent No.1- Commissioner, Food and Drugs Administration by order dated 31.07.2019 suspended him invoking Rule 4(1) (c) of 'Rules 1979'. The Applicant made various representations for revocation of suspension and reinstatement in service but in vain. It is on this background, he has filed the present O.A. on 23.06.2020. Despite enough chances, the Respondents failed to file reply. Ultimately, the matter was taken up for hearing at the stage of admission without reply.

4. Learned P.O. has tendered the order issued by the Government dated 02.11.2020 whereby the Applicant's suspension has been revoked and he is reinstated at Usmanabad. On the basis of reinstatement order, all that learned P.O. submits that O.A. has become infructuous.

5. Per contra, learned Counsel for the Applicant has challenged the legality of the suspension order dated 31.07.2019 on the following grounds:-

(a) The Applicant's appointing authority is Government, and therefore, suspension by the Commissioner, Food and Drugs is without jurisdiction and unsustainable in law.

(b) In terms of contents of suspension order dated 31.07.2019, the Commissioner had invoked Rule 4(1)(c) of 'Rules 1979' but at the same time suspended the Applicant w.e.f. the date of arrest, and therefore, such suspension with retrospective effect is beyond the purview of Rule 4(1)(c) of 'Rules 1979'.

6. True, admittedly the Applicant's appointing authority is Government. As per Rule 4(1) of 'Rules 1979' the appointing authority or any other authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant in suspension. Whereas, in the present case, admittedly there is no such empowerment in favor of the Commissioner, Food and Drugs who has suspended the Applicant. However, it is explicit from the record that the Applicant was suspended because of his arrest by ACB on 26.04.2019 and he was detained in custody for more than 48 hour. He was released on bail on 30.07.2019. As such, here it is a case of deemed suspension as contemplated under Rule 4(2)(a) of 'Rules 1979' which is as follows:-

*4(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.*

7. Thus, it is by operation of law, the Applicant deemed to have been suspended from the date of his arrest once he was detained for the period exceeding 48 hours in police or judicial custody. Thus, it is by legal fiction, the Applicant was deemed to have been suspended.

8. True, in impugned suspension order, the Commissioner, Food and Drugs referred Rule 4(1)(c) of 'Rules 1979' instead of Rule 4(2)(a) of 'Rules 1979'. When the Applicant was detained in custody for more than 48 hours, the Commissioner, Food and Drugs ought to have taken note of Rule 4(2) of Rules 1979 and there was no question of invoking Rule 4(1) (c) of Rules 1979. It is nothing but ignorance of law on the part of the then Commissioner, Food and Drugs which has given handle to the Applicant to challenge the same. Be that as it may, needless to mention that quoting of wrong provision in order *ipso-facto* will not render the

order in question illegal if the matter is squarely covered by some other provisions of law. As such, even if there is a reference of invoking Rule 4(1)(c) and retrospective effect of suspension that does not matter. True, there cannot be retrospective suspension, if the suspension is under Rule 4(1)(c) of 'Rules 1979'. However, in present case, it was a case of deemed suspension by operation of law, and therefore, a reference of Rule 4(1)(c) is totally uncalled for. Rather, it is due to ignorance of law.

9. In view of above, the question comes where the facts clearly make out a case of deemed suspension under Rule 4(2)(a) of Rules 1979, whether impugned order dated 31.07.2019, which was passed in ignorance of law is of any avail or benefit to the Applicant so as to challenge the legality of suspension order on the point of competency.

10. In this behalf, it would be apposite to refer the judgment of Hon'ble Supreme Court in **(2003) 6 SCC 516 (Union of India Vs. Rajiv Kumar)** wherein the Hon'ble Supreme Court held that in case of deemed suspension even there is no necessity of issuance of order of suspension. The Hon'ble Supreme Court held that in case of deemed suspension it comes into force by operation of law and even passing of separate order is not required. As such, in view of the law laid down by the Hon'ble Supreme Court when by operation of law, the Applicant is deemed to have been suspended under Rule 4(2)(a) of Rules 1979, mention of wrong provision by Commissioner, Food and Drugs in suspension order dated 31.07.2019 as well as question of his competency does not survive. In other words, suspension order dated 31.07.2019, cannot be attacked on the ground of competency in view of the law laid down by the Hon'ble Supreme Court in **Rajiv Kumar's case**.

11. At this juncture, it would apposite to refer Paragraph Nos.14 and 15 from the decision in **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 lose 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.”*

12. 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.

13. 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."

14. 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.

15. In view of above, the criticism levelled by the learned Counsel for the Applicant on the competency of Respondent No.1 pales into insignificance in view of the decision of the Hon'ble Supreme Court in **Rajiv Kumar's case**. Once suspension is automatic due to legal fiction, it cannot be eclipsed or challenged on the ground of absence of competency of Respondent.

16. Learned Counsel for the Applicant further sought to contend that the suspension of the Applicant beyond 90 days was impermissible in view of the decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, and therefore, prayed for directions for grant of pay and allowances after expiration of period of 90 days.

17. True, the Applicant was under suspension beyond 90 days. However, admittedly he is reinstated in service by order dated 02.11.2020 subject to initiation of D.E. as well as criminal prosecution pending against him under the provisions of Prevention of Corruption Act, 1988. The orders regarding regularization or treatment to the suspension period are required to be passed by the competent authority in terms of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as Rules, 1981) at appropriate stage i.e. after final decision of Criminal Case or D.E. Therefore, the claim for pay and allowances immediately after expiration of 90 days period of suspension is premature.

18. The totality of the aforesaid discussion leads me to sum up that challenge to the suspension order on the ground of competency holds no water and Original Application deserves to be dismissed. Hence the following order:-

**ORDER**

Original Application is dismissed with no order as to costs.

**Sd/-**

**(A.P. KURHEKAR)**  
**MEMBER (J)**

Date : 08.04.2021

Place : Mumbai

Dictation taken by :

Vaishali Santosh Mane

Uploaded on :

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