

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.524 OF 2021**

**DISTRICT : SATARA**

Shri Sanjay S. Dhumal )  
Age : 44 Yrs., working as Block Education )  
Officer, Panchayat Samiti, Satara, )  
R/o. Survey No.5/2A, 1, Daundyachi )  
Patti, near Saibaba Mandir, Godoli, Satara.)...**Applicant**

**Versus**

The State of Maharashtra, through )  
Principal Secretary, School Education & )  
Sports Department, M. K. Marg, H. R. )  
Chowk, Mantralaya, Mumbai 400 032. )...**Respondent**

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

**Smt. Archana B. K., Presenting Officer for Respondent.**

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

**DATE : 13.12.2021.**

**JUDGMENT**

1. The Applicant has challenged the suspension order dated 20.07.2021 passed by the Government whereby he was suspended invoking Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (herein after referred to a 'Rules 1979') which *inter-alia* provides for deemed suspension where a Government servant is detained in police or judicial custody for a period exceeding 48 hours.

2. The Applicant is serving as Block Education Officer, Panchayat Samittee, Satara. Offence under Section 354, 506 of IPC was registered vide Crime No.317/2021 against the Applicant in Satara Police Station. He was arrested on 28.06.2021. It is on this background, the Applicant has been suspended by order dated 20.07.2021 *inter-alia* stating that the Applicant was under custody for more than 48 hours and it is a case of deemed suspension with retrospective effect from the date of arrest.

3. Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant has pointed out that the suspension order is illegal and is bad in law since admittedly Applicant was not in custody for more than 48 hours. He has pointed out that the Applicant was arrested on 28.06.2021 and was released by learned Magistrate on 29.06.2021. He, therefore, submits that impugned suspension order of deemed suspension with retrospective effect is totally bad in law and liable to be quashed.

4. Per contra, Smt. Archana B.K., learned Presenting Officer sought to justify the impugned order *inter-alia* contending that in view of serious allegations of outraging of modesty of woman, suspension was warranted. However, as regard legality of suspension order by way of deemed suspension and factual aspect of not being in custody for 48 hours or more than, she fairly states that the Applicant was released on bail on 29.06.2021 meaning thereby he was not in custody for 48 hours.

5. At this juncture, it would be apposite to reproduce Rule 4(2) (a) of 'Rules 1979' which is as under:-

*“Rule 4(2)(a) : with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charges or otherwise, for a period exceeding forty-eight hours.”*

Whereas suspension order dated 20.07.2021 reads as under :-

*“ज्याअर्थी, दाखल गुन्ह्याच्या अनुषंगाने त्यांना दि.२८.०६.२०२१ रोजी अटक करून मा. न्यायालयाने त्यांना १४ दिवस त्याचालयीन कोठडी रिमांड मंजूर केली.*

आणि ज्याअर्थी, श्री.धुमाळ यांना अटक केल्याच्या दिनांकापासून ४८ तासांपेक्षा जास्त कालावधी झाला आहे, त्याअर्थी आता शासन, महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम ४(२)(अ) अन्वये प्रदान करण्यात आलेल्या शक्तीचा वापर करून श्री.संजय धुमाळ, गटशिक्काधिकारी, पंचायत समिती, सातारा यांना अटकेच्या दिनांकापासून निलंबित करित आहे आणि पुढील आदेश होईपर्यंत ते निलंबित राहतील.’’

6. It is thus explicit that the Government invoked Rule 4(2)(a) of ‘Rule 1979’ presuming and believing that the Applicant is detained under custody for 48 hours. However, factually it is not so since admittedly he was released on bail from date i.e. on 29.06.2021. This being the position, the question of retrospective suspension by way of deemed suspension does not survive. In law, there is requirement of detention in custody for 48 hours or more as a condition precedent for the applicability of deemed suspension contemplated Rule 4(2)(a) of ‘Rules 1979’. Since the Applicant was admittedly not in custody for 48 hours, consequently the suspension order by way of deemed suspension with retrospective effect is totally bad in law.

7. Indeed, the Government ought to have taken remedial measures after noticing material illegality crept in the suspension order and should have issued appropriate modification order. However, no such exercise is undertaken though knowing well that deemed suspension is not permissible on the backdrop of factual aspect of not having in custody for 48 hours. Even any such attempt to revalidate the order of suspension with retrospective effect invoking Rule 4(1) of ‘Rules 1979’ could not have cured such legal defect. This issue has come up for consideration before this Tribunal in **O.A.No.13/2009(Dr. Vasant N. Shinde Vs State of Maharashtra)**, decided on 07.06.2010 wherein both the suspension orders declared illegal. Para No.5 of the judgment is material, which is as under:-

“5. After hearing the learned Counsel for the Applicant and Mr. Kadam, the learned Presenting Officer for the Respondents, it is explicitly clear that the original order of suspension dated 11.08.2005 was totally erroneous and unsustainable in law as the applicant was admittedly not in custody for a period over 48 hours. If that be so, there is no question of passing any order of deemed suspension on 11.08.2005. If that be so the very order cannot stand. The order dated 11.08.2005 cannot be sustained in

*law at all. Respondents cannot by a subsequent order dated 6<sup>th</sup> June 2009 try to revalidate an illegal and unsustainable order. However, the respondents are at liberty to pass a fresh order, if they deemed it fit and proper in accordance with law. Accordingly, the order dated 11.08.2005 as well as 6<sup>th</sup> June, 2009 stand quashed and set aside with the aforesaid liberty to the respondents. Original Application stands disposed of accordingly.”*

8. The judgment passed by this Tribunal as above was challenged in **Writ Petition No.2815 of 2011 (The State of Maharashtra & Ors. Vs Dr. V.N. Shinde)** before the Hon’ble High Court wherein the order passed by this Tribunal was upheld. Learned P.O. could not point out any rule or decision to the contrary as rightly pointed out by learned Counsel for the Applicant.

9. In view of the aforesaid legal situation inevitable conclusion is that suspension order dated 20.07.2021 is *non-est* and totally bad in law.

10. The totality of the aforesaid discussion leads me to sum up that impugned suspension order dated 20.07.2021 being illegal and bad in law deserves to be quashed. Hence the following order:-

**ORDER**

- (A) Original Application is allowed.
- (B) Suspension order dated 20.07.2021 is quashed and set aside.
- (C) Applicant be reposted within two weeks from today.
- (D) No order as to costs.

Sd/-

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

Place : Mumbai  
Date : 13.12.2021  
Dictation taken by : VSM