

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.668 OF 2023**

**DISTRICT : MUMBAI**

**Sub.:- Suspension**

Dr. Prajwalit Prakash Kende. )  
Age : 43 Yrs, Working as Head of the )  
Department, Govt. Dental College & )  
Hospital, Mumbai and having office at )  
in the campus of Saint Georges Hospital, )  
P.D' Mello Road, Mumbai 400 001 and )  
Residing at A-404, Muskurah CHS Ltd., )  
Babrekar Nagar Road, Ganesh Nagar, )  
Kandiwali (W), Mumbai – 400 067. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Principal Secretary, )  
Medical Education & Drugs Department, )  
9<sup>th</sup> Floor, G.T. Hospital Campus, L.T. Marg,)  
New Mantralaya, Mumbai – 400 001. )...**Respondent**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondent.**

**CORAM : Shri M.A. Lovekar, Vice-Chairman**

**DATE : 04.03.2025**

**JUDGMENT**

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent
2. Case of the Applicant is as follows :-

The Applicant was working as Assistant Professor in Government Dental College, Mumbai. One of his students made a complaint to the Dean of the College on 09.05.2022 alleging that in January, 2020, in a conference at Dhule, the Applicant had sexually harassed her. The complainant also alleged one more incident of like nature which had allegedly taken place on 09.05.2022. Vide order dated 10.05.2022, a decision was taken by the Dean of the College to hold an enquiry against the Applicant as per the provisions of 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013' (hereinafter referred to as 'Act of 2013' for brevity). On 10.05.2022, the Applicant was called in the Office of the Dean. He participated in the enquiry. He submitted a letter dated 11.05.2022. According to him, when the alleged incident had taken place, he was under the influence of liquor and on vacation leave. He also gave an assurance that no such incident would ever take place in future, and sought pardon. Vide letter dated 01.06.2022, the Commissioner, Medical Education and Research, Mumbai passed an order and furnished copy of Report of enquiry to the Applicant calling upon him to submit his Representation/Reply. The Applicant submitted his Reply dated 11.06.2022. Thus, the enquiry had concluded in June, 2022. However, by the impugned order dated 10.10.2022, the Applicant was placed under suspension under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline & Appeals) Rules, 1979' (hereinafter referred to as 'Rules of 1979' for brevity). At any rate, the suspension of the Applicant could not have been continued beyond 90 days in view of Judgment of Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary Vs. Union of India & Anr. : (2015) 7 SCC***

**291.** The Applicant made Representations dated 11.01.2023, 20.01.2023, 21.02.2023 and 17.04.2023 to revoke the order of his suspension and to pay arrears of Subsistence Allowance. These Representations, however, went unheeded. Hence, this OA.

3. Reply of the Respondent is as follows. The allegations against the Applicant are quite serious in nature. The impugned order was passed by correctly invoking Rule 4(1)(a) of 'Rules of 1979'. An enquiry into the complaint received against the Applicant was conducted. During this enquiry, the Applicant accepted the allegations which were levelled against him. Evidence of witnesses was recorded. The Internal Committee made the following recommendation :-

“Dr. Prajwalit Kende, Associate Professor has used his position as head of the department as well as post graduate student guide for sexual harassment, so strict action should be taken against him immediately as per the rules.”

This chronology would show that the impugned order suffers from no infirmity.

4. It was submitted by Shri A.V. Bandiwadekar, learned Advocate for the Applicant that the impugned order of suspension of the Applicant is ex-facie unsustainable and it could not have been passed by invoking Rule 4(1)(a) of 'Rules of 1979'. The relevant part of Rule 4 reads as under:-

**“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) ...
  - (c) ...
- Provided ...”

According to Advocate Shri A.V. Bandiwadekar on the date of passing of the impugned order, the disciplinary proceeding against the Applicant was neither contemplated nor pending and hence, recourse to Rule 4(1)(a) of 'Rules of 1979' was not permissible.

Section 9 of the 'Act of 2013' deals with complaint of sexual harassment. Section 11 deals with how such complaint of sexual harassment is to be enquired into. Section 11(1) which is relevant reads as under :-

**"11. Inquiry into complaint.** -(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable."

The record of the case shows that enquiry by the Internal Committee conducted against the Applicant was concluded in the month of May, 2022. With covering letter dated 13.05.2022, said report was forwarded by the Dean of the College to the Commissioner, Medical Education & Research, Mumbai. It can be concluded that said enquiry was conducted as per afore quoted Section 11 of 'Act of 2013'.

Section 13 of the 'Act of 2013' reads as under :-

**"13. Inquiry report.** (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be-

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him."

A conjoint consideration of Sections 11 and 13 of 'Act of 2013' shows that in the instant case, enquiry was completed much prior to passing of the impugned order of suspension of the Applicant dated 10.10.2022, report of enquiry conducted by the Internal Committee was forwarded to Respondent No.1 and Respondent No.1 was to take action on the report of enquiry as deemed proper.

The Applicant has placed on record the copy of order dated 19.09.2024. By this order, following punishment has been imposed on the Applicant.

“५. त्याअर्थी, महाराष्ट्र नागरी सेवा (शिस्त व अपील), नियम १९७९ मधील नियम-६ अन्वये प्रदान करण्यात आलेल्या शक्तीचा वापर करून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम-५ (९) मधील तरतुदी नुसार, “डॉ. प्रज्वलित केंडे सहयोगी प्राध्यापक तथा विभागप्रमुख मुखशल्यचिकित्साशास्त्र शासकीय दंत महाविद्यालय व रुग्णालय, मुंबई यांना सेवेतून बडतर्फ करणे, मात्र भावी काळात शासकीय नोकरी मिळण्याच्या दृष्टीने सर्वसाधारणपणे ही अनर्हता ठरेल” ही शिक्षा देण्यात येत आहे.”

5. The discussion made so far will show that on the date of passing of the impugned order of suspension of the Applicant, the departmental enquiry was already concluded. Thus, neither of the contingencies envisaged in Rule 4(1)(a) of the 'Rules of 1979' was attracted. For this reason, the impugned order cannot be sustained.

6. In view of this finding and the fact that the order of dismissal of the Applicant has been passed, further contentions of the Applicant regarding revocation of order of his suspension and his entitlement to full pay and allowances for the period of suspension beyond 90 days need not be considered. Hence, the following order.

### **ORDER**

The Original Application is allowed in the following terms :

- (a) The impugned order of suspension of the Applicant dated 10.10.2022 is quashed and set aside and the Applicant is held entitled to get all consequential benefits which shall be paid to him within 2 months from today.
- (b) No order as to costs.

Sd/-

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

Mumbai  
Date : 04.03.2025  
Dictation taken by :  
S.K. Wamanse.

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