

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.503 OF 2020

DISTRICT : SOLAPUR

Shri Vijay Savala Pandhare.)
Age : 31 Yrs., Agricultural Officer,)
Worked in the office of Divisional Joint)
Director of Agriculture, Thane and residing)
at Pisewadi, Post : Velapur,)
Tal. Malshiras, District : Solapur.)...**Applicant**

Versus

The Commissioner.)
Agriculture, M.S, Pune.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent.

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

DATE : 06.12.2021

JUDGMENT

1. The Applicant who was serving as Taluka Agricultural Officer, Mahad, District Raigad has challenged his suspension order dated 23.01.2019 whereby he was suspended in contemplation of departmental enquiry (DE) invoking Rule 4(1)(a) Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline & Appeal Rules 1979' for brevity.

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

While Applicant was serving as Taluka Agricultural Officer, Mahad, District Raigad, he came to be suspended by order dated 23.01.2019 by Respondent – Commissioner, Agriculture, Pune on the allegation of misconduct in contemplation of DE invoking Rule 4(1)(a) of ‘Discipline & Appeal Rules 1979’. Later, Applicant’s suspension has been revoked by the Government in terms of order dated 6th October, 2020 and he was posted in the office of District Superintendent, Agricultural Officer, Gondia on non-executive post belatedly though in view of decision of Hon’ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** as well as G.R. dated 09.07.2019, he was required to be reinstated on completion of 90 days’ suspension since, admittedly, no charge-sheet in D.E. was served upon him. Later, D.E. was initiated by charge-sheet dated 01.12.2020s and it is still pending without any substantial progress.

3. Though Applicant’s suspension has been revoked and his reinstatement in service, the legality and validity of suspension order on the ground of competency is under challenge.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that the Applicant is Group-B Gazetted Government servant and appointing authority is Government. He further submits that in terms of Rule 4(1) of ‘Discipline & Appeal Rules 1979’, the suspension has to be by the appointing authority or authority superior to appointing authority or by disciplinary authority or any other authority empowered in this behalf by general or special order. He, therefore, submits that the Commissioner being not appointing authority nor there being any special authorization in this behalf, the impugned suspension order is *ex-facis* without jurisdiction and liable to be quashed.

5. Per contra, the learned P.O. sought to justify the suspension order *inter-alia* contending that the Government by letter dated 24.09.2019 gave *ex-post facto* approval to the suspension in view of serious

misconduct committed by the Applicant, and therefore, interference is not warranted.

6. In view of submissions advanced, the crux of the matter is whether Respondent – Commissioner, Agriculture, Pune is competent to suspend the Applicant and the impugned order is legal and sustainable in law.

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 as well as appointing authority for the Applicant is Government. Significant to note, the revocation of suspension order has been issued by the Government and not by the Commissioner, Agriculture, Pune, otherwise there was no reason for Government to pass order of revocation of suspension, if Commissioner, Agriculture was competent to suspend the Applicant. Be that as it may, admittedly, the Government is the appointing authority of the Applicant, as seen from his appointment order dated 29.04.2013. This being the position, in absence of empowerment by special order in favour of Commissioner, Agriculture in law, he cannot be said competent to suspend the Applicant.

10. In so far as *ex-post facto* sanction accorded by the Government on 24.09.2019 is concerned, the learned P.O. could not point out any such provision for *ex-post facto* sanction to the suspension order. In absence of any such provision under Rules, *ex-post facto* sanction by Government will not render suspension legal and valid in the teeth of specific provisions under Rule 4 of 'Discipline & Appeal Rules 1979'. The suspension has to be strictly in accordance with the provision by authority specified in Rule 4(1) of 'Discipline & Appeal Rules 1979'. The Commissioner being not falling in the authorities mentioned in Section 4(1) of 'Discipline & Appeal Rules 1979', the suspension order is *ex-facia* without jurisdiction. Suffice to say, in absence of empowerment to Commissioner by special or general order, the suspension order issued by him will have to be held without jurisdiction.

11. As regard prolong suspension, though Applicant was suspended by order dated 23.01.2019, admittedly, no review was taken. The charge-sheet was served in D.E. within the period of 90 days, and therefore, after expiration of 90 days, the Applicant was required to be reinstated in service in view of mandate of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. The charge-sheet was issued much belatedly on 01.12.2020. The Government of Maharashtra has issued G.R. dated 09.07.2019 *inter-alia* giving specific instructions of initiation of DE within 90 days and also acknowledged the legal position that if DE is not initiated within 90 days, there would be no other option to the authority except to revoke suspension. Despite this position, the Applicant was subjected to prolong suspension for the period of one year and nine months.

12. In **Ajay Kumar Choudhary's** case, the Hon'ble Supreme Court in Para Nos.11, 12 & 21 of the Judgment held 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.”*

13. The totality of aforesaid legal and factual aspects leads me to conclude that the suspension order is bad in law for want of jurisdiction/competency and liable to be quashed. At the time of revocation of suspension, the Applicant was posted at Gondia. Now, in view of decision of the Tribunal, he would be entitled continue at the same post i.e. Taluka Agricultural Officer, Mahad, District Raigad. However, in my considered opinion, it would be inappropriate to continue him at place where alleged misconduct has taken place. He needs to be posted at some other place. At the time of suspension, the Head Quarter of the Applicant was kept at Thane. The learned P.O. is directed to take instructions as to whether vacancies are available at Thane. After telephonic instructions received from Shri Nanaware, Joint Director (Estt.), Pune, he submits that the Applicant can be accommodated at Thane instead of continuing him at Mahad. Shri Bandiwadekar, learned Advocate for the Applicant concedes this position for posting of the Applicant at Thane. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The suspension order dated 23.01.2019 is quashed and set aside.
- (C) The Applicant be posted at Thane instead of Mahad and necessary orders to that effect be passed within two weeks.
- (D) The Applicant is entitled to the consequential service benefits of the suspension period.
- (E) The D.E. should be completed expeditiously latest within four months from today including passing of final order therein in accordance to Rules.
- (F) No order as to costs.

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

Mumbai

Date : 06.12.2021

Dictation taken by :

S.K. Wamanse.

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