

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.946, 947 & 948 OF 2019

DISTRICT : PUNE

ORIGINAL APPLCIATION NO.946 OF 2019

Shri Sahebrao Fakira Alkunte)
Age 53 years, Social Welfare Inspector,)
[now under suspension],)
R/o. Sr. No.66, Satavnagar, Handewadi)
Road, Near Sai Malhar Floor Mill,)
Hadapsar Pune 411 028.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary, Social Welfare)
Dept, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner, Social Welfare,)
Maharashtra State, Pune.)...**Respondents**

ORIGINAL APPLCIATION NO.947 OF 2019

Shri Shrishail Sidramappa Kalshetti)
Age 55 years, Social Welfare Inspector,)
[now under suspension],)
R/at 171, Pratik Nagar, Solapur)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary, Social Welfare)
Dept, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner, Social Welfare,)
Maharashtra State, Pune.)...**Respondents**

ORIGINAL APPLCIATION NO.948 OF 2019

Shri Sheetal Ashok Kandalgaonkar)
 Age 47 years, Social Welfare Inspector,)
 [now under suspension],)
 R/at 385, North Kasapa, Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
 Through Secretary, Social Welfare)
 Dept, Mantralaya,)
 Mumbai – 400 032.)
2. The Commissioner, Social Welfare,)
 Maharashtra State, Pune.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicants.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.10.2019

JUDGMENT

1. In all these Original Applications, the Applicants have challenged their suspension order dated 25.04.2017 on the ground that they are subjected to prolong suspension without taking review of the suspension and reinstatement in service.

Shortly stated facts giving rise to these Applications are as follows:-

2. While Applicants were serving in the office of Assistant Commissioner, Social Welfare Department, Solapur offence u/s 408, 409, 420, 467, 468, 471 and 34 of IPC r/w 31(c) of Prevention of Corruption Act and u/s 3(2)(5) and 3(2)(7) of The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was registered against him. Simultaneously, D.E. was initiated against the Applicants except

Applicant in O.A.No.947/2019. In Criminal Case, though sanction for prosecution is granted, no charge sheet is filed in court of law. As such, the Applicants are subjected to prolong suspension for more than two years and, therefore, they have filed these Original Applications challenging the suspension.

3. Smt. Punam Mahajan, learned Counsel for the Applicants submits that prolong suspension beyond 90 days is unsustainable in law in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. She further pointed out that two officials of Group-A were also suspended along with the Applicants, they were reinstated in service but the Applicants who are Group-III employees are subjected to discrimination by keeping them in prolong suspension. She further pointed out that the Government/Competent Authority failed to take review of the suspension as contemplated in G.R. dated 14.10.2011, 31.01.2015 and 09.07.2019. She, therefore, prayed to quash the suspension.

4. Per contra, Ms S. P. Manchelar, learned Chief Presenting Officer submits that D.E. is already initiated and it is in process. She sought to justify the suspension contending that in view of the registration of serious offences, the suspension was inevitable. As regard discrimination, she submits that two officials were belonging to Group-A, and therefore, the Review Committee at the level of the Government has taken their review and reinstated them in service. Whereas, the Applicants being Class-III employees, their review needs to be taken at divisional level. She submits that Review Committee will also take review of the Applicants, soon.

5. Normally, an adequacy of material before the authority at the time of taking decision in suspension does not fall within the scope and ambit of judicial review. Needless to mention that the question as to whether the facts of the case warrants suspension of a Government

servant in contemplation of D.E. is a matter of exclusive domain of the employer and the decision has to be based on the objective satisfaction based on the record. Therefore, the question as to whether the suspension was justified cannot be gone into present set of facts. However, in the present set of facts, the important question is whether the suspension can be continued indefinitely without bothering to take follow-up action as mandated by G.R. dated 14th October, 2011 as well as the law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

6. 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.”*

7. 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.

8. At this juncture, it would be material to note that the Government had issued instructions from time to time by G.R. dated 14.10.2011, 31.01.2015 and 09.07.2019 to take review of the suspension of the government servant so that they are not subjected to prolong suspension. As per, G.R. dated 14.10.2011, the Review Committee was under obligation to take periodical review after every three months. Clause 4(a) of G.R. states that where the government servant is suspended in view of registration of serious crime against

him and the Criminal Case is not decided within two years from the date of filing of charge sheet then the Review Committee may recommend for reinstatement of the government servant on non-executive post. Whereas, as per Clause 4(b) of G.R., where the period of two years from filing of charge sheet is not over or where no charge sheet is filed, in that event also, the Review Committee can make recommendation for revocation of suspension and to reinstate the government servant having regard to the guidelines mentioned in G.R.

9. Later, by G.R. dated 31.01.2015, the Government again issued clarification which inter-alia empowers the Review Committee to revoke the suspension where D.E. is already initiated, the period of one year of suspension is over and sanction for prosecution is already granted.

10. Later, again recently, the Government of Maharashtra had issued G.R. dated 09.07.2019 thereby acknowledging the mandate laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case that suspension beyond 90 days would be impermissible and instructions are issued to all departments to ensure initiation of D.E. within 90 days.

11. Despite the aforesaid Government Resolutions, the Respondents have failed to place the matter before the Review Committee and the Applicants are subjected to prolong suspension of more than two years.

12. What emerges from the record that the Applicants are subjected to prolong suspension for more than two years. Significantly, two co-delinquents belonging to Group-A were reinstated in service but as regard the Applicants, the matter is not placed before appropriate Review Committee. When review of officials belonging to Group-A was taken, it was incumbent on the part of department to place the matter before appropriate Review Committee to take decision about the

Applicants but it is not done and obviously the Applicants are subjected to discrimination. In view of the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, suspension is impermissible. The Respondents are therefore, in obligation to take review of the suspension of the Applicants and to pass appropriate orders. They cannot be subjected to prolong suspension waiting for the decision of Criminal Case wherein charge sheet itself is not filed though the suspension for prosecution is accorded. In so far as D.E. is concerned, only the Enquiry Officer is appointed but it is not progressing.

13. For the aforesaid reasons, in my considered opinion, O.A. can be disposed of by giving suitable directions to the Respondents to take review on the suspension of the Applicants within stipulated period. Hence, the following order.

ORDER

- (A) The Original Applications are allowed partly.
- (B) The Respondents are directed to place the matter before Review Committee to take decision about continuation or revocation of suspension of the Applicants and to pass appropriate order within six weeks from today.
- (C) The decision, as the case may be, shall be communicated to the Applicants within two weeks thereafter.
- (D) If the Applicants felt aggrieved by the decision, they may avail legal remedy, in accordance to law.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 04.10.2019
Dictation taken by : VSM

