

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 316 OF 2023

DISTRICT:- JALGAON

Abhijit S/o Vijay Deshpande,
Age : 53 years, Occu. Service as
District Deputy Registrar,
Co-operative Societies, Dhule,
R/o C/o Shri Pradeep Borse,
Flat No. 9, Konark Apartment,
Professor Colony, Deopur,
Dhule, District Dhule.

.. **APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through : The Secretary,
Co-operation, Marketing &
Textile Department, Madam Kama
Road, Hutatma Chowk,
Mantralaya Extn., Mumbai-400 032.
2. The Commissioner for Co-operation
& Registrar, Co-operative Societies,
IInd Floor, New Central Building,
D.R.B.R. Ambedkar Marg,
Maharashtra State, Pune.
3. The Divisional Joint Registrar,
Co-operative Societies, Nashik,
3rd Floor, MHADA Building,
Gadkari Chowk, Nashik.

.. **RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, learned counsel for the
applicant.
: Shri S.K. Shirse, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 04.05.2023

ORAL ORDER

Heard Shri S.D. Joshi, learned counsel for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondent authorities.

2. The applicant has preferred the present Original Application seeking quashment of the order dated 21.3.2023, whereby he has been suspended by respondent No. 1. Further prayer has also been made seeking direction against the respondents to permit the applicant to discharge his duties in the capacity of District Deputy Registrar, Co-operative Societies, Dhule. It is the contention of the applicant that the enquiry is sought to be initiated into the misconduct allegedly indulged into by the applicant while he was working as the Assistant Registrar of Cooperative Societies at Igatpuri, District Nashik. It is the contention of the applicant that he worked as Assistant Registrar, Cooperative Societies at Igatpuri in the period between 2014 and 2018. It is the further contention of the applicant that thereafter he was promoted to the post of Deputy Registrar in the year 2021 and was posted at Dhule. It is the further contention of the applicant that he has absolutely unblemished career throughout and the present action has been initiated at the instance of one Shri Satish Khare, the then

District Deputy Registrar at Nashik. It is also the contention of the applicant that he did never indulged in such act, which can be termed as illegal or not falling within the discretion of jurisdiction. It is further contention of the applicant that having regard to the charges leveled against him there is absolutely no necessity of putting the applicant under suspension. The applicant in the circumstances has prayed for setting aside the order of suspension passed against him.

3. The respondents have resisted the contentions raised and the prayer made in the application. Respondent Nos. 1 to 3 have jointly filed their affidavit in reply. It is the contention of the respondents that in the year between 2014 and 2018 when the applicant was Assistant Registrar, Cooperative Societies at Igatpuri, he has passed illegal orders and there were other certain charges also. In the impugned order the charges are indicated. It is contended that in respect of the alleged misconduct of the applicant a question was raised in the Assembly and on the floor of the Assembly assurance has been given that necessary action will be taken against the applicant and resultantly the applicant has been suspended in contemplation of the departmental enquiry against him. According to the respondents, they have acted well within their

power. It has been contended that the charges against the applicant are of serious nature and in the circumstances the impugned order does not require any interference.

4. Shri S.D. Joshi, learned counsel appearing for the applicant assailed the impugned order on various grounds. Learned counsel submitted that though the respondents do possess the power and authority to suspend any of the employees working under them, there are certain norms which are to be followed. Learned counsel submitted that measure of suspension is not to be resorted so casually and in each and every matter wherein enquiry is contemplated, suspension is not to be ordered as matter of course. Learned counsel submitted that in the present matter, suspension is not at all warranted for the reason that the charges which are leveled against the applicant are pertaining to work discharged by him during the period between 2014 and 2018 while the applicant was working as Assistant Registrar, Cooperative Societies at Igatpuri. Learned counsel submitted that there is no possibility of the applicant having access to the documents pertaining to the misconduct alleged against him since he is not at the said place. It is further contended that the applicant is not also likely to tamper with any of the prosecution witnesses or

prosecution evidence. In the circumstances, according to the learned counsel, the respondents shall not have taken the action of the suspension against the applicant.

5. Learned counsel further submitted that the applicant has made a specific allegation against one Shri Satish Khare, the then District Deputy Registrar, Cooperative Societies at Nashik and has alleged that in initiating the impugned action, as well as, for raising the question in the Assembly, the said person is instrumental. Learned counsel further submitted that the applicant has already submitted his explanation as about the charges which are indicated through the order of suspension. Taking me through the reply so forwarded by the applicant, learned counsel submitted that the applicant did nothing which was not within his jurisdiction and has also not passed any order which was beyond the provisions of law. Learned counsel submitted that it was the decision of the majority of the members of the said Industrial Cooperative Societies to get it converted into Housing Society and that was permissible under the provisions of the Cooperative Societies Act and the Rules thereunder. Insofar as other allegations are concerned, learned counsel submitted that they are false. Learned counsel submitted that had there been some truth in the said allegation,

the performance of the applicant of the relevant period would not have been assessed by his superior authorities as 'noteworthy' or 'excellent'. Learned counsel submitted that having regard to his performance in the relevant period, as well as, past period, he came to be promoted in the year 2021 to the post of District Deputy Registrar. Learned counsel submitted that the factum of promotion of the applicant also indicates that he has complied with the norms which are laid down for such promotion and had there been such charges or such complaints against the applicant he would never have been promoted to the post of District Deputy Registrar. Learned counsel further submitted that the applicant is ready to face the departmental enquiry and he is sure that he will prove his innocence in the said enquiry. Learned counsel submitted that however, suspension of the applicant, without any cogent or sufficient reasons, is the worrying factor not only for the applicant but for every honest Government servant. Learned counsel submitted that the suspension casts stigma on the career of such employee and during the entire said period the Government servant remains in trauma.

6. Learned counsel submitted that in the judgment delivered by the Hon'ble Andhra Pradesh High Court in the case of **M.**

Rathunath S/o Laxminarayana, Deputy Superintendent (P) TSRTC, Thorrur depot, Warangal & 2 others Vs. Telangana State Road Transport Corporation Res by its MD, Hyderabad and others (W.P. No. 4553/2014 decided on 07.03.2017) certain principles are culled out in the matters of suspension. Learned counsel invited my attention to the paragraph 11 of the said judgment. The Hon'ble High Court has culled out certain principles in the matter of suspension. I deem it appropriate to reproduce the said principles which read thus,

“11. The principles that can be culled out from above precedent decisions are:

(i) The real effect of the order of suspension is that employee continues to be a member of service of employer but is not permitted to work and further, during the period of suspension he is paid subsistence allowance;

(ii) It would not be as an administrative routine or an automatic order to suspend an employee and not to be lightly passed. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee;

(iii) Suspension must be a step in aid to the ultimate result of the investigation or inquiry;

(iv) The power of suspension should not be exercised in an arbitrary manner and without any reasonable

ground; should not be vindictive and in misuse/abuse of power;

(v) Suspension should be made only when there is a strong prima facie case of delinquency;

(vi) Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered;

(vii) Order of suspension can be resorted to pending further investigation or contemplated disciplinary action only on grave charges;

(viii) Competent Authority should take into consideration relevant facts and attendant circumstances as to how far and to what extent public interest would suffer if the delinquent is not placed under suspension;

(ix) Suspension should not be continued for long time. Soon after suspension, charges should be drawn and served and disciplinary proceedings should be concluded as expeditiously as possible;

(x) Prolonged suspension without reasons recorded in support of the continuation under suspension is not valid.

7. Learned counsel submitted that as has been observed by the Hon'ble High Court, suspension is a device to keep the delinquent out of the mischief range. Learned counsel

submitted that the applicant is at Dhule and is not likely to cause any mischief into the evidence pertaining to the alleged misconduct. Learned counsel further submitted that suspension must be a step in aid to ultimate result of investigation or enquiry. Learned counsel submitted that having regard to the charges even if all the charges are found to have some substance may result in imposing minor punishment upon the applicant. In the circumstances, according to learned counsel, this is a fit case where the Tribunal can exercise its discretion to set aside the order of suspension passed against the applicant.

8. Shri S.K. Shirse, learned Presenting Officer appearing for the State authorities has opposed the submissions made on behalf of the applicant. Learned Presenting Officer referring to the charges against the applicant submitted that according to the respondents the nature of the charges which are leveled against the applicant is serious. Learned P.O. submitted that permission granted by the applicant for conversion of Industrial Society into a Housing Society cannot be taken casually. Learned P.O. further submitted that provisions under the Cooperative Societies Act do not permit any such conversion. Learned P.O. further submitted that other charges i.e. not

conducting the enquiry U/s 88 of the Cooperative Societies Act, not to remain present for the meeting and irregular presence in the office are also the serious charges. It is further submitted that under the provisions of M.C.S. (Discipline & Appeal) Rules, 1979 and more particularly under rule 4(1)(a) thereof it is well within the jurisdiction of the authority to suspend the Government servant against whom the departmental enquiry is contemplated. Learned P.O. further submitted that sufficiency of the charges or the graveness of the charges is the subject which cannot be gone into by the Tribunal that too at the initial stage. Learned P.O. in the circumstances prayed for dismissal of the application.

9. I have duly considered the submissions advanced on behalf of the applicant and the respondents. I have also gone through the documents filed on record.

10. Rule 4(1)(a)(b)(c) of the M.C.S. (Discipline & Appeal) Rules, 1979 reads thus:-

“4. Suspension.- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension-

(a) *where a disciplinary proceeding against him in contemplated or is pending, or”*

(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial :

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.”

11. The plain reading of the aforesaid provision would mean that the order of suspension can be resorted to in contemplation of the disciplinary proceedings. Suspension is an interim measure in the aid of disciplinary proceedings, so that the delinquent may not come in custody or control of papers or take any advantage of his position. Suspension is ordered to keep Government servant away from performing the official duties and responsibility for the purpose of conducting free and fair enquiry. Rule 4 (1) (a) of the Discipline & Appeal Rules of 1979 admittedly does not provide that for placing a Government servant under suspension the departmental enquiry contemplated against the said Government servant must be for

the serious or grave charges. However, through various judicial pronouncements, the law now stands settled that the suspension should be made in a case where the allegations against the delinquent are of grave misconduct or indiscipline or involving moral turpitude and there shall be strong prima-facie evidence against the delinquent, which if proved, would result in major punishment like removal or dismissal from service.

12. Emphasizing the aforesaid principles, the learned counsel for the applicant has vehemently argued that present is the case wherein suspension is not warranted. Referring to the averments in the suspension order it has been argued by the learned counsel that, none of the charge/misconduct alleged against the applicant, even if proved, is likely to result in imposition of any major penalty. It has also been argued that the applicant is already out of mischief range and hence that cannot be a ground for placing the applicant under suspension. As against, it has been argued by the learned Presenting Officer, that the misconduct alleged against the applicant is of the serious nature and in the circumstances to conduct free and fair enquiry, the applicant needs to be kept out of employment.

13. There cannot be a dispute on the proposition that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. It is also true that the order of suspension constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospectus of promotion and also carries a stigma. Considering the aforesaid aspects, it is expected that the suspension should not be made in a perfunctory or in a routine or a casual manner, but with due care and caution after taking all factors into account. It has to be however, kept in mind that in the matters of suspension, the exercise of power of judicial review vested in this Tribunal is very limited. According to learned Presenting Officer, the scope of consideration is limited to the extent of examining the competence of the authority, who has placed the applicant under suspension and whether it is an arbitrary exercise of power by the disciplinary authority. It has also been argued by the learned Presenting Officer that the graveness of the charge and sufficiency of material against the delinquent are the aspects, which cannot be looked into by this Tribunal and they can be better judged by the disciplinary authority. The submission so advanced by the learned Presenting Officer cannot be wholly accepted. Under the judicial review the

excesses by the public authorities can be certainly looked into. The Tribunal also can examine whether the power has been exercised by the disciplinary authority in selective manner and whether allegations are frivolous and technical in nature not warranting suspension.

14. In the present matter, the applicant has brought on record some such circumstances, first and foremost that the applicant is already out of mischief range and hence, there is no possibility of tampering of any evidence or access to any documents at the place of the incident pertaining to the alleged misconduct. The contention of the applicant that his performance has been recorded as 'noteworthy' of the relevant period, also cannot be simply ignored. However, the question is whether all these aspects can be considered at this stage. I say so because the order of suspension is passed against the applicant on 21.3.2023. In the order of suspension though the instances of misconduct alleged against the applicant are mentioned for which the departmental enquiry is contemplated, the statement of charge is not yet issued. The statement of charge assumes vital importance for the reason that it specifies and explains the charge against the applicant with all necessary particulars. Moreover, the documents on which the department

is relying upon to substantiate the said charge are also annexed with the statement of charge. Further the list of witnesses is also provided along with the statement of charge, which may be examined by the department to prove the charges against the applicant. It is thus evident that unless the statement of charge is served upon the applicant, it may be unsafe to record any effective finding about the nature of charges and their sustainability and ultimately whether suspension of the applicant is warranted.

15. Though a vehement attempt has been made by the learned counsel for the applicant to justify how the allegations made in the order of suspension are false and frivolous, it is beyond the jurisdiction of this Tribunal to adjudicate upon the said aspects. All these submissions can be made only before the enquiry officer and the applicant can very well prove his innocence during the course of the enquiry. It has also been argued that the contemplation of departmental enquiry and the present order of suspension are at the instance of one Shri Satish Khare, the then District Deputy Registrar at Nashik. Such allegations also cannot be entertained for the reason that the person against whom such an allegation is raised has not been impleaded as party respondent in his personal capacity in

the present matter. It appears to me that the applicant has made some haste in approaching this Tribunal by filing the present O.A. The order of suspension is passed a fortnight before. The statement of charge is yet to be issued. Moreover, the order of suspension is liable to be reviewed by the reviewing authority mandatorily within 90 days, in view of the guidelines laid down by the Hon'ble Apex Court in the case **Ajay Kumar Choudhary Vs. Union of India Through its Secretary & Anr., (2015) 7 SCC 291**. There cannot be a negative presumption that reviewing authority would never revoke the suspension. For all aforesaid reasons the prayer made by the applicant seeking quashment of the order of suspension cannot be accepted at this stage. The respondents are however, directed to expedite the enquiry proceedings and to complete the departmental enquiry against the applicant in all respect within the period of six months from the date of this order. It is clarified that the applicant is not precluded from approaching this Tribunal in the event the order of suspension is not reviewed within the period of 90 days and/or the period of suspension is inordinately prolonged or like such issues.

16. With the observations and directions as above, the Original Application stands disposed of with no order as to costs.

VICE CHAIRMAN

O.A.NO.316-2023 (SB)-2022-HDD-Suspens