

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 666, 560 BOTH OF 2017 AND
O.A. NO. 428/2019

(1) ORIGINAL APPLICATION NO. 666 OF 2017

DIST. : OSMANABAD

Dr. Zulphiquar Hussain)
s/o Ahmed Ismail Patel,)
Age. 43 years, Occu. : Service as)
Medical Officer (Group-A),)
At Public Health Centre, Yedshi,)
Tq. & Dist. Osmanabad.)
R/o Opp. Sherkhane Petrol Pump,)
Aurangabad Road, Osmanabad,)
Dist. Osmanabad.) .. APPLICANT

VERSUS

1. The Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 32.)

2. The Commissioner and Director)
Of National Health Mission,)
Mumbai.)

3. The Joint Director)
Finance & Accounts),)
National Health Mission,)
Mumbai.)

4. The Chief Executive Officer,)
Zilla Parishad, Osmanabad.)

5. The District Health Officer,)
Zilla Parishad, Osmanabad.).. RESPONDENTS

A N D

(2) ORIGINAL APPLICATION NO. 560 OF 2017

DISTRICT: - AURANGABAD.

Dr. Praful S/o. Venkatrao Gaikwad,)
 Age : 41 years, Occu.: Medical Officer)
 Group A, presently working at Rural)
 Hospital, Deogaon-Rangari,)
 Tq. Khultabad, Dist. Aurangabad.) .. APPLICANTS.

V E R S U S

1. The State of Maharashtra,)
 Through the Principal Secretary,)
 Public Health Department,)
 Mantralaya, Mumbai-32.)
2. The Director of Health Services,)
 Vth Floor, "Arogya Bhavan",)
 St. Georges Hospital Campus,)
 Near C.S.T., Mumbai.)
3. The Deputy Director of Health Services,)
 Aurangabad Circle, Aurangabad,)
 Baba Pump, Aurangabad.)
4. The Chief Executive Officer,)
 Zilla Parishad, Aurangabad.)
5. The Medical Superintendent,)
 Rural Hospital, Deogaon Rangari,)
 District Aurangabad.).. RESPONDENTS.

AND(3) ORIGINAL APPLICATION NO. 428 OF 2019

DISTRICT: - LATUR.

Rajendra S/o. Narendra Shelke,)
 Age : 56 years, Occu.: Service as)
 Executive Engineer (Works))
 Zilla Parishad, Latur)
 (Presently under suspension).) .. APPLICANT.

V E R S U S

1. The State of Maharashtra,)
Through the Secretary,)
Public Works Department,)
6th Floor, Mantralaya,)
Mumbai-32.
2. The Chief Executive Officer,)
Zilla Parishad, Latur.).. RESPONDENTS.

APPEARANCE : Shri S.D. Joshi, learned Advocate for the
applicants in O.A. nos. 666/2017 and
428/2019.
: Shri J.S. Deshmukh, learned Advocate for
the applicant in O.A. no. 560/2017
: Smt. M.S. Patni, learned Presenting Officer
for the respondent Nos. 1 to 3 in O.A. no.
666/2017, for respondent nos. 1 to 3 in
O.A. 560/2017 and for respondent no. 1 in
O.A. no. 428/2019.
: Smt. Vaishali Shinde, learned Advocate for
the respondent no. 4 in O.A. no. 560/2017.
: Shri U.B. Bondar, learned Advocate for
respondent no. 2 in O.A.no. 428/2019.

CORAM : **Hon'ble Shri B.P. Patil, Acting Chairman**
RESERVED ON : **12th & 13th December, 2019**
PRONOUNCED ON : **20th December, 2019**

O R D E R

1. Facts and the issues involved in these Original Applications are similar and identical therefore I have decided these Original Applications by the common order.

2. Applicant in O.A. no. 666/2017 Dr. Zulphiquar Hussain s/o Ahmed Ismail Patel was serving as a Medical Officer Group-A at Public Health Centre, Yedshi, Dist. Osmanabad. He is challenging the impugned order dtd. 26.7.2017 issued by the respondent no. 4 the C.E.O., Zilla Parishad, Osmanabad directing the recovery against him of Rs. 12,04,100/-, by filing this O.A..

3. The applicant in O.A. 560/2017 Dr. Prafulla s/o Venkatrao Gaikwad was serving as a Medical Officer at Rural Hospital, Deogaon-Rangari, Tq. Khultabad, Dist. Aurangabad. He is challenging the impugned order dtd. 25.2.2016 issued by the respondent no. 4 the C.E.O., Zilla Parishad, Aurangabad thereby stopping his non practicing allowance (for short N.P.A.), by filing this O.A.

4. The applicant in O.A. no. 428/2019 Dr. Rajendra s/o Narendra Shelke was working as a Executive Engineer (works), Zilla Parishad, Latur. He has challenged the impugned order dtd. 25.4.2019 issued by the respondent no. 2 the C.E.O., Zilla Parishad, Latur thereby placing the applicant under suspension, by filing this O.A.

5. All the applicants were Government servants and they were deputed on the establishment of the concerned Zilla Parishads.

While they were serving on the establishment of Zilla Parishads, the impugned orders had been issued by the C.E.O. of the concerned Zilla Parishad. The issue involved in these matters is whether the order passed by the respondent C.E.O. of the concerned Zilla Parishads can be challenged before this Tribunal and whether this Tribunal has a jurisdiction to entertain the O.As. in which the orders passed by the C.E.O. of concerned Zilla Parishads i.e. local body are challenged.

6. Learned Advocates for the respective applicants have submitted that the applicants are Government servants and therefore any order passed against them and which relates to their service can be entertained by the Tribunal in view of the provisions of sec. 19 of the Administrative Tribunals Act, 1985. They have submitted that due to the impugned orders issued by the C.E.O. of the concerned Zilla Parishads their rights have been affected and same amounts to service matter. Therefore, this Tribunal has the jurisdiction to entertain their O.As.

7. Moreover, Shri S.D. Joshi, learned Advocate for the applicant in O.A. no. 428/2019 Rajendra s/o Narendra Shelke has submitted that the respondents in O.A. no. 428/2019 has issued the impugned order of suspension arbitrarily & illegally

without considering the gravity of misconduct and therefore this Tribunal can entertain the O.A.

In support of his said submission, he has placed reliance on the judgment in case of **State of Orissa through its Principal Secretary, Home Department Vs. Bimal Kumar Mohanty** reported at **1994 (2) SCR 51**, wherein it is observed as under :-

“It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to

impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.”

8. Learned Presenting Officer has submitted that though the applicants in all these O.As. are Government servants their services were borrowed by the concerned Zilla Parishads by way of deputation. Therefore the C.E.O. of the concerned Zilla Parishad is the controlling Officer for regulating their day to day service. She has submitted that the impugned orders have been issued by the Head of local body i.e. the C.E.O. of the concerned Zilla Parishad and therefore the said orders cannot be challenged before this Tribunal in view of the provisions of the section 19 of the Administrative Tribunals Act, 1985. She has submitted that jurisdiction, powers and authority to deal with the service matters belonging to the employees under local bodies are not conferred on this Tribunal in view of the provisions of section 15(2) of the Administrative Tribunals Act, 1985 and therefore this Tribunal has no jurisdiction, power and authority to deal with such matters

and therefore this Tribunal cannot admit the present O.As. Therefore she has prayed to reject the present O.As.

9. On going through the record it reveals that all the applicants are Government servants. They were deputed on the establishment of the concerned Zilla Parishads. Zilla Parishad borrowed their services. For the acts done by them during their deputation period the Zilla Parishad had taken necessary action against them by the impugned orders. The applicants have challenged the orders passed by the C.E.O. of the concerned Zilla Parishad by filing the present O.As. It means they are challenging the orders issued by the head of the concerned local bodies by filing the present O.As.

10. On going through the provisions of the Administrative Tribunals Act, 1985 it is crystal clear that the Parliament has enacted this Act to provide for the adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and posted in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution of India. The Act also provides for the

jurisdiction, powers and authority which may be exercised by each Tribunal. It provides the procedure to be followed by the State Tribunals.

11. Section 15 of the Administrative Tribunals Act, 1985 provides regarding jurisdiction, powers and authority of State Administrative Tribunals. Sub section (1) of section 15 provides that the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts, except the Supreme Court, in relation to recruitment and matters concerning recruitment to any civil service of the State or to any civil post under the State and all the service matters concerning a person appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation owned or controlled by the State Government.

Sub section (2) of the section 15 of the Administrative Tribunals Act, 1985 gives power to the State Government to apply the said provision under section 15(3) to local or other authorities and corporation controlled or owned by the State Government by issuing notification. On conferring the jurisdiction in respect of

such authorities by the Government the State Tribunal can exercise the jurisdiction and powers under the Act. The said provisions are material and therefore I reproduce the said provisions of section 15 of the Administrative Tribunals Act, 1985 :-

“15. JURISDICTION, POWERS AND AUTHORITY OF STATE ADMINISTRATIVE TRIBUNALS. –

*(1) Save as otherwise expressly provided in this Act, Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court ¹[**]in relation to –*

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government;

*(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation ²[**]or society or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.*

(2) *The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section(3) to local or other authorities and corporations or societies controlled or owned by the State Government :*

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of local or other authorities or corporations or societies.

(3) *Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to –*

(a) recruitment, and matters to recruitment, to any concerning service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person [other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14 appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

(4) *For the removal of doubts it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.”*

12. It is material to note that the State Government has not issued any notification conferring the jurisdiction on this Tribunal to entertain the service matters relating to the service conditions of the employees in connection with the local bodies, corporation or societies owned or controlled by the State Government. Therefore this Tribunal has no jurisdiction to entertain any matters relating to service of the employees of the Zilla Parishad, which is a local body or corporations or any orders passed by the local bodies.

13. Section 19 of the Administrative Tribunals Act, 1985 provides that the persons aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of their grievance. Explanation to section 19 defines the word 'order' mentioned in sub section 1 and it provides that such orders by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation owned or controlled by the Government or by an officer, committee or other body or agency of the Government or a local or other authority or corporation referred to in clause (a).

14. On reading the said provisions it is crystal clear that the order passed by any officer, committee or other body or agency of

the Government or a local or other authority or corporation referred to in clause (a) of section 19 of the Administrative Tribunals Act, 1985 can be challenged before the Tribunal, subject to other provisions of the Act. In view of the provisions of section 15 no such power or authority to entertain the application challenging the order passed by the local body has been conferred on the Tribunal.

15. Therefore, in my opinion, the orders passed by the C.E.O. of the concerned Zilla Parishads, who is head of the local body, cannot be challenged before the Tribunal in the absence of jurisdiction, power conferred on the tribunal. The provisions of section 19 of the Administrative Tribunals Act, 1985 are material, which read as under :-

“19. APPLICATIONS TO TRIBUNALS. –

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation : *For the purpose of this sub-section, “order” means an order made –*

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation or society owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise direct by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

16. As this Tribunal is not conferred with the jurisdiction, powers and authority to deal with the matters concerning person appointed by the local bodies, the order passed by the local bodies cannot be challenged before this Tribunal in view of the provisions of section 19 of the Administrative Tribunals Act, 1985. Therefore, in my view, the present O.As. cannot be admitted and entertained in view of the provisions of section 19 of the Administrative Tribunals Act, 1985. Hence, the present O.As. deserve to be rejected in view of the provisions of section 19 read with the provisions of section 15(2) of the Administrative Tribunals Act, 1985.

17. In O.A. no. 428/2019 the applicant has challenged the suspension order passed under rule 4(5) of the M.C.S. (Discipline & Appeal) Rules, 1979. In view of the provisions of the rule 4(5) of the M.C.S. (Discipline & Appeal) Rules, 1979 the applicant can make a representation for modification / revocation of the suspension before the authority competent to do so and he can make the representation to the authority which issued the suspension order or to any authority to which that authority is subordinate. Not only this, rule 17 of the M.C.S. (Discipline & Appeal) Rules, 1979 provides an appeal for challenging the suspension order made under Rule 4 of these Rules, while the Rule 18 provides appellate authorities to entertain such appeals. It means, the applicant in O.A. no. 428/2019 Dr. Rajendra s/o Narendra Shelke has alternate remedies to challenge the suspension order before the competent authority as provided under Service Rules i.e. M.C.S. (Discipline & Appeal) Rules, 1979, but he has not availed the alternate remedies available to him. Therefore O.A. no. 428/2019 cannot be admitted unless the applicant had availed all the remedies available to him under relevant service rules for redressal of his grievance in view of the provisions of Section 20 of the Act. On that count also the O.A. no. 428/2019 is not maintainable.

18. I have gone through the decision relied by the applicant in O.A. no. 428/2019 in case of **State of Orissa through its Principal Secretary, Home Department Vs. Bimal Kumar Mohanty** (supra). I have no dispute about legal proposition laid down therein. But the said decision is not much useful to the applicant in establishing his contention that the O.A. no. 428/2019 is maintainable. Therefore the principles laid down by the Hon'ble Supreme Court therein are not attracted in this case.

19. In view of above facts, in my opinion, the present O.A. Nos. 666, 560 both of 2017 and O.A. NO. 428/2019 are not maintainable in view of the provisions of sec. 19 & section 15 of the Administrative Tribunals Act, 1985. Therefore, the said O.As. cannot be admitted. Hence the same are liable to be rejected.

20. In view of the discussion in foregoing paragraphs, the O.A. Nos. 666, 560 both of 2017 and O.A. NO. 428/2019 are rejected. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 20th December, 2019