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, 4th 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 M. D. Lonkar, learned Special Counsel with Shri D. R. Patil, learned Presenting Officer for the Respondent.

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

Reserved on : 03.04.2025

Pronounced on : 08.04.2025

JUDGEMENT

Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Shri M. D. Lonkar, learned Special Counsel with Shri D. R. Patil, learned Presenting Officer 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 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. As per order dated 09.01.2025, this Tribunal passed order dated 17.01.2025 rejecting prayer for grant of 'Interim Relief' made by the Applicant. Order dated 17.01.2025 was challenged by the Applicant in Writ Petition No.2086 of 2025. It was disposed of by order dated 07.03.2025 with a direction to this Tribunal to decide the Original Application within the stipulated time.

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, 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. The impugned order of suspension of the Applicant refers to initiation of departmental enquiry against her by charge sheet dated 04.03.2024 under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. It also refers to another departmental enquiry initiation of which was contemplated at that point of time and this enquiry was also to be initiated under Rule 8 of the Rules of 1979. This second departmental enquiry was then initiated by charge sheet dated 07.01.2025.

It was argued by Adv Shri. Bandivadekar that the impugned order initially adverted to departmental inquiry initiated on 4-3-2024 which was more than 9 months old, if at all initiation or contemplation of said inquiry warranted suspension, order of suspension would have been passed either before commencement of inquiry or at the time of initiation of inquiry and under such circumstances clubbing of such relatively stale inquiry with another inquiry which was stated to have been contemplated, would give rise to an inference that the impugned order was malafide and the respondent was bent upon passing it. Alleging malafides is one thing and establishing them is another. Conclusion of malafides cannot be drawn in the absence of strong material to support the same.

5. It was submitted by Advocate Shri A. V. Bandiwadekar that the Applicant is a Group 'A' Super Class Officer, her appointing authority was the 'State Government' i.e. 'Hon'ble Chief Minister', only he was competent to pass the impugned order, said order could not have been passed as per approval accorded by 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 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."

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 अधिकाऱ्यांविरुध्दची 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 अधिकाऱ्यांविरुध्दची शिस्तभंगविषयक प्रकरणे.

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

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

It was submitted by 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 merit in this submission. It is not the case of the Applicant that the impugned order falls in one of the categories mentioned in amended Para No.3 incorporated in G.R. dated 16.02.2015.

6. It was further submitted by Advocate Shri A. V. Bandiwadekar that on account of upcoming elections to State Legislative Assembly Code of Conduct was implemented from 15.10.2024 and this being the case, there was no question of the Hon'ble Minister of PWD according approval to issue the order of suspension of the Applicant without seeking and receiving approval from Election Commission of India. To refute this submission, the Respondent placed on record the 'Office Note' which led to the order of suspension to the Applicant. The 'Office Note' concluded that financial irregularities to the tune of Rs.70,44,204/- were noticed necessitating initiation of departmental enquiry against the Applicant and two more co-delinquents. 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, below this signature, there is no date. This aspect of the matter assumes importance because on 15.10.2024, Code of Conduct was implemented on account of upcoming elections to State Legislative Assembly.

7. It was submitted by Advocate Shri A. V. Bandiwadekar that the entire contents of 'Office Note' refer to proposal for initiating departmental enquiry against the Applicant under Rule 8 of the Rules of 1979 and the proposal did not contain anything to show that in contemplation of initiation of departmental enquiry the Applicant was to be placed under suspension and approval for the same was also sought. Para 7 of the 'Office Note' reads as under :-

"७. परिच्छेद २ ते ४ मधील वस्तुस्थिती विचारात घेता पुढीलप्रमाणे कार्यवाही प्रस्तावित आहे:-

प्रस्तुत प्रकरणी रु.७०,४४, २०४/- एवढ्या रक्कमेची गंभीर आर्थिक अनियमितता झाल्याचे प्रथमदर्शनी निदर्शनास येत असल्याने, सदर अनियमिततेस जबाबदार

अधिकारी/कर्मचारी यांच्याविरूध्द महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या नियम ८ खाली विभागीय चौकशी करण्यात यावी. त्याकरीता मुख्य अभियंता, सार्वजनिक बांधकाम प्रादेशिक विभाग, कोकण, मुंबई यांच्याकडून प्रारुप दोषारोपपत्रे मागविण्यात यावीत."

First two lines of the aforequoted contents of 'Office Note' were marked as 'अ' and last four lines were marked as 'ब'. The 'Office Note' *inter-alia* contains signature of the Additional Chief Secretary' (PWD). Below the signature of said Authority the date mentioned is 17.10.2024. Below this date, there is an endorsement which reads as under :-

(अ) लक्षात घेता प्रथम निलंबित करावे.

(ब) नुसार कार्यवाही करावी.

8. It was submitted by Advocate Shri A. V. Bandiwadekar that absence of specific proposal to place the Applicant under suspension, and the endorsement proposing that that Applicant should be first placed under suspension and thereafter departmental enquiry should be initiated against her, would lend credence to the stand of the Applicant that in fact there was no proposal to place the Applicant under suspension, the proposal was confined only to initiating departmental enquiry against her and when the proposal was placed before the Hon'ble Minister (which must have been after 17.10.2024 considering the hierarchy) he had accorded approval only to initiate departmental enquiry against the Applicant and no approval was either sought for or accorded by him to place the Applicant under suspension. It was submitted that further inference will have to be drawn that the endorsement below the signature of Additional Chief Secretary (PWD) was inserted later on i.e. after the Hon'ble Minister had

accorded approval to only initiate departmental enquiry against the Applicant. It would be difficult to accept these contentions for want of sufficiently cogent material.

So far as this aspect of the matter is concerned, Special Counsel Shri M. D. Lonkar relied on the observations made by the Hon'ble Bombay High Court in judgment dated 04.07.2005 in ***W.P. No.1636/2005 (The State of Maharashtra V/s Vinay Mohan Lal & 5 Ors.)***. These observations are as under :-

> *"As laid down in Royappa's case (supra), the Courts and Tribunals must bear in mind the fact that the allegations of mala fides are often more easily made than proved, and the seriousness of such allegations demands proof of a high order of credibility. Since that heavy burden is not discharged by the person, who alleges mala fides, it would be dangerous to rely on such mala fides and pass an order on those mere allegations. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up. These considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in our democracy."*

9. It was argued by Advocate Shri A. V. Bandiwadekar that on 15.10.2025 Code of Conduct was implemented and thereafter no order like the impugned order could have been passed without getting necessary permission from Election Commission of India. The Respondent does not dispute that on the 'Office Note' ACS (PWD) had put her signature on 17.10.2024. Only thereafter the file must have been placed before the Hon'ble Minister (PWD). As mentioned earlier, there is no date below this signature. So far this aspect of the matter is concerned, the Applicant has relied on

directions of Election Commission of India dated 15.01.2021 which inter-alia state –

> "(i) The State/UT governments shall invariably obtain prior approval of the Commission before initiating any disciplinary action against the Chief Electoral Officers and other officers up to Joint Chief Electoral Officer during their tenure and also up to one year from its expiry."

The Applicant has further relied on the directives issued by Election Commission of India dated 31.03.2009 which inter-alia state –

> *" The Commission, having considered the matter has directed that written prior permission of the Commission is mandatory before suspending/initiating any disciplinary proceedings against officer/official connected with conduct of elections during the period of election."*

10. The Applicant has relied on ***S. K. Tripathi V/s State of MP High Court and others, 2009 (3) MPHT 504*** wherein it is held –

> *"2. The facts which are imperative to be stated are that the petitioner, District Education Officer, was placed under election duty by order of the Competent Authority dated 30-4-2009 as per Annexure P-6. While he was assigned the election duty, the order of suspension came to be passed by the respondent No. 2 on 12-5-2009.*
>
> *3. Though many an averment has been put forth in the petition criticizing the order of suspension, Mr. Sujoy Paul, learned Counsel for the petitioner in course of hearing restricted his submission to a singular ground that the petitioner while on election duty could not have been suspended by the respondent No. 2. To bolster the said submission he has commended me to a Division Bench decision rendered in Umesh Singh Yadav v. Collector/District Returning Officer, Balaghat 1992 MPLJ 173.*
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> *4. Mr. V.K. Shukla, learned Deputy Advocate General combating the aforesaid submission contended that the petitioner is a civil servant*

and his service conditions are controlled by 1966 Rules and, therefore, the respondent No. 2 had the jurisdiction to put him under suspension, despite the factum that he was placed on election duty during the said period. It is also urged by him that the decision rendered in Umesh Singh Yadav (supra), is distinguishable as controversy related to different set of facts altogether.

5. At the very outset it is condign to state that there has been no dispute at the bar as regards the fact that the petitioner was placed on election duty. It is also not disputed that his services were requisitioned by the Competent Authority, incharge of Election.

6. Presently to the rivalized submissions. To appreciate the rival submissions raised at the bar it is apposite to refer to Section 28-A of the Representation of People Act, 1951, which reads as under:

28-A. A Returning Officer, Presiding Officer, etc., deemed to be on deputation to Election Commission. The Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer appointed under this Part, and any Police Officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall during that period, be subject to control, superintendence and discipline of the Election Commission.

7. Be it noted, the Division Bench in Umesh Singh (supra), after reproducing the said provision has expressed the opinion as follows:

On a plain reading of the above provisions, it is clear that the authority to take disciplinary action is vested only with Election Commission and during the period of election.

8. Submission of Mr. Shukla is that in the said case the District Returning Officer has placed the petitioner therein under suspension and also issued the charge-sheet. In that factual matrix, the Division Bench has expressed the opinion that it is the Election Commission who could have taken suitable action u/s 28-A of the aforesaid Act and not the Returning Officer.

9. The distinction which is sought to be made by Mr. Shukla, in my considered opinion, is really not of any assistance to him. What has been stated by the Division Bench is that the power vests in the Election Commission for taking action against incumbents who are working during the election and deemed to be on duty with the

Election Commission. That is the ratio of the said decision. I have said so because in Paragraph 6 of the decision the Division Bench has expressed the view that the power of superintendence, control and discipline is only conferred on the Election Commission in respect of various officers working during election. The term "only" is of immense significance. The innovative submission of Mr. Shukla that the said decision was rendered only in context of Returning Officer and Election Commission is noted to be rejected inasmuch as the Bench has really stated that the power exclusively vests with the Election Commission. In the case at hand, the order of suspension has been passed by the respondent No. 2. He may be the Disciplinary Authority under the 1966 Rules but when the petitioner was on election duty there is deemed deputation with the Election Commission and, therefore, the provision contained in Section 28-A would be applicable on all fours. Therefore, the respondent No. 2 could not have passed the order as has been passed by him under Annexure P-1 as the election duty was in continuance.

11. In her Rejoinder the Applicant has stated that after Code of Conduct was implemented w.e.f. 15.10.2024, the Hon'ble Minister could not have dealt with any file relating to transfer, promotion, suspension etc. without there being necessary permission / approval from Election Commission of India. It is not the case of the Respondent that such permission / approval was obtained from Election Commission of India before passing the impugned order of suspension of the Applicant. Record clearly shows that the Hon'ble Minister could not have put his signature on the 'Office Note' before 17.10.2024 because the ACS (PWD) put her signature on the 'Office Note' on 17.10.2024 and only thereafter the file must have been placed before the Hon'ble Minister. The 'Office Note' further shows that Shri Salunkhe and ACS Smt. Patankar-Mhaiskar again put their signature on it on 29.11.2024. According to Special Counsel Shri Lonkar, since the impugned order of suspension of the Applicant was passed after Code of Conduct was lifted, no exception can be taken to it. This submission cannot be

accepted. What is crucial is the date on which approval was accorded by the Hon'ble Minister for initiating departmental enquiry against the Applicant in contemplation of which the Applicant was placed under suspension. On the basis of record, a finding can be recorded that when such approval was accorded Code of Conduct was in force and before moving the proposal permission was not obtained from the Election Commission. It is not in dispute that at the material point of time, election duty was assigned to the Applicant. The above referred flaw goes to the root of the matter rendering the impugned order unsustainable.

12. It was argued by Special Counsel Shri Lonkar that instant Original Application deserves to be dismissed because of failure of the Applicant to avail alternative remedy provided under Rule 4(5) of the Rules of 1979. At the time of considering question of 'Interim Relief', while passing the order dated 17.01.2025, this Tribunal had held, by relying on ***State of Maharashtra & Ors. V/s Shivram Sambhajirao Sadavarte (2001) 3 L.L.N. 925*** (Bombay High Court) that *prima-facie* the Original Application was not maintainable because alternative remedy was not availed by the Applicant. So far as this aspect of the matter is concerned, Advocate Shri A.V. Bandiwadekar relied on 'Operative Part' of the order dated 07.03.2025 passed by the Hon'ble Bombay High Court in W.P. No.2086/2025. This W.P. was directed against the order dated 17.01.2025 passed by this Tribunal. The 'Operative Part' of the order in W.P. inter-alia stated –

> *"The Maharashtra Administrative Tribunal would not be bound by the observations made by it in the impugned order dated 17th January 2025 and all contentions of the parties can be considered afresh."*

It was submitted by Advocate Shri A. V. Bandiwadekar that in view of what is held in the following rulings the instant Original Application will be perfectly maintainable.

(1) ***Dr. Chandrakant Gunda Gaik wad V/s State of Maharashtra & Ors. (judgment of this Tribunal dated 03.12.2009 in O.A.No.1237/2009).*** In this ruling, 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 Governor's satisfaction about the suspension order."*

(2) ***Ram and Sham Company v/s State of Haryana and Ors. AIR 1983 1147.*** In this ruling it is held :-

> *"Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226*

> *where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits."*

It was argued that though in this ruling there is reference to powers of the Hon'ble High Court under Article 226 of the Constitution of India, the underlying principle holding that alternative remedy does not create absolute bar will apply with equal rigor in the facts and circumstances of this case as well. I find merit in this submission.

(3) ***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."*

13. Having regard to above discussed legal position and the finding that the flaw of according approval to the impugned order by the Hon'ble Minister during subsistence of Code of Conduct without obtaining necessary permission from Election Commission of India goes to the root of the matter, I hold that the instant Original Application would be maintainable even if it is held that there was alternative remedy. It may be reiterated that in view of ruling of this Tribunal in the case of ***Dr. Chandrakant*** (supra), it will have to be held that the proper remedy which the Applicant could have availed to challenge the order of her suspension was by way of Original Application.

14. It was argued by Advocate Shri A. V. Bandiwadekar that once the impugned order is held to be bad in law, the Applicant will have to be reposted at Panvel. In Reply it was submitted by Special Counsel Shri Lonkar that there is lien on the 'post' and not on the 'place'. On this point Shri Lonkar placed reliance on ***Asif Mohd. Khan v/s State of M.P. and others, 2015 SCC OnLine MP 6742.*** In this ruling, it is held :-

> *34. In view of this express provision, it is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension. In the case of Haribans Mishra Vs. Rly. Board, (1989) 2 SCC 84 (para 15), the Supreme Court has held that lien can be on a post and not a lien on a place.*
>
> *35. Indubitably, even if the employee is placed under suspension, he would continue to hold his lien on the "post" on which he was "appointed substantively", until reinstated after revocation of suspension. However, there can be no vested right to continue at a place where the employee was posted at the time of suspension. Any other view would be antithesis to the rule of transfer being an incidence of service. It may be a case of transfer and posting at a different place, by the Competent Authority. That may be open to challenge on permissible grounds."*

Ratio of this judgment clearly shows that the Applicant cannot claim as a matter of right that she should be reposted at Panvel on revocation of order of her suspension. Special Counsel Shri Lonkar invited my attention to order dated 06.03.2025 (at page 740) whereunder one Shri Sandeep Chavan, Executive Engineer, is posted at PWD office at Panvel. In support of his above referred submission Advocate Shri A.V. Bandiwadekar sought to rely on the judgment of this Tribunal dated 24.02.2025 in ***O.A.No.849/2024 (Shri Prashant Subhash Bedse V/s the State of Maharashtra & 4 Ors.).*** In this case this Tribunal observed –

> *"I have held, on the basis of undisputed chronology which is set out above, that the impugned order of transfer of respondent no.5 was malafide. Said order was preceded by order of suspension of the applicant dated 11-7-2024. Because of this order post at Khed fell vacant. On the very next day i.e. on 12-7-2024 respondent no.5 wrote a request letter to respondent no.1 to transfer her to Khed. This was the background of order of transfer of respondent no.5 dated 16-7-2024. As a consequence, the applicant was displaced. By judgment of the Hon'ble Bombay High Court dated 31-1-2025 order of suspension of the applicant dated 11-7-2024 has been quashed and set aside. Taking into account all these circumstances direction to repost the applicant at Khed deserves to be issued. For the reasons discussed hereinabove, the impugned order of transfer of respondent no.5 dated 16-7-2024 is quashed and set aside. Respondent no.1 is directed to repost the applicant on his previous post at Khed within 7 days from today."*

In the instant case, on facts, I have held that the impugned order of suspension of the Applicant cannot be said to be malafide. The said order, however, is found to be unsustainable on the ground that approval for the same was accorded by the Hon'ble Minister when Code of Conduct as per directives of Election Commission of India was in force. Thus, the instant case is clearly distinguishable on facts. As mentioned above, one Shri Sandeep Chavan is posted as Executive Engineer at Panvel (PWD) by order

dated 06.03.2025. In these facts, contention of Advocate Shri A. V. Bandiwadekar that the Applicant should be reposted at Panvel deserves to be rejected.

15. For the reasons discussed hereinabove, the Original Application is allowed in the following terms. The impugned order of suspension of the Applicant dated 11.12.2024 is quashed and set aside and the Applicant is held entitled to get all consequential benefits. The Respondent shall pass necessary order pursuant to this determination within two weeks from today. No order as to costs.

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

Place: Mumbai
Date: 08.04.2025
Dictation taken by: V. S. Mane
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