

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 755 /2016

Devidas son of Shankar Bachute,
Aged about 57 years, Occ. Service as Block Development Officer,
Panchayat Samiti, Washim.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Rural Development and
Water Conservation Department,
Mantralaya, Mumbai-32.
- 2) The Collector, Akola.
- 3) The Chief Executive Officer,
Zilla Parishad, Akola.
- 4) Chief Executive Officer,
Zilla Parishad, Washim.

Respondents

Shri A.D. Dangore, Advocate for the applicant.

Shri S. A. Sainis, Id. P.O. for respondent nos. 1 to 2.

Shri Kiran Malokar, Advocate for respondent no.3.

Shri A.P. Tathod, Advocate for respondent no.4.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 13th day of April,2017)

Heard Shri A.D. Dangore, Id. counsel for the applicant, Shri S.A. Sainis, Id. P.O. for R-1 & 2, Shri Malokar, Id. counsel for R-3 and Shri A.P. Tathod, Id. counsel for R-4.

2. The applicant has challenged the impugned order of his suspension issued by the Government dated 11/11/2016 (A-9,P-49). The applicant was the Block Development Officer (BDO), Panchayat Samiti, Akola and was working at Borgaon Manju, District Akola. He has been kept under suspension vide impugned order since a Crime no.111/2016 at Police Station, Borgaon Manju was registered against him for the offences under punishable under Sections 467,468,471,477 (a),409 & 420 of the IPC. The applicant was under arrest from 16/6/2016 till 18/6/2016 for 49 hours. Since he was under custody for more than 48 hours, the applicant was kept under suspension.

3. The learned counsel for the applicant submits that the suspension is not legal since the applicant was not under custody for 48 hours.

4. The Hon'ble Chairman vide order dated 30/1/2017 has observed as under :-

“(2) It is necessary to know as to how 48 hours’ police custody is reckoned.

(3) Some responsible officer from the office of Secretary, Rural Development & Water Conservation Department not below the rank of Dy. Secretary should file affidavit duly approved by Secretary to explain as to how 49 hours' duration of custody suffered by applicant is calculated, and the type of custody i.e. police custody and judicial custody etc. is contemplated for applying the provision of deemed suspension."

5. In view of the aforesaid directions, the respondent no.1 filed an affidavit on 27/2/2017. It is stated that the applicant was arrested on 16/6/2016 at 16.01 hours and was produced before the Hon'ble Court of Judicial Magistrate First Class (JMFC), Akola who was pleased to remand the applicant in police custody till 18/6/2016 and thereafter the applicant was remanded to Magisterial custody and was granted Bail at 17 hours on 18/6/2016. The applicant was therefore in custody for 49 hours. The learned counsel for the applicant has invited my attention to the order passed by the Id. JMFC in respect of remand of the applicant. The copy of the said order is at P.B. Page nos. 40 & 41. From the opening Para of the order itself it seems that the applicant was brought before the Magistrate firstly at 4.45 p.m. on 16/6/2016 and then at 5.45 p.m. and was remanded to police custody till 18/6/2016. Thereafter on 18/6/2016 the applicant was sent in MCR and there is no dispute that he was released on Bail

at 5.00 p.m. on that day. Thus the applicant was arrested and was initially brought before the Magistrate at 4.45 p.m. on 16/6/2016. He was released on 18/6/2016 at 5.00 p.m. Thus technically it can be said that the applicant was in custody for more than 48 hours.

6. As per the Section 4 (2) (a) of the Maharashtra Civil Services (Discipline & Appeal) Rules,1979, a Government servant shall be deemed to have placed under suspension by an order of Appointing Authority w.e.f. 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 forty-eight hours.

7. From the aforesaid deeming provision it will be clear that even if no order of suspension is passed still the applicant can be presumed to be under suspension since he was in police custody for more than 48 hours. Even otherwise the fact that a serious crime was registered against the applicant coupled with the fact that the applicant was arrested and thereafter remanded to PCR to police custody and subsequently to magisterial custody itself is sufficient to keep the applicant under suspension. I therefore do not find any illegality in suspension order.

8. The learned counsel for the applicant has invited my attention to the representation made by him dated 3/2/2017 to the Secretary of Rural Development Department. The applicant has also

placed reliance on the Judgement reported in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Ano., reported in (2015) 7 SCC,291.** The Hon'ble Apex Court in the said case has observed that the currency of suspension order should not extend beyond three months if within this period the memorandum of charge/ charge-sheet is not served on the delinquent officer/ employee. If the memorandum of charge / charge-sheet is served, a reasoned order must be passed for extension of suspension. The Hon'ble Apex Court has given guidelines as regards continuation of suspension order and observed that the suspension, specially preceding formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. Practice of protracted period of suspension and repeated renewal thereof is strongly deprecated. The learned counsel for the applicant submits that the applicant has been arrested on 16/6/2016 and till today the charge sheet is not filed against the applicant. He submits that the ground of suspension is no more in existence.

9. It is admitted fact that the Govt. of Maharashtra has issued number of circulars as regards periodical revocation of suspension cases of the employees. The respondent authorities may consider the representation filed by the applicant in view of such guidelines and circulars issued by the Government from time to time

and also considering the guidelines given in the Judgment of Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Ano., (cited supra).**

10. In view thereof I pass the following order :-

ORDER

(i) The O.A. is partly allowed. The applicant's request to quash and set aside the suspension order dated 11/11/2016 issued by respondent no.1 is rejected. The respondent no.1 is however directed to consider the representation filed by the applicant for revocation of his suspension dated 3/2/2017 on its own merit and as per the guidelines in the various Govt. circulars and particularly in view of the observations made by the Apex Court in the Judgment in **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Ano., (2015) 7 SCC,291.** The decision in this regard shall be taken within eight weeks from the date of this order and shall be communicated to the applicant in writing. No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.