

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.936 OF 2018

DISTRICT : SATARA

Smt. Vandana Karansing Valvi.)
Age : 42 Yrs., Working as Block Education)
Officer, [Now under suspension], Panchayat)
Samiti, Mahabaleshwar, District : Satara and)
Residing at 368/B, Sadar Bazar, Satara.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary, School)
Education and Sports Department, Mantralaya,)
Mumbai – 400 032.) ...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent.

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

DATE : 12.02.2019

JUDGMENT

1. The Applicant has challenged the suspension orders dated 30.07.2018 as well as 27.11.2018 invoking the jurisdiction of This Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was working as Block Education Officer, Panchayat Samiti, Mahabaleshwar, District Satara. By order dated 30th July, 2018, she was kept under suspension on the ground that she was arrested by Anti-Corruption Bureau (ACB) on 11.05.2018 in pursuance of offence registered against her in Satara Police Station quoting Rule 4(1)(c) of Maharashtra Civil Services ((Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules 1979'). As such, as per impugned order dated 30.07.2018, it was deemed suspension on account of having remained in Police custody for more than 48 hours and suspension was w.e.f.11.05.2018 i.e. the date of arrest. The Applicant claims to be innocent and contends that she has no concern whatsoever with the offence registered against Smt. Gurav by ACB and she has been implicated falsely. At the time of alleged incident, she was on duty at Sindhi Lamaz Centre which is far away from Mahabaleshwar. The Applicant has challenged the suspension order mainly on the ground that the impugned order of deemed suspension has been passed though she was not in police custody for more than 48 hours. As such, the deemed suspension with retrospective effect is illegal and not sustainable in law. She further contends that neither charge-sheet is filed in the Criminal Case nor D.E. is initiated by the Department. Therefore, prolong suspension is illegal in view of Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

During the pendency of this O.A, the Respondent had issued Corrigendum Order dated 27th November, 2018 whereby it is stated that the suspension of the Applicant will be from 30.07.2018 i.e. from the date of first order of suspension. In view of this development, the Applicant has amended the O.A. and also challenged the Corrigendum Order dated 27.11.2018. In this respect, the Applicant contends that there cannot be retrospective suspension w.e.f. 30.07.2018 by passing of the impugned order dated 27.11.2018. The suspension

order dated 30.07.2018 being illegal, such illegality cannot be legalized by passing another order on 27.11.2018. Therefore, both the orders are illegal and unsustainable.

The Applicant further contends that the suspension is related to the service matters. Therefore, the subject of suspension ought to have been placed before the Civil Services Board for the approval and it being not done, the suspension is illegal. Despite representation dated 14th August, 2018, the Respondent did not take any action for revocation of suspension and reinstatement in service. On these pleadings, the Applicant prayed to set aside the impugned orders.

3. The Respondent resisted the application by filing Affidavit-in-reply thereby *inter-alia* denying that the suspension orders are illegal or suffers from any vice. The Respondent sought to contend that the first suspension order dated 30.07.2018 has been corrected by issuing another order dated 27.11.2018 thereby the suspension has been given effect from 30.07.2018 and not from the date of arrest. As such, in view of Corrigendum dated 27.11.2018, the challenge to the suspension is without any substance. As regard the complicity of the Applicant in crime registered by ACB is concerned, the Respondent contends that the Applicant's complicity was enough to register the offence against her. The Respondent contends that there was no necessity for approval to the suspension by Civil Services Board. The Respondent further contends that the Applicant has not availed the remedy of appeal against suspension, and therefore, he cannot approach the Tribunal without exhausting alternative remedies. As regard review of suspension, the Respondent contends that it will be considered in terms of G.Rs. dated 14.10.2011 and 31.01.2015 in due course. With these pleadings, the Respondent prayed to dismiss the application.

4. Shri Bandiwadekar, learned Advocate for the Applicant vehemently urged that, admittedly, the Applicant was not in Police Custody for more than 48 hours and therefore, deemed suspension order dated 30.07.2018 from the date of arrest is obviously illegal and *non-est*. As regard Corrigendum order dated 27.11.2018, he has pointed out that again the Respondent has committed illegality by giving effect to the suspension from retrospective effect i.e. from 03.07.2018 and not from the date of order i.e. 27.11.2018. According to him, even if Respondent wants to correct the error at the most suspension should have been from the date of passing of Corrigendum order dated 27.11.2018 and not from 30.07.2018. As such, there being retrospective effect from 30.07.2018, the Corrigendum order of suspension dated 27.11.2018 is also illegal and not sustainable in law. He further canvassed that there is no approval of Civil Services Board to the suspension order and on this point also, the suspension is illegal. He also placed reliance on the Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (cited supra) wherein the Hon'ble Supreme Court has mandated that the suspension should not exceed 90 days. He has pointed out that, neither charge-sheet is filed nor D.E. is progressing, and therefore, the suspension is illegal.

5. Per contra, Smt. K.S. Gaikwad, learned P.O. submitted that the mistake occurred in first suspension order dated 30.07.2018 has been rectified by issuing Corrigendum order dated 27.11.2018, and therefore, the challenge to the suspension orders is without any substance. She further canvassed that, without availing remedy of appeal or representation, the present application is not tenable and liable to be dismissed.

6. Needless to mention that the adequacy of material before the authority at the time of taking decision of suspension, normally does not fall within the scope and ambit of judicial review. However, it is well settled that the suspension should be for a short duration and if it is continued for a longer period, then it

must be objectively demonstrated that the continuation for a longer period is warranted in the facts and circumstances of the case. In the present case, the Applicant's contention that at the time of registration of offence by ACB, she was far away from the place of incident and had no complicity in the crime cannot be gone into by this Tribunal, and therefore, it would not be appropriate to make any comment in this behalf.

7. Regarding non-availing alternative remedy prior to approaching this Tribunal as contemplated under Section 20 of the Administrative Tribunals Act, 1985, here it is significant to note that the Applicant had already filed representation on 14.08.2018 (Page No.23 of P.B.) which was not responded, and therefore, having no other option, she had filed this O.A. Therefore, the objection raised in this behalf holds no water. In this behalf, it is pertinent to note that even after representation of the Applicant dated 14.08.2018, the Respondent on the contrary issued Corrigendum order dated 27.11.2018 impliedly thereby rejecting the representation of the Applicant. Furthermore, there is no express bar for directly filing the application before Tribunal and what is contemplated in Section 20 is that the Tribunal shall not 'ordinarily' admit an application unless the Applicant had availed of all other remedies available to him under the relevant Service Rules as to redressal of the grievances. In the present case, the first suspension order dated 23.07.2018 itself is illegal, as admittedly, the Applicant was not in custody for more than 48 hours. As such, this illegality goes to the root of the matter. Furthermore, as stated above, despite the representation of the Applicant dated 14.08.2018, the Respondent issued Corrigendum order dated 27.11.2018, and therefore, the Applicant is constrained to approach this Tribunal. Suffice to say, in the facts and circumstances of the present case, it cannot be said that the Applicant has not availed other remedies available to her.

8. Now turning to the contention raised by the learned Advocate for the Applicant that the suspension issued ought to have been placed before Civil Services Board for waiting, I find no substance therein.

9. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on ***AIR 1964 SC 786 (R.P. Kapoor Vs. Union of India & Anr.)*** wherein the Hon'ble Supreme Court held that the words "disciplinary matters" in Article 314 of the Constitution must be given their widest meaning and it includes suspension. The learned Advocate for the Applicant further referred to the definition of "service matters" as defined in Section 3(q) of Administrative Tribunals Act, 1985. According to this definition, service matters include disciplinary matters. As such, according to him, the suspension must have been vetted by Civil Services Board. I find myself unable to agree with this submission.

10. True, the suspension relates to service matters, but that itself cannot be interpreted to lay down a law that it also needs to be placed before the CSB. The suspension falls exclusively within the domain of disciplinary authority and often requires immediate implementation of the orders of suspension. Needless to mention that the suspension order is a preliminary nature and prelude to an enquiry. The exigency may warrant the suspension of an employee with immediate effect depending upon the facts and circumstances of the matter. Therefore, the very object of issuing suspension order would be defeated if it is delayed for placing the same before the CSB. The learned Advocate for the Applicant could not point out any such specific provision in this behalf, which mandates the placing of suspension matter before the CSB for its approval or vetting. I, therefore, see no substance in the submission advanced in this behalf by the learned Advocate for the Applicant.

11. Now, the material question comes whether the impugned suspension orders dated 30.07.2018 and 27.11.2018 are legal and valid. Admittedly, the

Applicant was not in custody for more than 48 hours, and therefore, there could be no deemed suspension from the date of arrest. Therefore, the first impugned suspension order dated 30.07.2018 is obviously illegal and non-est. Realizing illegality crept in order dated 30.07.2018, the Respondent had issued another corrected suspension order dated 27.11.2018. It is material to note that, as per the contents of the order dated 27.11.2018, the Government in supersession of the earlier order issued the said order. However, it is pertinent to note that, in this second suspension order also, the Applicant is shown suspended under Rule 4(1)(c) of 'Rules 1979' w.e.f. 30.07.2018. Thus, again by order dated 27.11.2018, the suspension is effected with retrospective operation i.e. from 30.07.2018, which is not in consonance with law.

12. In law, the deemed suspension is contemplated only where the situation is covered under Rule 4(2)(a) and (b) of 'Rules 1979'. In the present case, the question of applicability of Rule 4(2) does not arise. Suffice to say, the suspension order dated 30.07.2018 suffers from vital legal defect in law and it is *non-est*. Thereafter, in supersession of first order, the Respondent by order dated 27.11.2018 passed another order with retrospective effect of suspension from 30.07.2018. In other words, it has given retrospective effect from the date of first order. This being the position, the suspension order dated 27.11.2018 is also not sustainable in law. The Respondent in its attempt to cure illegality crept in first order tried to rectify the mistake, but again landed in illegality because of giving retrospective effect.

13. The aforesaid issue also 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 in similar situation, both the suspension orders declared illegal. Para No.5 of the Judgment is material, which is as follows :

“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 6th 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 6th June, 2009 stand quashed and set aside with the aforesaid liberty to the respondents. Original Application stands disposed of accordingly.”

14. 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, as seen from the copy of Judgment which is at Page No.51 of Paper Book.

15. As such, there is no escape from the conclusion that the suspension orders dated 30.07.2018 as well as 27.11.2018 are not sustainable in law and liable to be set aside.

16. Lastly, the question comes about the issue of prolong suspension of the Applicant and the effect of the Judgment of Hon’ble Supreme Court in ***Ajay Kumar Choudhary’s*** case (cited supra). Admittedly, in criminal case, neither charge-sheet is filed nor D.E. is initiated.

17. The legal position in respect of prolong suspension is no more *res-integra* in view of Judgment of Hon’ble Supreme Court in ***Ajay Kumar Choudhary’s*** case (cited supra). It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is 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.”*

18. 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.

19. The contention raised by the learned P.O. that, since the period of one year is not completed from the date of suspension, the matter is not ripe for placing the same before Review Committee in terms of G.Rs. dated 14.10.2011 and 31.01.2015, and therefore, the suspension cannot be said illegal, is nothing but fallacious and misconceived in the teeth of ratio laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case. Needless to mention that, such G.R. stipulating the period of one year for placing the same before Review Committee cannot override the law laid down by Hon'ble Supreme Court. In fact, now, it is advisable that the Respondent should rethink about the policy of periodical review about the suspension in view of the mandate of Hon'ble Supreme Court that the suspension should not exceed beyond 90 days.

20. Be that as it may, now turning to the facts of present case, admittedly, the period of more than 90 days is over from the date of suspension, and therefore, there is no escape from the conclusion that such suspension is unsustainable in law.

21. The necessary corollary of the aforesaid discussion leads me to sum-up that the suspension orders dated 30.07.2018 and 27.11.2018 are not sustainable in law and deserve to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The suspension orders dated 30.07.2018 and 27.11.2018 are hereby quashed and set aside.
- (C) The Applicant be reposted within two weeks from today.
- (D) The Respondent is at liberty to repost her on any suitable post or on non-executive post as it thinks appropriate.
- (E) No order as to costs.

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

Mumbai

Date : 12.02.2019

Dictation taken by :

S.K. Wamanse.

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