

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1138 OF 2023

DISTRICT : SOLAPUR

Shri Kiran Anant Lohar,)
Age 49 years, Education Officer (Primary),)
Zilla Parishad, Solapur (presently under suspension),)
R/o Plot No.C/2, Aakansha, Shikshak Colony,)
Pachgaon, Taluka Karveer, District Kolhapur)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
School Education Department,)
Mantralaya, Mumbai)
2. The Commissioner of Education,)
Central Building, First Floor, Dr. Annie Besant)
Road, Agarkar Nagar, Pune 411 002)..Respondents

Shri P.S. Bhavake i/b. Shri U.S. Desai – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)
RESERVED ON : 30th January, 2024
PRONOUNCED ON: 6th February, 2024

J U D G M E N T

1. The applicant challenges his suspension order dated 7.11.2022 issued by respondent no.1 by invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

Brief facts:

2. The applicant who was working as Education Officer (Primary), Zilla Parishad, Solapur was suspended on 7.11.2022. During his tenure at Solapur an FIR No.828/2022 was lodged against him in Sadar Bazar Police Station, Solapur on 1.11.2022 for offences punishable under Section 7 of the Prevention of Corruption Act, 1988. In connection with the said FIR the applicant was arrested on 1.11.2022 and by order dated 7.11.2022 passed in Criminal Bail Application No.14623/2022 the Special Judge (ACB), Solapur released the applicant on bail.

3. Thereafter the respondent no.1 vide order dated 7.11.2022 placed the applicant under suspension w.e.f. 1.11.2022, as per the provisions of Rule 4(2)(a) of the MCS (Discipline & Appeal) Rules, 1979 as he was detained in police/judicial custody for a period of more than 48 hours.

4. Ld. Advocate for the applicant pointed out that it is a settled position of law that suspension of an employee should not extend beyond 3 months if the said employee is not served with a charge sheet within three months of suspension. He further states that 3 months of suspension of the applicant got over on 30.1.2023. However, no charge sheet was served on the applicant within said period. Thereafter the applicant made representations dated 30.1.2023 and 20.2.2023 to the respondents seeking revocation of suspension. However, Ld. Advocate states that respondents did not consider nor revoke the suspension. He

further pointed out that the respondents served the applicant with a charge sheet on 14.3.2023 after four months of suspension of the applicant. Ld. Advocate for the applicant states that after serving charge sheet the respondents neither proceeded with the enquiry nor took review of suspension of the applicant. Thereafter the applicant again made representations dated 21.6.2023 and 28.8.2023 to respondent no.1 seeking revocation of his suspension.

5. Ld. Advocate for the applicant pointed out that the suspension order should be revoked as no charge sheet was served on the applicant within first three months of suspension. He relies on clause (1)(ii) of the GR dated 9.7.2019 which states that if charge sheet is not served on the suspended employee within three months, the suspension order should be revoked. He further states that there is no question of his influencing the said Departmental Enquiry.

6. Ld. Advocate for the applicant relies on the following judgments:

- (i) Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291.
- (ii) Rajendra Pandharinath Patil Vs. The Government of Maharashtra, OA No.1072/2023 decided by this Tribunal on 14.12.2023.
- (iii) Shri Balaji Raosaheb Raut Vs. the State of Maharashtra & Ors., OA No.1093 of 2022 decided by this Tribunal on 26.9.2023.

7. Per contra Ld. PO refuted the contentions of the Ld. Advocate for the applicant. She pointed out that the applicant while working as Education Officer (Primary), ZP, Solapur was trapped by Anti Corruption Bureau on 31.10.2022 while accepting the amount of Rs.25,000/- from complainant for sending the complainant's proposal to the Director of Education

(Primary), Pune for connecting standard 8th to 10th classes of the complainant's school on UDISE plus online system after getting the required approval from the Director Education (Primary), Pune. She states that case of the applicant was placed before the suspension review committee on 21.4.2023 wherein it was stated that in view of the serious charges against the applicant he should not be reinstated. It was decided to place the reinstatement proposal of the applicant in the next meeting of suspension review committee. Ld. PO further pointed out that from the FIR registered by the ACB it appears that the applicant is involved in serious corruption case and has thus violated the provisions of MCS (Conduct) Rules, 1979. The act of the applicant regarding acceptance of bribe amount is of serious nature which is unbecoming of a Government servant. In the meanwhile the Government has initiated disciplinary proceedings against the applicant and has issued charge sheet dated 6.2.2023 for detailed enquiry of the same. Ld. PO therefore submits that the OA may be dismissed.

8. Considering the facts of the case it is apparent that admittedly the charge sheet was not issued within three months of the suspension. . In this connection it is apposite to look to the GR dated 9.7.2019, clause 1(ii) of which reads as under:

“१. या अनुषंगाने शासकीय कर्मचाऱ्यांचा निलंबनाचा आढावा घेण्यासंदर्भात पुढील प्रमाणे सूचना देण्यात येत आहेत.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप 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 दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता / खबरदारी घेण्यात यावी. ”

9. It is rather surprising to note that charge sheet was not issued within three months as stipulated in the abovementioned clause 1(ii) of GR dated 9.7.2019.

10. The Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary* (supra) has mandated that the currency of suspension order should not extend beyond three months if within this period the Memorandum of Charges/Charge sheet is not served a reasoned order must be passed for extension of the suspension. In this case neither of the two has been done. In view of the totality of the facts and circumstances of the case and in view of the judgment of the Hon'ble Supreme Court in *Ajay Kumar Choudhary* (supra), I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 7.11.2022 is quashed and set aside.
- (C) The respondents are directed to reinstate the applicant in service and give him a suitable posting in a non-executive post as deemed fit within six weeks from today.
- (D) The respondents are also directed to complete the Departmental Enquiry within a period six months.
- (E) No order as to costs.

**Sd/-
(Medha Gadgil)
Member (A)
6.2.2024**

Dictation taken by: S.G. Jawalkar.