

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.509 OF 2024

**DISTRICT : KOLHAPUR
SUBJECT : SUSPENSION**

Shri Shankar Dhondiba Gawade,)
Aged 52 Yrs, Occ. Government)
Service as Police Head Constable)
[now under suspension] attached to)
Kagal Police Station, Dist. Kolhapur, R/o. 868, W-Ward,))
Shree Colony, Line Bazar,)
Kasaba Bawada, Dist. Kolhapur.)... **Applicant**

Versus

The District Superintendent of Police, Kolhapur,)
Having Office at Kasaba Bawada Road,)
Dist. Kolhapur.)... **Respondents**

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

Shri Deepak R. Patil, learned Presenting Officer for the Respondents.

CORAM : M.A. LOVEKAR, VICE-CHAIRMAN

RESERVED ON : 25.02.2025

PRONOUNCED ON : 27.02.2025

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri D.R. Patil, learned Presenting Officer for the Respondents.

2. While serving at Kagal Police Station the applicant was placed under suspension by the impugned order dated 6-3-2024 by the respondent by exercising powers under Rule 3(1-A) of the Bombay Police (Punishments and Appeals) Rules, 1956. By charge-sheet dated 30-5-

2024 departmental inquiry was initiated against the applicant. In its meeting held on 28-6-2024 the Review Committee took the decision not to revoke suspension of the applicant because of pendency of departmental inquiry. By order dated 26-8-2024 suspension of the applicant was revoked. Hence, this O.A. impugning the order dated 6-3-2024.

3. Stand of the respondent is that an inquiry into the conduct of the applicant was pending and hence he was placed under suspension. Preliminary inquiry was conducted. Thereafter, by issuing charge-sheet dated 30-5-2024 departmental inquiry was initiated. The Inquiry Officer held all 7 charges to be proved in his report dated 26-8-2024. Thereafter, show-cause notice dated 6-9-2024 was issued to the applicant proposing punishment of dismissal from service. The applicant gave his reply to the said notice. By order dated 9-11-2024 the respondent has imposed the punishment of compulsory retirement. Thus, the O.A. has become infructuous.

4. In this case the applicant has impugned order of his suspension. It is apparent that said order was passed under Rule 3(1-A) of Rules of 1956. Relevant part of this Rule reads as under -

“3(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where-

(a) an inquiry into his conduct is contemplated or is pending,

or

(b) a complaint against him of any criminal offence is under investigation or trial:

There is material on record to conclude that an inquiry into the conduct of the applicant was going on and hence the applicant was placed under suspension. The order of suspension was passed on valid grounds. It may, however, be observed that the condition attaching to the order of suspension regarding change of his headquarter to the

Office of S.D.P.O., Gadhinglaj cannot be sustained as it is contrary to the Circular dated 19-3-2008 issued by the department.

5. It was submitted by Adv. Shri Bandivadekar that in this case though charge-sheet of departmental inquiry was issued within 3 months from the date of order of suspension, the Review Committee did not take the decision about continuance or revocation of order of suspension within 3 months, such decision was taken after lapse of 3 months i.e. on 28-6-2024 and under the circumstances period of suspension of the applicant beyond 90 days will have to be treated as duty period in view of settled legal position. In judgment dated 21-3-2024 in **W.P. No.6304/2023 (Sonal d/o Prakashrao Gawande vs. Municipal Council, Pandharkawada) Nagpur Bench of the Hon'ble Bombay High Court** has held –

“13. It is imperative to note that on 9th July, 2019 the State Government issued instructions as regards the suspension and thereby it was directed that in a case when the departmental inquiry has been initiated and the chargesheet is served upon the delinquent within three months from the date of suspension, a review shall be made about the continuation of order of suspension and a clear decision shall be taken in this respect. The said Government Resolution further says that where in a case after suspension within three months the departmental inquiry has not been initiated or the chargesheet is not served upon the delinquent, as per the judgment of the Hon'ble Supreme Court of India, the only option left is to cancel the suspension.

14. The said Government Resolution was issued by the State of Maharashtra in view of the judgment of the Hon'ble Supreme Court of India dated 16th February, 2015 passed in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another¹, wherein it is held thus:

We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any

person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

6. The learned P.O. on the other hand has relied on the judgment of the Hon'ble Supreme Court in **(Union of India & Ors. V/s Jaipal Singh) AIR 2004 Supreme Court 1005** delivered on 03.11.2003. In this case, on facts, it was observed-

"On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside."

7. In the instant case charges against the applicant laid by charge-sheet dated 30-5-2024 have been held to be proved and the departmental inquiry has culminated in imposition of punishment of compulsory retirement. Under such circumstances it would be proper that the issue of treatment of period of suspension is determined in the first place by the Disciplinary Authority. In case this decision goes

against the applicant, it would be open to him to approach this Tribunal. With these observations the Original Application is disposed of. No order as to costs.

**Sd/-
(M.A. Lovekar)
Vice-Chairman**

Place: Mumbai
Date: 27.02.2025
Dictation taken by: N.M. Naik.

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