

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.397 of 2019

Smt. Kiran Jayprakash Kuwar)
Occ : Block Education Officer, Panchayat)
Samiti, Nashik (Now under suspension),)
R/at. Anmol Nayantara, City-II, Nashik.) **...Applicant**

Versus

1) The State of Maharashtra,)
Through the Principal Secretary,)
School Education & Sports Department,)
O/at Mantralaya, Mumbai 32.) **...Respondents**

Shri A. V. Bandiwadekar, Advocate for the Applicant.

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

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

DATE : 15.07.2019.

ORDER

1. Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. In the present matter, the challenge is to the suspension order dated 28.03.2019 whereby the Applicant is kept under suspension invoking the jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

3. Shortly facts giving rise to the O.A. is as under:-

The Applicant is presently working as Block Education Officer, Panchayat Samiti, Nashik, Dist. Nashik. By order dated 28.03.2019, she was kept under suspension in contemplation of D.E. invoking the Rule 4(1)(a) of Maharashtra

Civil Services (Discipline & Appeal) Rules, 1979. The suspension is challenged on the ground that it was not at all warranted as the suspension order has been passed pertaining to alleged misconduct took place in the year 2011-2014. The Applicant had made representation but in vain. Ultimately, she has filed the Original Application contending that prolong suspension is unsustainable in law.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant has pointed that the Applicant is kept under suspension in contemplation of D.E. for alleged mis-conduct in the year 2011-2014 when the Applicant was serving at Panchayat Samiti, Chandwad. He submits that there was no propriety to keep her under suspension after the period of five years from the alleged misconduct that too when the Applicant has been already transferred from the place where the alleged misconduct had taken place. Learned Counsel further referred to the judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)** and also referred to the G.R. dated 14.11.2011 as well as recent G.R. dated 09.07.2019. He, therefore, submits that prolong suspension without taking review is illegal and the Applicant be reinstated in service.

5. Whereas, Shri A. J. Chougule, learned Presenting Officer for the Respondents sought to justify the impugned suspension order and in alternate submission urged that liberty be granted to the Respondents to take review of the suspension.

6. Needless to mention that the suspension should be ordered only when the circumstances are found to justify the same and the Disciplinary Authority should not suspend the Government servant lightly and they should exercise their discretion with utmost care. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against the 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 hamper the investigation of the case. As such, suspension should not be resorted to as a matter of rule. It has to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being avail of the post.

7. Now, in the present case, the perusal of suspension order reveals that the suspension has been ordered for alleged misconduct of the period from 2011-2014 when the Applicant was working as Block Education Officer at Panchayat Samiti, Chandwad, Dist. Nashik. The Applicant had completed her normal tenure at Chandwad and then transferred to various places. However, it is only in 2019 by impugned order dated 28.03.2019 she kept under suspension for the alleged misconduct taken place at Chandwad, Dist. Nashik. As such, there seems to be no proximity in the alleged misconduct and the suspension order. At any rate is quite belated.

8. Significant to note that though the Applicant has kept under suspension in contemplation of regular D.E. but till date admittedly, no charge sheet has been served upon the Applicant. This shows lethargy and inaction on the part of the Respondents.

9. Needless to mention that the adequacy or sufficiency of material before the disciplinary authority for suspension of a Government employee, normally cannot be interfered with by the Tribunal in its limited jurisdiction. However, at the same time, it is well settled that the Government servant cannot be subjected to prolong or continued suspension indefinitely. Indeed, in terms of various G.Rs, the Government had issued instructions to complete the D.E. in six months were the Government servant is kept under suspension.

10. The Applicant was suspended in contemplation of D.E. but admittedly till date no charge sheet has been issued against the Applicant though the period of

more than four months is over. As such, neither D.E. is progressing nor there is possibility of conclusion of criminal case within reasonable time. The representations made by the Applicant for revocation of suspension and reinstatement in service are not responded. It is on this background, the Applicant has approached this Tribunal challenging the suspension order.

11. In so far as the period of suspension is concerned, the issue is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, the Hon'ble Supreme Court in Para No.21 held as follows:-

“ 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.”

12. 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.

13. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days and where charge-sheet in criminal case or in D.E. has been initiated within 90 days, then the concerned authority is required to take decision about extension or revocation of suspension. The concerned authority needs to take objective decision as to whether the continuation of suspension is warranted in the facts of the case. However, in the present case, admittedly, no such exercise has been undertaken by the disciplinary authority or Review Committee.

14. Here reference of G.R. dated 14.10.2011 is necessary whereby the Government has issued specific instructions for periodical review of the Government servant who are suspended in contemplation of D.E. or consequent to registration criminal offence against them. As per clause 7(a) of G.R., where the Government servant is kept under suspension on account of contemplated D.E., the Disciplinary Authority needs to take review firstly after three months and secondly again after six months. It further provides that where the D.E. is not completed within six months then the Disciplinary Authority is under obligation to revoke the suspension and to reinstate the delinquent in service on non-executive post. Furthermore, the Government of Maharashtra has recently issued a G.R. dated 09.07.2019 consequent to the decision of the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's case*** (cited supra) accepting that where the charge-sheet is not issued within three months, the suspension cannot be continued. The Government, therefore, issued directions that Competent Authority should ensure that charge sheet is issued within 90 days from the date of suspension.

15. However, in the present case, admittedly no charge sheet has been issued to the Applicant though the period of near about four months is over. In fact, the Hon'ble Supreme Court held that currency of suspension should not extend beyond three months, if within this period the memorandum of charges/charge sheet is not served upon the delinquent officer/employee and if the memorandum of charges/charge sheet is served in that event, the Disciplinary Authority is under obligation to pass reasoned order for the extension of suspension.

16. However, in the present case, there is complete failure on the part of Respondents to adhere to the G.R. dated 14.10.2011, recent G.R. dated 09.07.2019 as well as the law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. The Respondents are, therefore, required to take review of the suspension and to pass further appropriate order.

17. In view of above, the Original Application can be disposed of with suitable directions. Hence the following order.

ORDER

- (a) The O.A. is allowed partly.
- (b) Respondents are directed to take review of the suspension of the Applicant in terms of G.R. dated 14.10.2011 as well as G.R. dated 09.07.2019 in the light of observation made by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case and shall pass appropriate order within three weeks from today.
- (c) The decision, as the case may be, be communicated to the Applicant within two weeks thereafter.
- (d) If the Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (f) No order as to costs.

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

