

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.790/2016

DISTRICT – DHULE

Shri Pitambar Tarachand Khairnar,
Age: 57 years, Occ : Suspended,
R/o : 78, Ramnagar, Wadibhokar Road,
Deopur, Dhule.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through The Secretary,
Water Resources Department,
Mantralaya, Mumbai-400 032.
2. The Chief Engineer,
Tapi Irrigation Development Corporation,
Sinchan Bhavan, Akashwani Chowk,
Jalgaon.
3. The Superintendent Engineer,
Dhule Water Resources Department,
Sinchan Bhavan, Sakri Road,
Dhule.
4. The Executive Engineer,
Dhule Water Resources Department,
Sinchan Bhavan, Sakri Road,
Dhule.

...RESPONDENTS

APPEARANCE :Shri S.S.Patil, learned Advocate for the
applicant.

:Shri N.U.Yadav, learned Presenting Officer
(PO) for the respondents.

CORAM : Hon'ble Shri B.P.Patil, Member (J)

DATE : 6th July 2017

J U D G M E N T
[Delivered on 6th day of July 2017]

Applicant has challenged the impugned order of suspension passed by the respondent no.3 on 25-01-2016 and the order passed by the respondent no.2 dated 16-08-2016 by which his appeal dated 15-07-2016 challenging his suspension order has been dismissed.

2. The applicant joined service with the respondent no.3 as Assistant Civil Engineer w.e.f. 14-09-1983. On 16-01-2015, he has been promoted as Junior Engineer and since then he was working in that capacity. He was retired on 31-05-2017 on superannuation.

3. Learned Advocate for the applicant submits that a C.R.No. 77 of 2014 for the offences punishable u/s.406, 408, 420, 467, 468, 471, 506 r/w. 34 of the Indian Penal Code (IPC) had been registered against him on 06-03-2014 in Dhule Taluka Police Station, Dhule, in view of the order passed by 8th Judicial Magistrate First Class (JMFC) Dhule in RCC No.444/2012. He was arrested in that crime at 10:50 p.m. on 16-03-2014 and he detained in Police Custody up to 18-03-2014. Thereafter, he was released on

bail. He came to be suspended on 25-01-2016 w.e.f. 16-03-2014 as he was in Police Custody for more than 48 hours. It is his contention that being aggrieved by the said order he preferred an appeal along with application for condonation of delay before respondent no.2 for revocation of suspension order. Respondent no.2 without giving him an opportunity of hearing and without fixing the matter for hearing and also without considering merits in the appeal, rejected it by order dated 16-08-2016.

4. It is the contention of the applicant that the impugned suspension order dated 25-01-2016 is for indefinite period and he is kept under suspension since then. No show cause notice has been issued for initiation of departmental enquiry against him, and therefore, he challenged the impugned order dated 25-01-2016 passed by the respondent no.3 as well as the order dated 16-08-2016 passed by respondent no.2, challenging his suspension. It is contended by the applicant that suspension order passed by respondent no.3 as well as order passed by the respondent no.2 are illegal.

5. Respondent nos.1 to 3 filed affidavit in reply and contended that the applicant was arrested by the Police in C. R. No.77/2014 of Taluka Police Station Dhule on 16-03-2014 and he was detained in Police custody up to 18-03-2014. The applicant being Chairman of Tarachand Dina Khairnar Primary School, Junawane allegedly committed offences in that crime. It is their contention that applicant had not informed regarding his arrest and his detention in police custody to them. He suppressed the said fact. Respondents came to know about it when they received letter dated 15-07-2015 from Taluka Police Station, Dhule. Thereafter, the impugned suspension order has been passed by the respondent no.3. It is their contention that the applicant challenged the impugned order by filing appeal before the respondent no.2 along with the application for condonation of delay but no sufficient cause which prevented him to approach appellate authority within time, has been shown. Therefore, respondent no.2 rejected the application for condonation of delay and the appeal. It is their contention that the applicant was in police custody for more than 48 hours, and therefore, he was under deemed suspension from the date of his arrest. The

applicant was in magistrate custody thereafter. It is their contention that the impugned order of suspension as well as the order passed by respondent no.2 rejecting application for condonation of delay and appeal filed by the applicant, are legal, just and proper, and therefore, they prayed to reject the O.A.

6. I have heard arguments of Shri S.S.Patil learned Advocate for the applicant and Shri N.U.Yadav learned Presenting Officer (PO) for the respondents.

7. Learned Advocate for the applicant has submitted that the applicant has been suspended by the impugned order dated 25-01-2016 w.e.f. 16-03-2014 on the verge of his retirement. He has submitted that the applicant was arrested in a crime bearing C. R. No.77 of 2014 for the offences punishable u/s.406, 408, 420, 467, 468, 471, 506 r/w. 34 of the IPC on allegations of breach of trust and cheating. Said offences have no concern with the official duty of the applicant. Suspension of the applicant continued till his retirement. The applicant retired on superannuation on 31-05-2017. He has submitted that his case has not been placed before the suspension review

committee but after issuance of directions by this Tribunal, it was placed before the suspension review committee on 19-06-2017 and that time it has been decided that no question of revocation of suspension arises since the applicant retired w.e.f. 31-05-2017. He has submitted that no chargesheet has been filed against him in the criminal case nor departmental enquiry against him is concluded. Therefore, suspension order is illegal and suspension cannot be continued for indefinite period. He has prayed that in view of retirement of the applicant w.e.f. 31-05-2017, it is just to revoke his suspension order. He has submitted that in similar set of facts this Tribunal had passed an order and revoked suspension of the government employee who had retired. In support of his submissions, he has placed reliance on the order dated 30-01-2015 passed by the Tribunal in O.A.No.364/2014 in the case of **Shri Chudaman Daga Pawar V/s. The State of Maharashtra & Ors.**

8. Learned Advocate for the applicant has submitted that Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 ("M.C.S. (D & A) Rules, 1979" for short) does not provide indefinite suspension. He has submitted that the

purpose of suspension was to facilitate investigation agencies to conduct enquiry and the applicant should not interfere in the investigation. He has submitted that the alleged offence is not in respect of official duties discharged by the applicant, and therefore, no question of pressurizing the witnesses and interfering in the enquiry or investigation by the applicant arises. He has submitted that suspension order suspending the applicant with effect from 16-03-2014 is not legal and proper, and he prayed to quash and set aside the suspension order.

9. In support of his submissions, he has placed reliance on the case of **Madhukar Namdeo Patil V/s. Chairman, Sudhagad Education Society & Ors.** reported in [2000 (4) **Mh.L.J. 206**] wherein the applicant who was working as Teacher was arrested in a criminal case on 28-10-1999. He was released on bail on 02-11-1999. On 05-11-1999, the order of suspension was issued against him on the ground that he had been detained in judicial custody for a period extending 48 hours. Said order was challenged on the ground that it was against the provisions of Rule 33(5) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Hon'ble High Court on considering

the provisions of the said rules allowed the petition and quashed the suspension order on the ground that it was against the provisions of the said rules.

10. Learned Advocate for the applicant has also placed reliance on the judgment in the case of **State of Maharashtra & Ors. V/s. Shivram Sambhajirao Sadawarte** reported in [2001 (2) Bom. C.R. 492] and in the case of **Shri Machhindra Pandurang Chavan V/s. State of Maharashtra & Ors.** reported in [1989 (3) Bom. C.R. 501] and also in the case of **Shri Hrishikesh Vasantrao Kumbhar V/s. Zilla Parishad, Sangli Through its Chief Executive Officer & Ors.** reported in [2016 III CLR 354], and has submitted that in view of the settled legal position, suspension order cannot be for an indefinite period, and therefore, suspension of the applicant who has now retired must be revoked by allowing the O.A.

11. Learned P.O. has submitted that the applicant was arrested by the Police of Taluka Police Station Dhule and he was detained for more than 48 hours in police custody, and therefore, in view of the Rule 4(2), suspension order had been issued by the respondent no.3. He has submitted that

the applicant suppressed the fact regarding his arrest and his detention in police custody for more than 48 hours. Said fact had been brought to the notice of the respondents by the Taluka Police Station, Dhule by letter dated 22-07-2015, and therefore, respondents collected necessary documents and passed the impugned order of suspension of the applicant. He has submitted that in view of the mandatory provisions of Rule 4(2) of the M.C.S. (D & A) Rules, 1979 respondents have passed the order. The applicant has right to challenge the said suspension order before the appellate authority as per Sub Rule 5 of Rule 4 of the M.C.S. (D & A) Rules, 1979 within stipulated time. He has submitted that as the applicant has not challenged the order within stipulated time and he filed the appeal beyond the period of limitation before the respondent no.2, therefore, appeal came to be rejected by the impugned order dated 16-08-2016 by the respondent no.2. Applicant has not satisfactorily explained the delay caused for filing the appeal.

12. On going through the documents on record, it reveals that a crime bearing C.R.No.77/2014 had been registered against the applicant with Dhule Taluka Police Station for

the offences punishable u/s.406, 408, 420, 465, 467, 468, 471, 504, 506 r/w. 34 of the IPC for the alleged offences of cheating and breach of trust. The applicant was working as Chairman of Tarachand Dina Khairnar Primary School, Junawane, Tq. & Dist. Dhule.

13. He was arrested by police on 16-03-2014 and he was in police custody up to 18-03-2014. Admittedly, he was detained in police custody for more than 48 hours and this fact has not been disputed by the applicant. In view of the provisions of Rule 4(2) of the MCS (D & A) Rules, 1979, he shall be deemed to have been placed under suspension from 48 hours of his detention by the police authorities. The fact of his arrest and detention has not been brought to the notice of the respondent no.3 by the applicant and others prior to 22-07-2015. On 22-07-2015, Taluka Police Station, Dhule informed the respondents about arrest of the applicant and thereafter, respondent no.3 passed impugned order dated 25-01-2016 suspending the applicant w.e.f. 16-03-2014. The applicant challenged the said order before respondent no.3 by filing the appeal on 15-07-2016 along with application for condonation of delay which came to be rejected by the respondent no.2 by his communication

dated 16-08-2016. Admittedly, the applicant was placed under suspension from 16-03-2014 and he was under suspension till he retired w.e.f. 31-05-2017. Neither respondent no.2 nor respondent no.3 passed further order as regards revocation or continuation of the suspension order on his retirement. It is settled legal position that object to suspend a Government servant who is facing serious charges is for placing him out of field so that he does not influence investigating officer and fair investigation in the matter is facilitated.

14. Learned Advocate for the applicant has relied on the judgment of Hon'ble High Court of Judicature of Bombay Bench at Aurangabad. Hon'ble High Court has discussed provisions of Rule 4 of the MCS (D & A) Rules, 1979 in the judgment in the case of **State of Maharashtra & Ors. V/s. Shivram Sambhajirao Sadawarte** reported in [2001 (2) Bom. C.R. 492], which are as follows:

"8. Sub-rule (1) of Rule 4 empowers the Government to place a Government servant under suspension.

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

(b) the employee is alleged to be engaged in activities prejudicial to the interest of the security of the State and,

(c) where a case against him in respect of any criminal offence is under investigation, enquiry or trial, whereas sub-rule (2) deals with the concept of deemed suspension (a) in case where the employee is detained in police or judicial custody, whether on criminal charges or otherwise for a period exceeding 48 hours or (b) if in the event of conviction for an offence, the employee sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Sub-rule (3) also deals with the Government's power to place an employee under suspension where a penalty of dismissal, removal or compulsory retirement from service as imposed by the Government is set aside in appeal or on review and the order of suspension in such cases shall be deemed to have continued in force on and from the date of the original order of the dismissal, removal or compulsory retirement and shall remain in force until further orders. The same power is vested with the Government when such order of dismissal, removal or compulsory retirement is rendered void or set aside by a decision of Court of Law. Whereas sub-rule (5) states that an order of suspension made or deemed to have been made under this rule shall be continued to remain in force until it is modified or revoked by the authority competent to do so and Clause (c) of the said sub-rule provides enabling powers to the Government to modify or revoke the order of suspension. This

provision is applicable to all categories of suspensions as set out in sub-rule (1) to (4) and therefore, in every case the suspension shall continue to remain in force until it is modified or revoked by the authority competent to do so under Clause (c) thereto."

It has been further observed by the Lordships in paragraph 10 as follows:

"10. There can be no dispute that a Government servant cannot be kept under suspension indefinitely or for an unreasonable long period and the same is not contemplated under Rule 4 of the Rules as well. A provision is made empowering the Government to review or revoke such an order of suspension in appropriate cases. If the employee approaches the State Government requesting to revoke the suspension order under Rule 4(5) of the Rules and the said request is declined or remains undecided beyond a reasonable period, undoubtedly the delinquent employee has the right to challenge the Government's decision before a competent Court and the Court will have the powers of judicial review of such an order. The scheme of the rules is clear and does not call to be restated time and again. The delinquent's approach can be at any time and the same is required to be considered by the competent authority within a reasonable period."

The principle laid down in the said decision is most appropriately applicable in the instant case.

15. Considering the said principle and the facts in this case, in my opinion, the respondent no.3 ought to have decided the appeal of the applicant on merit by considering the delay caused for it instead of dismissing it summarily. It ought to have considered the grounds raised by the applicant in appeal and ought to have decided the appeal on merit. He has not recorded said reasons for rejecting the application for condonation of delay. The delay of 125 days caused for filing appeal was not inordinate or deliberate delay. Respondent no.2 ought to have condoned the delay of about 125 days caused for filing appeal by the applicant as the valuable rights of the applicant were involved in the matter. But instead of that, respondent no.2 dismissed the application for condonation of delay, and consequently, dismissed the appeal. Therefore, in my opinion, the impugned order passed by the respondent no.2 informing the applicant in that regard by communication dated 16-08-2016 is not legal, proper and correct. Therefore, it deserves to be quashed and set aside.

16. I have gone through the other decisions relied on by the learned Advocate for the applicant. Facts in case of **Madhukar Namdeo Patil V/s. Chairman, Sudhagad**

Education Society & Ors. reported in [2000 (4) Mh.L.J. 206], reported in [2000 (4) Mh.L.J. 206], **Shri Machhindra Pandurang Chavan V/s. State of Maharashtra & Ors.** reported in [1989 (3) Bom. C.R. 501] and **Shri Hrishikesh Vasantrao Kumbhar V/s. Zilla Parishad, Sangli Through its Chief Executive Officer & Ors.** reported in [2016 III CLR 354] are not identical with the facts in the present case. Therefore, principle laid down in those cases is not much useful to the applicant in the present case.

17. In view of the above said facts, it is crystal clear that respondent no.2 has committed error in rejecting the application for condonation of delay caused for filing the appeal by the applicant along with his appeal challenging suspension order. Therefore, the impugned order/ communication dated 16-08-2016 dismissing the application for condonation of delay and appeal by the respondent no.2 requires to be quashed and set aside by allowing the O.A. and condoning the delay caused for filing the appeal with a direction to respondent no.2 to consider the appeal preferred by the applicant challenging suspension order dated 25-01-2016 on merit. Respondent no.2 is further directed to consider as to whether

suspension of the applicant has to be revoked or continued in view of the fact that the applicant has already retired from service w.e.f. 31-05-2017.

18. In these circumstances, O.A. deserves to be allowed. Accordingly, O.A. is allowed and impugned order/ communication dated 16-08-2016 issued by the respondent no.2 dismissing application for condonation of delay and appeal filed by the applicant challenging suspension order dated 25-01-2016 is quashed and set aside. Delay caused for filing appeal challenging suspension order dated 25-01-2016 is hereby condoned. Respondent no.2 is directed to decide the appeal afresh on merit by giving an opportunity of hearing to the applicant. Respondent no.2 is also directed to consider the fact whether the suspension of the applicant can be revoked or continued in view of the retirement of the applicant w.e.f. 31-05-2017. Respondent no.2 is directed to decide the appeal within 2 months from the date of this order. There shall be no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 06-07-2017.