

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 69 OF 2020

DISTRICT: - BEED.

Suresh S/o. Ghanshyam Tandale,

Age-55 years, Occu. : Service

R/o. Mathura, Plot No. 271, N-3, CIDCO,
Aurangabad.

.. APPLICANT.

V E R S U S

1) The State of Maharashtra,

Through its Secretary for Food,
Civil Supply & Consumer Protection,
Mantralaya, Mumbai – 32.

2) The Controller,

Legal Metrology (Weights & Measures)
7th Floor, Fountain Telecom,
Building No. 1, Hutatma Smarak Chowk,
M.G. Road, Mumbai-400001.

3) Deputy Controller,

Legal Metrology (Weight & Measures)
Plot No. 5-8-94/1, Darshan Bungalow,
Bansilal Nagar, Railway Station Road,
Aurangabad.

4) The Assistant Controller,

Legal Metrology (Weight & Measures)
B & C Quarters, Chandmari,
Palvan Chowk, Dhanora Road,
Beed, Dist. Beed.

.. RESPONDENT.

APPEARANCE : Shri S.S. Tandale, learned Advocate
holding for Shri B.R. Kedar, learned
Advocate for the applicant.

: Shri D.R. Patil – learned Presenting
Officer for the respondents.

CORAM : **BIJAY KUMAR, MEMBER (A)**
DATE : **07.07.2021**

ORDER

The Original Application was filed on March 27, 2019 which was registered as OA St No 674/2019 and subsequently assigned OA No. 69/2020. The Applicant stated in his Original Application that he was appointed as Inspector of Legal Metrology (Weights and Measures) on August 16, 1995. A dealer of shops & measures made complaint against him October 29, 2015 alleging that the Original Applicant demanded some amount from him for issuing verification certificate for electronic weighing machine. Taking cognizance of the complainant, a trap was conducted by Anti-Corruption Bureau, herein after referred to as "ACB" and a crime No. 243/2015 was registered and the applicant was arrested by ACB team. Later on, he was released by the orders of the Court on the same day, within 5 hours of arrest. A charge-sheet had been filed against him by ACB. In view of above developments, the Respondent suspended the Applicant on November 02, 2015 w.e.f. October 29, 2015. After passing suspension orders, neither any charge-sheet been served and enquiry officer has been appointed for the purpose of departmental enquiry nor was the suspension orders against the Applicant has been revoked in spite of several

representations made by the Applicant on January 04, 2018, September 25, 2018, January 01, 2019 and January 22, 2019.

2. **The Applicant has made following prayers in the present**

Original Application-

A] The OA may kindly be allowed,

B] The Impugned suspension of the Applicant w.e.f. October 29, 2015 vide order dated November 02, 2015, may kindly be revoked/ cancelled w.e.f completion of 90 days period from the date of suspension of the Applicant and he be reinstated in the service on his original post, with due date effect of completion of 90 days, from the date of his suspension, with consequential service benefits including the regular salary,

C] Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted to him.

3. **Objection recorded by the Registry on the Issue of**

Limitation- The registry noted its objection on April 01, 2019 that the **OA** was **time barred by limitation**; however, as this Tribunal granted circulation, the matter was placed before the Tribunal on April 3, 2019. On request of Applicant for grant of time to produce some documents, the matter was removed from the Board and the same was taken on Board on April 09, 2019. During hearing on

the day the Applicant sought permission to file a Miscellaneous Application which was allowed with instruction to remove the matter from the Board and be kept after filing of Miscellaneous Application by the Applicant.

4. **Miscellaneous Application No. 195/ 2019 for condonation of delay**- It is on April 12, 2019 that a Miscellaneous Application No. 195/2019 was filed for condonation of delay of 668 days in filing the Original Application. This Tribunal, vide its order dated January 23, 2020, granted condonation of delay in filing of the Original Application No. 69/2020.

5. **Affidavit in Reply filed by Respondents**- The learned CPO filed affidavit in reply for Respondents No. 1 to 4 on January 08, 2021 stating that the suspension order had already been revoked on September 20, 2019 following which the Applicant has joined the service on October 03, 2019 (Before Noon). Therefore, the application has become infructuous. The Respondents have further submitted that the Applicant was not authorized to accept government fees by cash but only through a system known as GRAS. However, he received payments by cash which was not allowed. In addition, ACB had registered crime against him for demanding and receiving illegal gratification, which is of a serious nature and therefore, after a thoughtful consideration, Respondent No. 2 had issued suspension order. The Respondents have denied

that the arrest of the applicant was on the basis of his detention for more than 48 hours as mentioned in Para (iv) of the original application. In addition, the Respondents have justified time taken in issuing charge-sheet against the applicant on the ground of time taken in completing preliminary enquiry. The learned CPO has cited a judgment by Hon'ble High Court of Uttarakhand in Special Appeal No. 576 of 2019 delivered on June 18, 2019 and suggested to look into whether the judgment of Hon'ble Supreme Court in Ajay Kumar Chaudhari lays down a binding precedent or not in the light of earlier Constitution Bench judgments of the Hon'ble Supreme Court.

6. **Gist of Hearings on Subsequent Dates**- As per recordings of the Oral Orders of the Tribunal dated February 18, 2021 (Coram: Hon'ble Shri A. P. Kurhekar, Member-J), the learned Advocate B. R. Kedar for the Applicant wanted to challenge the legality of the suspension order on ground of competency of the Controller, Legal Metrology even though, the Applicant had been reinstated in service on September 20, 2019. An e-mail dated June 30, 2021 was received by the Registry from learned Advocate Shri Swaraj Tandale for the Applicant requesting for a short date for hearing the matter in the interest of justice, the hearing was scheduled on July 02, 2021. During the hearing on the day, learned Advocate Shri S. S. Tandale for the Applicant mentioned

that he did not want to file rejoinder to the affidavit in reply by the Respondents. With consent of the two sides, the matter was taken up for final hearing on July 02, 2021. The learned advocate Shri S. S. Tandale holding for Shri B. R. Kedar, learned Advocate for Applicant made following arguments-

7. **Arguments by learned Advocate Shri S. S. Tandale holding for learned advocate Shri B. R. Kedar for the Applicant-**

a) The Applicant came to be appointed as Inspector of Legal Metrology (Weights and Measures) on August 16, 1995. One dealer of shops & measures made complaint on October 29, 2015 that the Original Applicant demanded some amount from him for issuing verification certificate for electronic weighing machine. Taking cognizance of the complainant, a trap was conducted by Anti-Corruption Bureau, herein after referred to as "ACB" and a crime No. 243/2015 was registered and the applicant was arrested by ACB team and released by the orders of the Court on the same day, within 5 hours of arrest. A charge-sheet had been filed against him by ACB. The Respondent suspended the Applicant on November 02, 2015 w.e.f. October 29, 2015. After passing suspension orders, neither any charge-sheet has been served and enquiry officer has been appointed for the purpose of departmental enquiry nor has the suspension orders against the Applicant been revoked in spite of several representations made by the Applicant on January 04, 2018, September 25, 2018, January 01, 2019 and January 22, 2019.

(b) That passing suspension orders on November 02, 2015 w.e.f. October 29, 2015, when the total period of detention of the Applicant was about five hours only and not more than 48 hours, is not justified.

c) The learned Advocate for the Applicant cited following judgments and orders passed to assert that any suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee under suspension for a longer period and reinstatement could not be a threat for fair trial or departmental enquiry, the suspension should not continue further and authority should have revoked the suspension order with effect from completion of 90 days period from the date of suspension, and should have reinstated the applicant with consequential benefits, including regular salary but, by not doing so the Respondents have failed to follow the laid down by the Hon'ble Apex Court and this Hon'ble Court.

d) The learned advocate for the Applicant cited following judgments / orders in support of his arguments-

(i) Judgment passed by the Hon'ble Apex Court in case of Ajay Kumar Chaudhari Vs. Union of India (2015) 7 SCC 291

(ii) State of Tamil Nadu Vs. Pramod Kumar and another in Civil Appeal No. 8427- 8428 of 2018 dated, August 21, 2018

(iii) Order passed by the Principal Bench of the Maharashtra Administrative Tribunal, Mumbai in OA No. 35/2018 in matter of Shri Dilip Jagannath Ambilwade Vs. State of Maharashtra and another

(iv) Orders passed by the Principal Bench of the Maharashtra Administrative Tribunal, Mumbai in OA No. 936/2018 in case of Vandana Karansingh Valvi Vs. the State of Maharashtra and another

8. **Arguments by learned Presenting Officer Shri D. R. Patil for the Respondents.**

During the final hearing the learned Presenting Officer Shri D. R. Patil submitted that the contents of the affidavit in reply may be treated as his argument in the matter.

9. **After the two sides concluded their arguments, the matter was closed for orders.**

Analysis of Facts-

The Controller, Legal Metrology, (weights & Measures), had passed the impugned suspension order dated November 02, 2015 exercising powers under rule 4 (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The order passed on November 02, 2015 had been given retrospective effect from October 29, 2015 (पुर्वलक्षी प्रभावाने). However, the quoted rule does not stipulate passing of suspension order with retrospective effect (पुर्वलक्षी प्रभावाने). Therefore, there is a merit in representations made by the Applicant on November 29, 2015 to give effect to the impugned suspension order w.e.f. the date of passing of the order, i.e. November 02, 2015.

10. The applicant had made second representation dated January 04, 2018 addressed to the Principal Secretary, Food and Public Distribution and Consumer Protection Department, government of Maharashtra to re-instate him as he was under suspension for two years. It is by his 3rd representation addressed to the Principal Secretary, Food and Public Distribution and Consumer Protection Department, government of Maharashtra, the applicant had demanded treating him reinstated on the post with effect from 91st day from the date of suspension and release full salary and other service benefits. The applicant had represented to the Principal Secretary, Food and Public Distribution and Consumer Protection Department, government of Maharashtra, with similar request on September 25, 2018; January 01, 2019 and also on January 22, 2019. The applicant had also made a representation with similar request to the Chief Secretary, Government of Maharashtra on January 22, 2019 citing orders of Maharashtra Administrative Tribunal in OA No. 35/ 2018 and the judgment of Hon'ble Supreme Court in Civil Appeal No. 1992/ 201, Ajay Kumar Chaudhary Vs. Union of India and another.

11. In spite of above representations made by the Applicant, the case of the Applicant had not been submitted to the Suspension Review Committee constituted by the government, until July 05, 2019 i.e. till lapse of over 3 years. During this period, no

administrative inquiry was initiated against the Applicant. The Respondents have not brought on record updated status of the departmental enquiry initiated against the applicant on August 20, 2019 by issuing a Show Cause Notice to him. Even the proceedings of the Suspension Review Committee or affidavit filed by the Respondents do not speak about status of criminal case lodged by ACB against the applicant. The learned Presenting Officer too, has not covered these points to show that there had been any justification in continuing with the suspension of the Applicant.

12. Now, the matter in hand needs to be examined in the light of judgments/ orders cited by the leaned advocate for the Applicant and the Respondents.

(a) The learned advocate for the Applicant has cited Judgment passed by the Hon'ble Apex Court in case of Ajay Kumar Chaudhary Vs. Union of India in Civil Appeal No. 1912 of 2015 (Arising out of SLP No. 31761 of 2013). In Para 86 of the judgement the Hon'ble Supreme Court has listed 15 propositions to serve as guidelines, the most quoted among them is the proposition listed at serial number 14 which is reproduced as under-

“We, therefore, direct that the currency of Suspension Order should not extend beyond three month if within this period the Memorandum of Charges / Charge-sheet is not served a reasoned order must be passed for extension of the suspension.We recognize that previous constitution benches have been

reluctant to quash proceedings on ground of delay, and to set time limit to their duration. However, the imposition of time limit has not been discussed in prior case laws, and would not be contrary to the interest of justice.....”

(b) In the case of State of Tamil Nadu Vs. Pramod Kumar and another in Civil Appeal No. 8427-82428 of 2018 dated, August 21, 2018, cited by learned Advocate for the Applicant, the Hon’ble Supreme Court had observed in Para 23 of the judgment as under-

“This Court in Ajay Kumar Chaoudhary Vs. Union of India (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be threat to a fair trial.....”

However, in the instant matter, the Hon’ble Supreme Court has not strictly applied the proposition of three months as limit of period for suspension as stipulated in judgment in *Ajay Kumar Chaoudhary Vs. Union of India (2015) 7 SCC 291* .

13. On the other hand, the learned Presenting Officer has cited a judgment by Hon’ble High Court of Uttarakhand at Nainital in Special Appeal No. 576 of 2019, Naresh Kumar Vs. State of

Uttarakhand and ors delivered on June 18, 2019. It has been observed by the Hon'ble High Court that-

“However, when a smaller Bench of the Supreme Court lays down a proposition contrary to and without noticing the ratio decidendi of the earlier larger Benches, such a decision will not become the law declared by the Supreme Court so as to have a binding effect under Article 141 of the Constitution on all the Courts within the Country.”

14. A number of judgments of Hon'ble Supreme Court have been quoted by the Hon'ble High Court of Uttarakhand at Nainital to arrive at its observation mentioned at Para No. 34 of the judgment with is as under-

*“The attention of the Supreme Court, in **Ajay Kumar Chaoudhary**, [Ajay Kumar Chaoudhary Vs. Union of India (2015) 7 SCC 291], was drawn to its earlier judgments in Asok Kumar Aggrawal, Sanjiv Rajan, L. Srinivasan and Deepak Kumar Bhalla, wherein it was held that mere delay in conclusion of disciplinary proceedings or criminal cases or long period of suspension would not render the order of suspension invalid.”*

15. Two other orders passed by the Principal Bench of Maharashtra Administrative Tribunal have also been cited by the Applicant which are analysed as follows-

(a) Order passed by the Principal Bench of the Maharashtra Administrative Tribunal, Mumbai in OA No. 35/2018 in matter of Shri Dilip Jagannath Ambilwade Vs. State of Maharashtra and another- in this matter the Principal Bench (**Coram:** Hon'ble Justice A. H. Joshi, the then Chairman) had passed orders as per proposition laid out by Hon'ble Supreme Court in *Ajay Kumar Chaoudhary Vs. Union of India (2015) 7 SCC 291*.

(b) On the other hand, orders passed by the Principal Bench of the Maharashtra Administrative Tribunal, Mumbai in OA No. 936/2018 in case of Vandana Karansingh Valvi Vs. the State of Maharashtra and another deals with another issue which may not touch the relief prayed for by the Applicant.

16. In view of above analysis, it is inferred that even if review period prescribed by Hon'ble Supreme Court may not be in knowledge of the competent authority, he was under obligation to review the cases of suspension regularly and grant extension beyond review period as prescribed by General Administration Department, which is one year in such cases, after recording detailed cogent reasons for the same. In the instant case, it is evident that the competent authority has not taken any step to review the suspension order through Suspension Review Committee after a period of one year as prescribed by General Administration Department, and has not cared to do so even after lapse of three years from the date suspension.

17. We are conscious of the fact that the Principal Bench of this Tribunal has taken the review period as 90 days as per proposition of Hon'ble Supreme Court in *Ajay Kumar Chaoudhary Vs. Union of India (2015) 7 SCC 291*, while the Tribunal decided the OA No. 35/2018 and OA No. 936/2018. The same norm is followed in the instant matter for maintaining consistency among approaches of different Benches of this Tribunal in spite of the fact that a clear prescription regarding review period has not emerged out from analysis of Supreme Court Judgments cited by the two sides.

18. In view of above facts, following order is passed-

A) The OA is allowed by granting relief as follows-

B) The impugned suspension order being under rule 4 (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, therefore, the date of suspension should be treated as the date of passing suspension order i.e. November 02, 2015.

C) Continuance of the Impugned suspension order of the Applicant dated November 02, 2015, beyond 90 days is without review and as no fact has been presented to establish justification for the continuation of suspension, therefore, the same is disregarded and it is directed that the Applicant shall be deemed to have been reinstated after completion of prescribed review period of 90 days of actual suspension and all consequential benefits thereof shall

follow treating that suspension ceased to exist 90 days after the date of suspension.

D] In the facts and circumstances of the case, the parties are directed to bear their own costs.

E] General Administration Department, Government of Maharashtra may consider to amend the Government Resolution No. अर्भयो-1314/ प्र.क्र. 86/ 11- , dated January 31, 2015 to incorporate review period of 3 months in view of directions issued by the Hon'ble Supreme Court in Ajay Kumar Chaoudhary Vs. Union of India (2015) 7 SCC 291.

MEMBER (A)

PLACE : AURANGABAD.

DATE : 07.07.2021

O.A.NO.69-2020(SB-suspension)-HDD-2021