

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 93/2022(S.B.)

Shri Amol S/o Madhav Shrimanwar,
Aged about 36 years, Occ. Service,
Resident of Near Government English
Medium School, Semana Road, Gadchiroli
District Gadchiroli [MS]

Applicant.

Versus

- 1) The State of Maharashtra,
Through Secretary,
Ministry of Social Justice &
Special Assistance,
Mantralaya, Mumbai [MS]-440032.
- 2) The Commissioner of Social Welfare 3,
Church Path, Maharashtra State,
Pune-411001.
- 3) The Assistant Commissioner,
Social Welfare Department
Nagpur Division, MA/15/1,
South Ambazari Road,
Vasant Nagar [MS]-440020.

Respondents

Shri Bhojraj Dhandale, counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 8th September 2022.

JUDGMENT

Judgment is reserved on 25th August, 2022.

Judgment is pronounced on 08th September, 2022.

Heard Shri Bhojraj Dhandale, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

When the applicant was holding a post of Social Welfare Inspector, he was arrested on 10.03.2017 in a crime registered under Section 7, 12, 13 (1)(d) R/W 13(2) of the Prevention of Corruption Act. He was in Police custody for more than 48 hours. By order dated 31.03.2017 (Annexure A-3) he was placed under suspension w.e.f. 10.03.2017. In this case he was served with a charge sheet on 14.05.2019 (Annexure A-5). By order dated 22.08.2019 (Annexure A-7) order of suspension dated 31.03.2017 was revoked. In the meantime, on 06.03.2018 the applicant was arrested by the C.I.D., Aurangabad in Crime No.27/2016 registered at Mandvi Police Station *inter alia* under Sections 420, 467, 471, I.P.C. In this crime also he was in custody for more than 48 hours. By order dated 03.01.2022 (Annexure A-9) he was placed under suspension w.e.f. the date of his arrest i.e. 06.03.2018. In respect of the second instance, the respondent department has not yet served the charge sheet to him though period of 90 days has

elapsed. Hence, the order dated 03.01.2022 (Annexure A-9) is required to be quashed and set aside.

3. Reply of respondents 2 and 3 is at pages 50 to 56. Their contentions are as follows-

(1) In the facts and circumstances of the present case, it is not possible to say that on the expiry of 90 days period, the suspension stands revoked. The Government of Maharashtra had issued G.R. dated 14.10.2011 which inter-alia provides for periodical review of suspension of a Government servant suspended on account of registration of serious criminal offence. The G.R. provides detailed instructions/guidelines about the matters to be considered while deciding review and reinstatement of a Government servant. As per Clause 3 of G.R. where suspension is on account of registration of serious crime, such matters are required to be placed before the Review Committee/Competent Authority after completion of one year from the date of suspension.

(2) In the present case the respondents has made an effort to ensure compliance with G.R. dated 14.10.2011/government policy. The respondent first sent a proposal of the one of the co-accused named Shri. Sachin Shrimanwar to the Divisional Commissioner, Revenue Pune to take a review of his suspension. The said matter is decided by the Divisional Commissioner on 21/12/2021 and it is ordered therein to speed up completion of departmental enquiry, afterwards appointing authority can decide on

reinstatement of suspended employee. Meanwhile the Police Superintendent of Crime Branch, Aurangabad sent letters to the Deputy Commissioner, Establishment Pune on 08/07/2021 and 28/07/2021 wherein they asked for information regarding what kind of action has been initiated by the department against the accused whether the department has initiated preliminary enquiry departmental enquiry/terminated the applicants from service as well as the Police department and it was opined that the applicant should not be reinstated in services.

4. The only issue in this case is whether the impugned order dated 03.01.2022 can be sustained. In view of the following legal position and the guidelines contained in the G.R. dated 09.07.2019 this issue will have to be answered in the negative.

शासन निर्णय :-

निलंबित शासकीय अधिकारी / कर्मचा-यांच्या निलंबनाची कारणे व त्यांचे गांभीर्य यानुसार त्यांच्या प्रकरणांचा आढावा घेण्यासंदर्भात शासनाने वेळोवेळी वर संदर्भामध्ये दर्शविल्यानुसार शासन निर्णय निर्गमित केले आहेत. श्री.अजयकुमार चौधरी विरुद्ध युनियन ऑफ इंडिया (सिव्हिल अपिल क्र.१९१२/२०१५) मध्ये मा.सर्वोच्च न्यायालयाने दि. १६/०२/२०१५ रोजी दिलेल्या निर्णयाच्या परिच्छेद १४ मधील आदेश खालीलप्रमाणे आहेत.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/ Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 prepare 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 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 the 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.

२. मा.सर्वोच्च न्यायालयाने वरीलप्रमाणे दिलेल्या दि.१६/०२/२०१५ च्या निर्णयाचे अनुषंगाने केंद्र साकारचा दि.२३ ऑगस्ट, २०१६ रोजीचा कार्यालयीन आदेश सोबत जोडला आहे. मा.सर्वोच्च न्यायालयाचा निर्णय व केंद्र सरकारचा कार्यालयीन आदेश पाहता निलंबित शासकीय कर्मचा-यांना ९० दिवसांच्या मुदतीत दोषारोप पत्र बजावून त्यांच्या निलंबनाच्या आढाव्या संदर्भातील तरतुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :-

9. या अनुषंगाने शासकीय कर्मचा-याच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.
- i) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषरोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेऊन निलंबन पुढे चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिका-याच्या स्तरावर घेण्यात यावा.
- ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषरोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा.सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरु करून दोषरोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता/खबरदारी घेण्यात यावी.
- iii) फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरु करून दोषरोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधित प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.

Hence, the order.

ORDER

The O.A. is allowed.

The impugned order dated 03.01.2022 is quashed and set aside.

Consequential order shall be passed within 15 days from today. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 08/09/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 08/09/2022.
and pronounced on
Uploaded on : 08/09/2022.