IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.998 OF 2018

DISTRICT : THANE

Shri Vasudeo Bisan Pawar.)
Age : 53 Yrs., Occu.: Naib Tahasildar)
[now under suspension] with last posting as)
Supply Inspecting Officer, District Thane in the)
Office of Tahasildar, Bhiwandi and residing at)
Royace Galaxy, Flat No.504, Gandhari, Near)
Agarwal College, Tal.: Kalyan, District : Thane.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Revenue Department, Mantralaya,)
Mumbai - 400 032.)

2. The Divisional Commissioner.)
Konkan Division, Konkan Bhawan,)
1st Floor, Navi Mumbai 400 614.)

3. The District Collector, Thane.)**…Respondents**

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

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

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

DATE : 07.01.2019

JUDGMENT

1. In this Original Application, the Applicant is seeking direction to the Respondents 2 and 3 to implement the order passed by Respondent No.1 dated 03.07.2018 whereby, the suspension of the Applicant has been revoked and reinstated as Resident Naib Tahasildar, Thane by invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.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 under :

"The Applicant was working as Supply Inspecting Officer, Tahasildar Office, Bhiwandi, District Thane. On 08.06.2017, in a trap laid by Anti-Corruption Bureau, he along with co-accused were caught red-handed while accepting bribe and in sequel, he came to be arrested for the offences registered under Sections 7, 12, 13[1][d] and 13[2] of the Prevention of Corruption Act, 1988. He was remanded to Police Custody for more than 48 hours. Consequently, he came to be suspended by order dated 04.07.2017 under Rule 4(2)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. However, no charge-sheet was filed pertaining to FIR registered against him and suspension was continued. He, therefore, filed an appeal before Respondent No.1 on 13.04.2018 for revocation of suspension and reinstatement in service contending that the suspension beyond the period of 90 days is illegal in view of law settled by the Hon'ble Supreme Court of India. The appeal was heard by the Hon'ble Minister and came to be allowed by order dated 03.07.2018 whereby the suspension of the Applicant has been revoked and posted as Resident Naib Tahasildar, Thane. However, this order passed by the Hon'ble Minister is not implemented by Respondents 2 & 3 though the enough period is over. Despite his representation dated 19.09.2018, no steps were taken to implement the said order and to reinstate the Applicant in service. Ultimately, the Applicant has approached this

Tribunal for direction to Respondents 2 & 3 to implement the order passed by Hon'ble Minister for his reinstatement and posting.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page Nos.28 to 39 of the Paper Book) *inter-alia* denying the Applicant's entitlement for reinstatement on the post of Resident Naib Tahasildar, Thane. The Respondent contends that the order passed by Hon'ble Minister on 13.07.2018 is not final, as it has not been issued legitimately in the sense of after compliance of official procedure by sending it through Outward Register. In this behalf, the Respondent contends that the order dated 03.07.2018 is not in consonance with the provisions contained in G.R. dated 20.04.2013 (It is not G.R. but Circular) and G.R. dated 31.01.2015 which *inter-alia* provides for review of the suspension by the concerned Committee after one year from the date of suspension and in case, Committee revokes the suspension, the employee has to be reinstated on non-executive post out of District in terms of Clause 2(b) of Circular dated 20.04.2013. However, in order dated 03.07.2018, the Applicant is reposted on executive post i.e. Resident Naib Tahasildar, Thane which is against the instructions contained in Circular dated 20.04.2013. Having noticed the mistake, the Respondent No.1 placed the file before the Hon'ble Minister for further necessary orders but the decision thereon is not yet taken. Thus, sum and substance of the stand taken by the Respondent is that the order dated 03.07.2018 needs to be recalled and matter is under consideration before Hon'ble Minister and so long as it is not decided, it cannot be implemented being contrary to the instructions contained in Circular dated 20.04.2013.

4. Heard Mr. A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

5. At the very outset, it needs to be stated that there is no dispute about the passing of order dated 03.07.2018 by the Hon'ble Minister. Admittedly, it has

been passed by the Hon'ble Minister on 03.07.2018 under his signature. However, its implementation is kept in abeyance by Respondents 2 & 3 on the ground that, it is not final as it has not been issued legitimately after compliance of official formalities by the Government. Thus, the Respondents sought to contend that the Applicant has obtained Xerox copy of order unofficially and secondly, in view of Office Note prepared by the office for recalling the order, the same is under consideration to take remedial measure i.e. for correction in the form of posting on non-executive post instead of executive post.

6. In view of the stand taken by the Respondents that the Applicant has obtained Xerox copy of the order dated 03.07.2018 unofficially, the Applicant has filed Rejoinder explaining the circumstances in which the Xerox copy of signed and complete order was delivered to him by none other than the Hon'ble Minister. On Affidavit, he stated that, in fourth week of July, 2018, he went to the office of Hon'ble Minister to enquire about the decision of the appeal and thereon, he was informed that the appeal has been already decided. He personally met Hon'ble Minister in the office and requested him to furnish the Xerox copy of the order. The Hon'ble Minister directed his staff to furnish the Xerox copy of the order to the Applicant. As such, he got Xerox copy of order from none other than Hon'ble Minister personally. The Applicant thus denied that he obtained the copy of order illegitimately as Respondents sought to contend in their reply.

7. It is thus quite clear from the pleadings and submissions advanced at the Bar that there is absolutely no dispute that the order dated 03.07.2018 is the decision rendered by the Hon'ble Minister under his signature and date. The Xerox copy of order is at Page No.12-A of the P.B. which is admittedly under the signature of the Hon'ble Minister. In other words, the genuineness or authenticity of the order is not in question.

8. The controversy or issue is about implementation of the order on the ground that the reinstatement of the Applicant as Resident Naib Tahasildar, it being executive post is incorrect as Circular dated 20.04.2013 speaks that while reinstatement on the suspended employee in the service, he should be appointed on non-executive post. However, as per order dated 03.07.2018, he was reinstated on executive post which now the Respondent No.1 wants to rectify by requesting the Hon'ble Minister to review the said portion of the order.

9. The submission advanced by the learned P.O. that, unless the copy of order is furnished through Outward Register legitimately, it does not have force of law and cannot be implemented, is not acceptable. The learned P.O. sought to place reliance on the Judgment of Hon'ble Supreme Court in ***(2003) 7 SCC 309 (Municipal Corporation of Delhi Vs. Qimat Rai Gupta & Ors.)*** and (2015) 10 SCC 369 (State of West Bengal & Ors. Vs. R.K.B.K. Ltd. & Anr.). I have gone through these decisions and in my considered opinion, the facts being quite distinguishable, those are of little assistance to the Respondents in the present context.

10. In ***Municipal Corporation of Delhi's*** case (cited supra), the Hon'ble Supreme Court was considering whether the word, "made" occurring in Section 126(4) of Delhi Municipal Corporation Act, 1957 can be interpreted to mean that, unless the order is communicated to assesse, it should be deemed to have not been made. The learned P.O. placed reliance on Para 27 of the Judgment which is as follows :

> "***27***. *An order passed by a competent authority dismissing a government servant from services requires communication thereof as has been held in State of Punjab v. Amar Singh Harika but an order placing a government servant on suspension does not require communication of that order. (See State of Punjab v. Khemi Ram.) What is, therefore, necessary to be borne in mind is the knowledge leading to the making of the order. An order ordinarily would be presumed to have been made when it is signed. Once, it is signed and an entry in that regard is made in the requisite register kept and maintained in terms of the provisions of*

a statute, the same cannot be changed or altered. It, subject to the other provisions contained in the Act, attains finality. Where, however, communication of an order is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, the order is required to be communicated."

11. Whereas, the ratio of the Judgment is as follows :

"*A distinction exists in the construction of the word "made" depending upon the question as to whether the power was required to be exercised within the period of limitation prescribed therefor or in order to provide the person aggrieved to avail remedies if he is aggrieved thereby or dissatisfied therewith. An order ordinarily would be presumed to have been made when it is signed. It is required to be communicated where communication thereof is a necessary ingredient for bringing an end result to a status or to provide a period an opportunity to take recourse to law if he is aggrieved thereby. Therefore, the word "made" occurring in Section 126(4) of the DMC Act cannot be construed to mean that unless the order is communicated, it should be deeded to have not been made."*

12. Whereas, in ***State of West Bengal's*** case, the Hon'ble Supreme Court was dealing with West Bengal Kerosene Control Order 1968 and in Para No.2 held as follows :

"**2**. *The order under Para 9 of the Control Order will take effect from the date when it is served. The order, unless it is served, definitely neither the agent nor the dealer would suspend its activities or obey any order, for he has not been communicated with the order. An order passed in file in case of this nature would not be an effective order, for it is adverse to the interest of the dealer or agent and, therefore, Para 10 has to be given a purposive meaning. The words used in Para 10 are "date of the order". In the scheme of the Control Order, the order comes into effect from the date of receipt by the agent or the dealer."*

The ratio of the authority is that the order becomes effective from the date of its communication in terms of West Bengal Kerosene Control Order 1968.

13. In fact, in the present case, there is communication of order by Hon'ble Minister himself. As such, it cannot be said, on the basis of those authorities that unless the impugned order is forwarded to the Applicant through Outward

Register, it is not valid. Therefore, these two authorities are of no assistance to the learned P.O.

14. Whereas, in the present context, the situation is squarely covered by the Judgment of Hon'ble Supreme Court in ***(2013) 3 SCC 559 (State of Bihar & Anr. Vs. Sunny Prakash & Ors.)***. Para No.19 of the said Judgment which is material for this purpose and guidance, which is reproduced as follows :

> "**19**. *Mr. Venugopal, learned senior counsel for the contesting respondents heavily relied on the principles laid down in State of Bihar and Others vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, (2005) 9 SCC 129. The said decision also arose from a dispute concerning the absorption of about 4000 employees working in teaching and non-teaching posts in 40 colleges affiliated to various Universities which were taken over as Constituent Colleges in accordance with the provisions of the Bihar State Universities Act, 1976. It was contended on behalf of the State of Bihar that power to sanction additional posts and appointments against the same in the affiliated colleges is within the exclusive jurisdiction and power of the State under Section 35 of the Act. It was also contended that certain decisions of the Government that were taken after the change of elected Government had no prior approval of the Council of Ministers. The decision by the Cabinet, approval by the Chief Minister on behalf of the Cabinet is sine qua non for treating any resolution as a valid decision of the Government. It was also stated that in the absence of Cabinet approval, the order dated 01.02.1988 which was issued by the Deputy Secretary to the Government of Bihar has no legal efficacy. It was further argued by the State that any valid order of the Government has to be formally expressed in the name of the Governor in accordance with Article 166 of the Constitution. In para 64, this Court has held thus:*
>
> > *"64. So far as the order dated 18-12-1989 is concerned, the State being the author of that decision, merely because it is formally not expressed in the name of the Governor in terms of Article 166 of the Constitution, the State itself cannot be allowed to resile or go back on that decision. Mere change of the elected Government does not justify dishonouring the decisions of previous elected Government. If at all the two decisions contained in the orders dated 1-2-1988 and 18-12-1989 were not acceptable to the newly elected Government, it was open to it to withdraw or rescind the same formally. In the absence of such withdrawal or rescission of the two orders dated 1-2-1988 and 18-12-1989, it is not open to the State of Bihar and State of Jharkhand (which has been created after reorganisation of the State of Bihar) to contend that those decisions do not bind them."*

From the above conclusion, it is clear that merely because of change of elected Government and the decision of the previous government not expressed in the name of Governor in terms of Article 166 of the Constitution, valid decision cannot be ignored and it is not open to the State to contend that those decisions do not bind them."

15. True in ***Sunny Prakash's*** case, the implementation of the order was kept on hold due to change of elected Government. Whereas in the present case, the implementation of the order is kept in abeyance, as the concerned authority wants to review the same in respect of place of posting. Adverting to this aspect, the learned C.P.O. sought to distinguish the Judgment in ***Sunny Prakash's*** case (cited supra) but I find myself unable to accept the same. One needs to consider the ratio though the facts may differ.

16. In fact, this aspect has also been dealt with by this Tribunal in ***O.A.260/2017 (Vijaykumar N. Jadhav Vs. The District Registrar cum District Collector, Sangli & Anr.) decided on 13th September, 2017***. In that case also, the change was contemplated in the order passed by Hon'ble Minister, and therefore, the implementation was kept in abeyance. In that matter, this Tribunal also referred the Judgment in State of West Bengal's case (cited supra) but placing reliance on the ratio of ***Sunny Prakash's*** case directed the Respondent to implement the order within four weeks.

17. Thus, what transpires from the factual position that, there is absolutely no controversy about the issuance of order dated 03.07.2018 by the Hon'ble Minister. The stand taken by the Respondent now that as it has not been formally communicated to the Applicant, and therefore, the same cannot be executed is unacceptable. Once the order is made and signed and also communicated to the Applicant by none other than Hon'ble Minister, it has to be implemented in its form forthwith. If the concerned authority wants to review the order, it may do so as permissible in accordance to law. Significant to note that, till date, the period of more than six months is over but no such steps are

taken by the concerned to take review of the order in accordance to law. I can understand, if the Applicant has rushed to the Court immediately after passing of the order for its implementation without giving reasonable period to the Department for its implementation and to take remedial measures, if any. In the present case, even after the representation of the Applicant dated 19.09.2018 for the implementation of the order, nothing happened and the matter is kept in cold storage which is definitely not the sign of good governance. Once the order exercising quasi-judicial power is passed and rights as well as obligations of the parties are crystalized, it needs to be implemented to prevail rule of law and the concerned person cannot be kept in uncertainty. The posting of the Applicant on executive post seems to have been given in ignorance of the instructions contained in Circular dated 20.04.2013. For that matter, six months' period was more than enough to review the same, if permissible in accordance to law. However, it being not done, now the order needs to be implemented as it is.

17. However, I must make it clear that, if the Respondent No.1 contemplates to review the order as regard the posting given on executive post, it may do so at their own if permissible in accordance to law and it is certainly not in pursuance of this order.

18. The necessary corollary of aforesaid discussion leads me to conclude that the application deserves to be allowed. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The Respondents are directed to formally communicate the order dated 03.07.2018 to the Applicant and give him posting in accordance therewith within four weeks from today.

(C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 07.01.2019
Dictation taken by :
S.K. Wamanse.
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