

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.821 of 2018

DISTRICT : NASHIK

Dr. Shivaji S. Lahade)
R/at Prayag Niwas, Sneh Nagar Bus Stop,)
Dindori Road, Mahsrul, Nashik – 422 003.)... **Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Public Health Department,)
M.S. Mantralaya, Mumbai 32.)
2. The Deputy Director.)
Health Services, Nashik Division,)
Nashik.)
3. The District Civil Surgeon.)
Nashik, District : Nashik.)...**Respondents**

Shri A.V. Sakolkar, Advocate for Applicant.

Smt. N. G. Gohad, Presenting Officer for the Respondents.

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

DATE : 08.04.2019

JUDGMENT

1. Heard Shri A.V. Sakolkar, learned Advocate for the Applicant and Smt. N.G. Gohad, learned Presenting Officer for the Respondents.
2. In the present Original Application, the challenge is to the suspension order dated 09.08.2018 which was served upon the Applicant on 31.08.2018 whereby the Applicant was kept under suspension in contemplation of Departmental Enquiry (D.E.) and for retiral benefits.
3. The Applicant stands retired on 30.09.2018. As no D.E. was initiated and retiral benefits were withheld, the Applicant has approached this Tribunal by filing this O.A.
4. When the matter came before the Tribunal for admission, the Hon'ble Chairman by way of interim relief stayed the suspension order with the observation that the suspension prima-facie appeared to be ordered for show of the power. The Hon'ble Chairman further noted that crime was registered on 16.04.2017 but the Applicant has been suspended after more than one year without showing what emergency or exigency cropped up for suspending the Applicant on the verge of retirement.
5. Learned P.O. for the Respondents submitted that Criminal Case is pending against the Applicant and, therefore, the regular pension and gratuity cannot be granted in view of the Rule 130(1)(c) of the Maharashtra Civil Services (Pension) Rules, 1982. She has further pointed out that the P.P.F, G.I.S. and Leave Encashment has been paid.
6. Now, the question comes whether suspension order is legal and the Applicant is entitled to the gratuity and regular pension.

7. Though the Applicant has been kept under suspension in contemplation of D.E. as seen from the suspension order dated 09.08.2018, admittedly, till date charge sheet in D.E. is not issued. As such, till date though the period of more than six months is over, no steps are taken to initiate the D.E. The Respondent No.1 seems to be not keen on holding D.E. against the Applicant which ought to have been initiated punctually and could have been completed within the period of six months. This being the position at present there is no initiation of D.E. against the Applicant.

8. In so far as legality of suspension order dated 09.08.2018 is concerned, as stated above, the Hon'ble Chairman in order dated 25th September, 2018 granted interim stay to the order of suspension with the specific observation that no case was made out to suspend the Applicant to suspend the Applicant, who was on the verge of retirement. The FIR of Crime No.1245/2017 was registered on 16.04.2017 and investigation was completed as well as charge-sheet was made ready on 05.06.2017. The Investigation Officer has approached the Government by letter dated 16th February, 2018 for sanction for prosecution. It is in this context, now material question is whether the suspension order is legal and justified.

9. At this juncture, it would be apposite to note the instructions laid down the principles to be borne in mind while placing the Government servant under suspension, which are as follows :

"2.1 When a Government Servant may be suspended.- Public interest should be the guiding factor in deciding to place a Government servant under suspension. The Disciplinary Authorities should not suspend a Government servant lightly and without sufficient justification. They should exercise their discretion with utmost care.

Suspension should be ordered only when the circumstances are found to justify it. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against a 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 embarrassment or to hamper the investigation of the case. In other cases, it will suffice if steps are taken to transfer the Government servant concerned to another place to ensure that he has no opportunity to interfere with witnesses or to tamper with evidence against him.

(I) By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory :-

(i) Cases where continuance in office of a Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) where the continuance in office of a Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;

(iii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i) and (ii) above) such as, for instance, where a scandal exists and it is necessary to place the Government servant under suspension to demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established.”

10. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon’ble Bombay High Court in **1987 (3) Bom.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :

“Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned.”

11. Similarly, reference of the Judgment of Hon’ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)** is necessary. It would be apposite to reproduce Para No.9, which is as follows :

“9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted to as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post.”

12. Thus, it is no more *res-integra* that suspension cannot be resorted to as a routine matter and the disciplinary authority is obliged to consider as to whether the suspension is really required in view of the guidelines given in Departmental manual as well as various judicial pronouncements. Material to note that the Applicant was due to retire on 30.09.2018. Whereas, the instance giving rise to the criminal prosecution was of 2017. This being the

position, it was not the case where the D.E. or criminal prosecution could not be completed without keeping the Applicant under suspension. In fact, when the Applicant was due to retire within a month, no emergent situation cropped up to suspend him at the verge of retirement. Suffice to say, the decision of suspending the Applicant is arbitrary and not sustainable in law. Therefore, such suspension order, which is of no utility, does not stand in law and deserves to be quashed.

13. As regard claim of gratuity and regular pension, as pointed out by the learned P.O, a criminal case is pending against the Applicant in the court of law. Therefore, in view of Rule 130(1)(c) of Maharashtra Civil Services (Pension) rules, 1982, the Applicant is not entitled to the gratuity and regular pension until the conclusion of criminal prosecution. Therefore, the relief claimed in this behalf is premature.

14. The necessary corollary of the aforesaid discussion leads me to sum-up that the O.A. deserves to be allowed partly. Hence, the following order.

ORDER

- (a) The O.A. is allowed partly.
- (b) The suspension order dated 09.08.2018 is declared illegal and unsustainable in law.
- (c) The claim of Applicant for gratuity and regular pension is premature and he is not entitled to the same until the conclusion of criminal prosecution.

- (d) The Applicant is entitled to provisional pension and Respondents shall pay the same regularly.
- (e) No order as to costs.

Sd/-

(A. P. KURHEKAR)
MEMBER-J

Place : Mumbai

Date : 08.04.2019

Dictation taken by : S.K. Wamanse

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