

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1075 OF 2018
WITH
ORIGINAL APPLICATION NOS.1085 & 1076 OF 2018

DISTRICT : PUNE

ORIGINAL APPLICATION NO.1075 OF 2018

Smt. Shubhangi Bhikaji Khalekar.)
Age : 48 Yrs., Occu.: Head Clerk, residing at)
Flat No.F-1, B-Wing, Tai Arcade, Pashan,)
Pune – 411 021.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Social Justice Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner.)
Social Welfare, M.S, Pune – 411 001.)...Respondents

WITH

ORIGINAL APPLICATION NO.1085 OF 2018

Shri Rajesh B. Wagh.)
Age : 53 Yrs., Occu.: Office Superintendent,)
residing at A-703, Dhanashree, Ashiyana Nyati)

Estate Rod, Hadapsar, Handewadi,)
District : Pune.)...Applicant

Versus

1. The State of Maharashtra & Anr.)...Respondents

WITH

ORIGINAL APPLICATION NO.1076 OF 2018

Shri Rajendra G. Shendge.)
Age : 57 Yrs., Occu.: Office Superintendent,)
residing at 647, Nana Peth, Near Famous)
Bakery, District : Pune – 411 002.)...Applicant

Versus

1. The State of Maharashtra & Anr.)...Respondents

Mrs. Punam Mahajan, Advocate for Applicants.

Ms. N.G. Gohad, Presenting Officer for Respondents in O.As.1075 & 1076/2018.

Mr. A.J. Chougule, Presenting Officer for Respondents in O.A.1085/2018.

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

DATE : 30.01.2019

JUDGMENT

1. In all these Original Applications, the challenge is to the suspension order mainly on the ground of prolong suspension without progress in departmental enquiry (D.E.) and for non-compliance of Government Resolution dated 14th October, 2011.

2. Shortly stated facts of O.A.1075 of 2018 and O.A.1085 of 2018 are as follows :

The Applicant in O.A.1075 of 2018 was working as Head Clerk whereas the Applicant in O.A.1085 of 2018 was working as Office Superintendent in the Office of Respondent No.2. By impugned order dated 14th April, 2017, they were suspended invoking powers under Rule 4(1) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules 1979') in contemplation of D.E. on the allegation that they have committed various illegalities as well as irregularities while making payment to the suppliers. The Applicants claimed to be innocent and contend that the charges leveled against them are unsustainable. They made representations to Respondent No.2 to revoke the suspension and reinstate them in service but in vein. After delay of one year, they have been served with the charge-sheet in D.E. However, the D.E. is not progressing. The Respondent No.2 failed to take review of the suspension as contemplated under Clause 7(a) of G.R. dated 14th October, 2011 which mandates that, where public servant is kept under suspension in contemplation of D.E, the disciplinary authority is required to take review of suspension after three months. Secondly, in case, where the D.E. is not completed within six months, the disciplinary authority is under obligation to take decision afresh about the revocation of suspension and reinstatement in service. However, in the present case, there is complete failure on the part of Respondents as mandated by G.R. dated 14th October, 2011. The Applicants further contend that, in view of law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India : (2015) 2 SCC (L & S) 455**, the suspension beyond 90 days is illegal and unsustainable.

3. The Applicant in O.A.1076 of 2018 was working as Head Clerk in the Office of Respondent No.2. He came to be suspended by impugned order dated 14th April, 2017 in contemplation of D.E. invoking Rule 4(1) of 'Rules 1979' on the

allegation that the Applicant committed major irregularities and illegalities while making payment to the suppliers. The Applicant claims to be innocent and contends that the charges leveled against him are unsustainable. Despite representation made by the Applicant, no steps have been taken to revoke the suspensions and for reinstatement in service. The charge-sheet in D.E. has been served after the period of more than one year. Apart, the D.E. is not progressing. Furthermore, the Respondent No.2 has failed to take review of suspension of the Applicant as contemplated in G.R. dated 14th October, 2011. The Applicant, therefore, contends that prolong suspension in view of law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra) is illegal and unsustainable.

4. The Respondents resisted the applications raising common ground contending that the allegations against the Applicants are serious, as they have embezzled crores of rupees. The Respondents, therefore, sought to justify the suspension in view of seriousness of the charges. The Public Account Committee raised serious queries in the matter and thereon, preliminary enquiry was conducted. The Respondents further contend that, as D.E. is already initiated, the relief sought by the Applicants for revocation of suspension is premature.

5. Heard Smt. Punam Mahajan, learned Advocate for the Applicants and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

6. Smt. Mahajan, learned Advocate for the Applicants vehemently urged that, till date, the period of 21 months is over since the date of suspension but neither D.E. is progressing nor Respondent No.2 has given thought for the revocation of suspension as contemplated in G.R. dated 14th October, 2011. She further urged that, as the D.E. is already initiated, there is no point to continue the suspension of the Applicants and there is complete failure on the part of Respondent No.2 to

take objective decision as mandated by law. In this behalf, she placed reliance on the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case as well as Judgment passed by this Tribunal in **O.A.35/2018 (Dilip Ambilwade Vs. State of Maharashtra) decided on 11.09.2018** and **O.A.474/2018 (Mukund Solase Vs. State of Maharashtra) decided on 03.11.2018**. She sought to contend that the allegation of embezzlement of crores of rupees are unfounded and at the most, it can be a case of irregularities for which explanation was tendered. She, therefore, prayed to quash the suspension order and to reinstate the Applicants in service.

7. Per contra, Ms. Gohad, learned P.O. reiterated the contentions raised in reply and sought to contend that, in view of serious allegations against the Applicants, the suspension is justified and legal. She further submits that, in due course, the Respondent No.2 will take decision about the continuation of suspension in terms of Clause 7(a) of G.R. dated 14th October, 2011.

8. 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).

9. 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.”

10. 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.

11. At this juncture, a reference can also be made to the Judgment of Hon’ble Bombay High Court in **Dr. Narender O. Bansal Vs. The Additional Chief Secretary, Mumbai & Ors., reported in 2016 (4) ALL MR 168**. In that case, the public servant/Medical Officer was suspended in contemplation of departmental enquiry for a longer period and there was failure on the part of Department to place the matter before the Review Committee in terms of G.R. dated 14.10.2011. The Hon’ble Bombay High Court held that the suspension does not appear to be either legal or in public interest, as the people are deprived of getting medical service from Medical Officer, and therefore, further continuation of suspension could not be in public interest.

12. In the present set of facts, the charge-sheet has been issued belatedly after a period of more than one year from the date of suspension. Besides, what

emerges from the record that the D.E. is not progressing and the inaction as well as lethargy on the part of concerned authority is obvious. Besides, admittedly, the Respondent No.2 has not given thought for revocation or continuation of suspension, as the case may be, in terms of G.R. dated 14th October, 2011 which provides for review of suspension by disciplinary authority from three months from the date of suspension. It also provides that, where the D.E. is not completed within six months, then considering the facts of the case, the Government servant can be reinstated in service by giving him posting on non-executive post so that he should not interfere in the departmental proceedings. Furthermore, the Hon'ble Supreme Court has laid down the ratio that, it is not open to Government to continue the suspension of the Government servant beyond three months, if charge-sheet in D.E. in Criminal Case is not filed within the time limit of 90 days. Where charge-sheet is filed before completion of 90 days, the competent authority is required to take objective decision about the continuation or revocation of suspension. However, in the present case, no such objective decision is taken. In fact, the charge-sheet has been issued in D.E. after the period of more than one year which is in contravention of law laid down by Hon'ble Supreme Court in *Ajay Kumar Choudhary's* case.

13. Suffice to say that, the prolong suspension is unsustainable in view of law discussed above and the decisions rendered by this Tribunal referred to above.

14. In view of above, the Respondent No.2 needs to take decision of the continuation or revocation of suspension as contemplated in G.R. dated 14th October, 2011. These O.As, therefore, can be disposed of with suitable directions. Hence, the following order.

ORDER

(A) The Original Applications are allowed partly.

- (B) The Respondent No.2 is directed to take decision about the continuation or revocation of suspension of the Applicants as contemplated in Clause 7(a) of G.R. dated 14th October, 2011 within a month from today and the decision, as the case may be, be communicated to the Applicants.
- (C) If the Applicants are aggrieved by the said decision, they may avail further remedy, if so advised in accordance to law.
- (D) No order as to costs.

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

Mumbai

Date : 30.01.2019

Dictation taken by :

S.K. Wamanse.

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