

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.1609 OF 2024**

**DISTRICT : Thane  
SUB : Suspension**

Smt. Rupali Ashwin Patil, Aged 39 Years, )  
Occ. working as Executive Engineer, Public )  
Works Division, Bhingari Pangvel, Dist.Raigad. )  
R/o. D-Wing, 408, 4<sup>th</sup> floor, Guratman, Yogi )  
Dham, Kalyan W), District Thane. ) ... **Applicant**

**Versus**

The State of Maharashtra, through the Principal )  
Secretary, Public Works Department, )  
Having office at M.K. Road, Mantralaya, )  
Mumbai 400 032. )...**Respondents**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant.

Shri D. R. Patil, learned Presenting Officer with Shri M. D. Lonkar,  
Special Counsel for the Respondent.

CORAM : Hon'ble Shri M. A. Lovekar, Hon'ble Member (J)

Reserved on : 16.01.2025

Pronounced on : 17.01.2025

**JUDGEMENT**

Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Shri D. R. Patil, learned Presenting Officer with Shri M. D. Lonkar, Special Counsel for the Respondent.

2. In this Original Application, the Applicant has impugned the order of her suspension dated 11.12.2024. The Applicant sought stay to this order. However, this Tribunal only issued notice to the Respondent on 20.12.2024. The Applicant challenged the order dated 20.12.2024 in Writ Petition No.19378/2024 because the stay was impliedly refused by

order dated 24.12.2024. The order of suspension of the Applicant dated 11.12.2024 was stayed by the Hon'ble Bombay High Court. By subsequent order dated 09.01.2025, this Tribunal was directed by the High Court to consider the prayer for 'Interim Relief' on its own merits and decide it by 20.01.2025. In this background, rival submissions on the point of 'Interim Relief' were heard.

3. Undisputed facts are as follows: -

The Applicant holds the post of Executive Engineer in PWD. By order dated 22.11.2023, she was transferred from Panvel Division to Jawhar Division. Against the order dated 22.11.2023, she filed O.A.No.1475/2023 before this Tribunal. By 'Interim Order' dated 23.11.2023, this Tribunal directed that the Applicant shall be allowed to continue on the post of Executive Engineer, PWD, Panvel. The Applicant was then served with a charge sheet dated 04.03.2024 containing three charges. On 11.12.2024, the Respondent No.1 passed the impugned order of suspension of the Applicant. This was followed by the charge sheet dated 07.01.2025 of departmental enquiry jointly initiated against the Applicant and 2 others. By this charge sheet, four charges are laid against the Applicant.

4. It was submitted by learned Advocate Shri A. V. Bandiwadekar that the Applicant is a Group 'A' Super Class Officer, her appointing authority is the 'State Government' i.e. 'Hon'ble Chief Minister', only he was competent to pass the impugned order, the said order could not have been passed on approval of the Hon'ble PWD Minister and these circumstances would render the impugned order *void-ab-initio*. In reply, learned Special Counsel Shri Lonkar for the Respondent relied on the G.R. of G.A.D., Government of Maharashtra dated 16.02.2015 (Exhibit R-3) whereby, Para No.3 of G.R. dated 26.06.2006 was amended. The heading of G.R. dated 16.02.2015 is as under :-

"अंतिम निर्णयासाठी मा. मुख्यमंत्री यांना सादर करावयाची शिस्तभंग विषयक प्रकरणे."

The relevant part of G.R. dated 16.02.2015 is as under :-

“शासन परिपत्रक -

संदर्भाधीन दि.२६.०६.२००६ च्या शासन परिपत्रकान्वये शासन सेवेतील सेवकांच्या सेवाविषयक बाबीसंबंधीची कोणती प्रकरणे मा. मुख्यमंत्र्यांना सादर करणे आवश्यक आहेत, कोणती प्रकरणे सामान्य प्रशासन विभागास दाखविणे आवश्यक आहेत व कोणती नाहीत, याबाबतच्या सूचना मंत्रालयीन विभागांना दिलेल्या आहेत. सदरहू परिपत्रकासोबतच्या "विवरणपत्र अ" मध्ये अंतिम निर्णयासाठी मा. मुख्यमंत्री यांना सादर करावयाची प्रकरणे नमूद केलेली आहेत. या विवरणपत्रातील अनुक्रमांक ३ वर खालीलप्रमाणे नमूद केलेले आहे :-

"३. अखिल भारतीय सेवेतील अधिकाऱ्यांविरुद्धची शिस्तभंगविषयक प्रकरणे तसेच विभागीय/प्रादेशिक विभागप्रमुख दर्जाचे तसेच त्यांच्यापेक्षा वरिष्ठ अधिकारी, विविध महामंडळाचे व्यवस्थापकीय संचालक आणि रु.१०,६५०/- हा किमान टप्पा असलेल्या वेतनश्रेणीतील गट-अ मधील सर्व अधिकाऱ्यांविरुद्धची शिस्तभंगविषयक प्रकरणे.

२.शासन आता वरील बाब या परिपत्रकान्वये खालीलप्रमाणे सुधारीत करीत आहे.

"३. अखिल भारतीय सेवेतील अधिकाऱ्यांविरुद्धची शिस्तभंगविषयक प्रकरणे तसेच विभागीय प्रमुख दर्जाचे तसेच त्यांच्यापेक्षा वरिष्ठ अधिकारी, विविध महामंडळाचे व्यवस्थापकीय संचालक आणि ग्रेड पे रु.८७००/- व त्यापेक्षा जास्त ग्रेड पे असलेल्या गट-अ मधील सर्व अधिकाऱ्यांविरुद्धची शिस्तभंगविषयक प्रकरणे."

It was submitted by learned Special Counsel Shri M. D. Lonkar that in view of G.R. dated 16.02.2015, approval of the Hon'ble Chief Minister was not necessary for issuing order of suspension of the Applicant. There is *prima-facie* merit in this submission. It is not the case of the Applicant that she falls in one of the categories mentioned in amended Para No.3 incorporated in G.R. dated 16.02.2015.

5. It was further submitted by learned Advocate Shri A. V. Bandiwadekar that on account of upcoming elections to State Legislative Assembly, the Code of Conduct was implemented from 15.10.2024 and this being the case, there was no question of the Hon'ble Minister for PWD according approval to issue the order of suspension of the Applicant. To refute this submission, the Respondent has placed on record the 'Office Note' which led to the order of suspension of the Applicant. The 'Office Note' concluded that financial irregularities to the tune of Rs.70,44,204/- were *prima-facie* noticed necessitating initiation

of departmental enquiry against the erring employees. The approval to this 'Office Note' was accorded by different authorities on different dates. The last page of this 'Office Note' bears signature of the Hon'ble Minister of PWD, however, there is no date below this signature. It was submitted by Advocate Shri A. V. Bandiwadekar that signature just above the signature of the Hon'ble Minister for PWD which was stated to be that of the A.C.S. is shown to have been made on 17.10.2024 and hence, it can be *prima-facie* gathered that the Hon'ble Minister must have put his signature after 17.10.2024. There is *prima-facie* substance in this submission. This circumstance goes to the root of the matter keeping in view the fact that the Code of Conduct was implemented from 15.10.2024. Once it is *prima-facie* held that the Hon'ble Minister could not have accorded approval to initiate departmental enquiry after the Code of Conduct was implemented, the order of suspension of the Applicant which can be inferred to have been issued pursuant thereto, would become unsustainable.

6. It was further submitted by Advocate Shri A. V. Bandiwadekar that the order of transfer of the Applicant dated 22.11.2023 was stayed by this Tribunal by order dated 23.11.2023 passed in O.A.No.1475/2023 and under such circumstances before passing the order of suspension, appropriate steps ought to have been taken by the Respondent to avoid simultaneous subsistence of conflicting situations. There is no merit in this submission. It is apparent that the order of stay to transfer of the Applicant could not have placed any embargo on the powers of the Competent Authority to pass the order of suspension.

7. It was further submitted by Advocate Shri A. V. Bandiwadekar that the impugned order of suspension was actuated by *mala fides*. It was submitted that the said order was passed by way of vendetta because the Applicant had challenged the order of her transfer and it was stayed by this Tribunal.

8. It was further submitted that though by charge sheet dated 07.01.2025, joint enquiry against the Applicant and 2 others commenced, only the Applicant was placed under suspension by order dated 11.12.2024. It is the settled legal position that *mala fides* are easy to allege but difficult to establish. Even to *prima-facie* establish *mala fides* cogent, strong material would be needed. Such conclusion cannot be reached on the basis of either surmises or inferences.

9. It was submitted by Advocate Shri A. V. Bandiwadekar that in W.P. No.19378/2024, the Hon'ble High Court granted 'ad-interim stay' to the order of suspension of the Applicant, while disposing of the Writ Petition, it was directed that the 'Interim Relief' was to subsist till this Tribunal had decided whether or not the impugned order of suspension was to be stayed and these circumstances would show that *prima-facie* case to stay the impugned order was found to have been made out. In reply, it was submitted by Special Counsel Shri M. D. Lonkar that while disposing of W.P., the Hon'ble High Court had specified that 'Interim Order' of stay was to continue to operate, however without prejudice to the rights and contentions of the parties. This submission is fully supported by order dated 09.01.2025 passed in W.P.

10. The Applicant has relied on ***P. Rajender V/s Union of India & Anr (2001) SCC Online AP 626***. In this case, it is held :-

*"7. Suspension pending investigation, inquiry or trial is interim in nature. The aforementioned rule clearly suggests that an order of suspension is not required to be passed only because it will be lawful to do so. An application of mind on the part of the competent authority is sine qua non for passing such order of suspension. Before passing of an order of suspension, therefore, it is expected that the appropriate authority shall not only take into consideration the public interest but shall also take into consideration the relevant facts and attendant circumstances as to how far and to what extent the public interest may suffer if the delinquent officer is not placed under suspension."*

On the other hand, the Respondent has relied on ***Government of Maharashtra and Anr. V/s Govindraj V. Naik (2018) SCC OnLine Bob 848***. In this case, it is held :-

*“The court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend is arbitrary and or is a mala fide exercise of power and or colourable exercise of power and/or the State or the authorities are not able to explain the reasons for suspension when it is for a unduly long period and adequate reasons are not forthcoming for the order of suspension.”*

Presently, it is only required to be seen whether the decision to suspend is *prima-facie* arbitrary or is a *mala fide* exercise of power and or colourable exercise of power. There is no cogent material to come to such conclusion.

11. It was further submitted by Special Counsel Shri Lonkar that since the Applicant did not avail alternate remedy provided under Rule 4(5) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979, the Original Application itself is not maintainable and hence, there would be no question of passing any ‘Interim Order’. In support of this submission, reliance is placed on ***State of Maharashtra & Ors. V/s Shivram Sambhajirao Sadavarte (2001) 3 L.L.N. 925*** (Bombay High Court). In this case, Rule 4 of the ‘Rules of 1979’ was considered and it was held :-

*“. Let us now turn to the provisions of Rule 4 of the Rules which deals with the issue of suspension.*

*"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 is 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 the appointing authority, the circumstances in which the order was made.*

*(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-*

*(a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours.*

*(b) With effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.*

*Explanation - The period of forty eight hours referred to in Clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.*

*(3) where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules, and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.*

*(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of, or by, a decision of a Court of Law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.*

*Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case,*

*(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.*

*(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.*

*(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority to which that authority is subordinate."*

*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 is 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 (a) thereto."*

*14. In the premise, we hold as under:*

*(a) The order of suspension issued under Rule 4 of the rules can be sought to be reviewed or revoked by the suspended employee by way of representation under Sub-rule 5 thereof, (b) Such a representation can be filed at any time and rejection of a representation may not operate as a bar in filing a subsequent representation for review/revocation,*

*(c) The representation so filed ought to be decided within a reasonable period of two to three months and by taking into consideration the nature of charges, progress in enquiry, investigations/trial as the case may be including the reasons for delay and other attending circumstances in each case as well as the policy decision of the State Government,*

*(d) Challenge to the order of suspension should not be ordinarily entertained by the Tribunal/Court directly unless the remedy as provided under Rule 4(5) is exhausted by the delinquent employee,*

*(e) If the representation filed by the delinquent employee under Rule 4(5) of the Rules is not decided within a period of two to three months or if the same is rejected, the employee has the right to approach the Tribunal and the order of the Government is subject to the judicial review,*

*(f) an order of suspension issued pending enquiry, investigation or trial, as the case may be, shall continue to operate till such enquiry, investigation and/or trial is completed and the suspension order cannot be quashed and set aside by the Tribunal on the basis of the circular dated 18 September, 1974 or the resolutions dated 14 December, 1995 and June 14, 1996. The order of suspension is subject to a judicial review by the Tribunal depending upon the facts and merits of each case,*

*(g) the State Government/competent authority ought to review the pending suspension cases every quarter and take the requisite steps to conclude the enquiry, investigation/trial as early as possible.*



In reply, it was submitted by Advocate Shri A. V. Bandiwadekar that alternate remedy does not create absolute bar and hence this Tribunal can certainly entertain instant Original Application. In support of this submission, reliance is placed on :-

- (1) ***Malpani Infertility Clinic Pvt Ltd & Ors. V/s Appropriate Authority PNDT Act & Ors. 2004 (4) Mh. L.J. (Bombay High Court).***
- (2) ***Laxman R. Vajage V/s Collector of Bombay & Ors. 2005 (1) Mh.L.J. (Bombay High Court).***
- (3) ***Ram and Sham Company v/s State of Haryana and Ors. AIR 1983 1147***

All these rulings lay down the proposition that availability of alternate remedy will be no bar to exercising powers under Article 226 of Constitution of India which are exercisable by the High Court. Hence, these rulings will not assist the Applicant in contending that inspite of availability of alternate remedy, this Tribunal may proceed to entertain the Original Application.

12. It was further submitted by Advocate Shri A. V. Bandiwadekar that in the instant case, the remedy of appeal does not lie. To support this submission, reliance is placed on the judgment of this Tribunal dated 03.12.2009 in ***O.A.No.1237/2009 (Dr. Chandrakant Gunda Gaikwad V/s State of Maharashtra & Ors.)***. In this case, it is held:-

“32. As far as the contention raised by Mr.Khaire that the applicant ought not to have approached this Tribunal before filing a representation to the Government against the suspension order, it is clear that there is no specific provision for making any appeal or representation in the above. In fact appeal against suspension order can only lie to the Governor and in the instant case, which is clearly barred by Rule 16 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. If at all an appeal will lie under rule 18 wherein suspension order has been passed by way of punishment, which is not the case herein. Even the judgment which is referred to by Mr.Khaire, the learned Counsel for the applicant in **State of Maharashtra Versus Shivram Sambhajirao Sadawarte 2001 (3) Mah. L.J. 249**, the facts and circumstances in that case do not apply in the instant case. In that case the Hon'ble High Court was dealing with the case of a Naib Tahasildar and not a Class-I Officer like the applicant. Even otherwise there is no statutory provision of Appeal or representation against suspension. In

*this case this Tribunal is the only remedy for the applicant. The judgment of the Hon'ble Supreme Court in **State of Haryana Versus Hari Ram and Others AIR 1994 SC 1262**, referred to and relied upon, by Mr.Khaire has no application in the present case as the challenge is not on the ground that the suspension order did not contain a recital about the Governors satisfaction about the suspension order."*

In view of observations made in the case of **Shivram Sadavarte** (supra), it will have to be *prima-facie* held that the Applicant can avail remedy under Rule 4(5) of 'Rules of 1979'.

13. The Applicant has further relied on **D. B. Gohil V/s Union of India & Ors. (2010)12 SCC 301**. In this case, it is held :-

*"5. Section 20(1) of the Administrative Tribunals Act, 1985 ("the Act", for short) provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The use of words "Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules" in Section 20(1) of the Act makes it evident that in exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal."*

In the facts and circumstances of the case, availability of alternate remedy shall be decisive *prima-facie* rendering this O.A. not maintainable, and it will follow that no 'Interim Order' of stay to the impugned order of suspension of the Applicant can be passed by this Tribunal. Consequently, the prayer for grant of such 'Interim Relief' will have to be rejected.

14. It was further submitted by Shri Lonkar, Special Counsel for the Respondent that if the impugned order of suspension of the Applicant is stayed, that would amount to granting final relief at 'Interim Stage' and such course is not permissible. In support of this submission, reliance is placed on **Raja Khan V/s Uttar Pradesh Sunni Central WAQF Board & Anr. (2011) 2 SCC 741**. In this case, it is held :-

*"11 It is well settled that by an interim order the final relief should not be granted, vide U.P. Junior Doctors' Action Committee v. Dr. B. Sheetal Nandwani<sup>2</sup> (SCC para 8), State of U.P. v. Ram Sukhi Devi<sup>3</sup> (SCC para 6), etc."*

15. For the reasons discussed hereinabove, no case is made out to stay the impugned order of suspension of the Applicant. Consequently, the prayer for grant of such 'Interim Relief' stands rejected with no order as to costs.

Sd/-  
( **M. A. Lovekar**)  
**Member (J)**

Place: Mumbai  
Date: 17.01.2025  
Dictation taken by: V. S. Mane  
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**L.O.**

16. After pronouncement of the order, learned Advocate for the Applicant has sought stay to its effect and implementation for a period of one week so as to enable him to approach the Hon'ble High Court.

17. This prayer is opposed by Special Counsel Shri Lonkar by relying on **Mr. Nivedan Bhimrao Torne V/s The Municipal Corporation of Greater Mumbai & Ors.**, judgment dated 18.10.2022 passed by the Hon'ble Bombay High Court in W.P.No.4185/2022. In this ruling, it is held :-

*15. However, insofar as the submission of Mr. Singhvi that the final order may not be directed to be given effect till sometime after it is passed so as to enable the petitioner to approach the Court and obtain appropriate relief is concerned, we are unable to accept such submission in view of the authoritative decision of the Supreme Court in [State of Orissa vs. Madan Gopal Rungta](#)<sup>3</sup> as well as a decision of fairly recent origin in [Manish S. Pardasani vs. State Excise](#)<sup>4</sup>.*

*16. In the aforesaid former decision, it has been unequivocally held by the Supreme Court that by the terms of [Article 226](#) of the Constitution of India no power is conferred on the High Courts to grant relief which is interim in nature although the Court declines the final relief as claimed in the writ petition. Such a course of action would be legally impermissible since interim relief can only be passed in aid of the final relief. When final relief cannot be granted, question of granting interim relief does not arise.*

17. Incidentally, the decision in *Manish S. Pardasani* (supra) was rendered in a civil appeal which travelled to the Supreme Court from a decision of this Court and the discussions forming part of paragraphs 64 to 68 are very relevant. It was held that in anticipation of an adverse order, the Court cannot make any direction affecting the independence of the authority empowered to pass an order. It is only after an adverse order is passed and infringement of a legal right shown that relief could be granted.

18. It is true, as contended by Mr. Singhvi, that orders of similar nature as prayed by him are regularly passed by this Court. With all the respect and humility at our command, we say that if such orders are passed without noticing the law *laid down in Madan Gopal Rungta* (supra) and *Manish S. Pardasani* (supra), the same would not be binding on us. Therefore, no Court, far less this Court, should ever think of considering a prayer of the nature made by Mr. Singhvi.

18. Considering the aforequoted proposition of law laid down by the Parent High Court, aforesaid prayer of the Applicant cannot be allowed.

Said prayer is rejected.

19. S.O. to 04.02.2024.

Sd/-  
( **M. A. Lovekar** )  
**Member (J)**

Place: Mumbai  
Date: 17.01.2025  
Dictation taken by: V. S. Mane  
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