

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.303 OF 2017

DISTRICT : Mumbai

1. Smt. Preeti Harsh Wigh,)
R/at. 102, Vikas Co-operative Housing Soc.)
Ltd., Plot No.92, Sector 17, Koparkhairne,)
Navi Mumbai 400 709.)..Applicants

VERSUS

1. Government of Maharashtra, through the)
Principal Secretary, Public Health Dept.)
Mantralaya, Mumbai 32.)
2. Commissioner, ESIS, Panchdeep Bhavan)
N.M. Joshi Marg, Lower Parel, Mumbai 13)..Respondents

Shri M.D. Lonkar, the learned Advocate for the Applicant
Ms S. Suryawanshi, the learned P.O. for the Respondents

CORAM : Shri R.B. Malik, Vice-Chairman

DATE : 28th August, 2017

JUDGMENT

1. The Applicant a Maetron in ESIS Hospital, Mulund hereby calls into question a communication dated 05.04.2017 from the Respondent No.1, the State of Maharashtra to Respondent No.2, Commissioner, ESIS, Mumbai whereby the period of her suspension from 18.04.2016 to 07.11.2016 was refused to be treated as on duty.

2. I have perused the record and proceedings and heard Shri M. D. Lonkar, the learned Advocate for the Applicant and Ms S. Suryawanshi, the learned P.O. for the Respondents.

3. The Applicant was placed under suspension by an order dated 18.04.2016. She presented the O.A. No.405/2016 **(Smt Preeti Harsh Wigh V/s. Government of Maharashtra & 1 Anr.)** seeking quashing and setting aside of that order of suspension with consequential service benefits and in effect seeking reinstatement. The said O.A. came to be decided by the judgment dated 25.10.2016, a copy of which is at Exh. 'E', page 18 of the Paper-Book. I relied upon some judgments of the Hon'ble Supreme Court and a few earlier judgments of this Tribunal, from para 12 and the subsequent paragraphs. They were **Ajay Kumar Choudhary V/s Union of India (2015) 2 SCC 291, O.P. Gupta V/s. UOI (1987) 4 SCC 328 and State of Andhra Pradesh V/s. N. Radhakrishnan (1998) 4 SCC 154.** Profuse quotations therefrom were noted for guidance and in para 15 the final order was made as follows:-

“15. For the foregoing and inviting reference to the observations hereinabove, generally and in the preceding Paragraph particularly, the order herein impugned stands hereby quashed and set aside. The order of suspension of the Applicant stands quashed and set aside with effect from 8th November, 2016 on which date, the Applicant shall be reinstated to the post she had been suspended from. The Respondents shall clear within one week thereafter

the arrears, if any, of the suspension allowance and post reinstatement, the Applicant shall be entitled to her regular pay and allowances. The Applicant is at liberty to move the Respondents in the matter of regularization of the period of suspension with monetary benefits, if any. The Original Application is allowed in these terms with no order as to costs”.

4. The above paragraph would make it quite clear that the impugned order of suspension was found unsustainable and it was quashed and set aside and reinstatement was ordered. The suspension allowances and post-retirement arrears were ordered to be cleared within one week. It would, therefore, be very clear that as far as the suspension was concerned there is judicial finding that it was legally unsupportable. The concluding part of the order indicated that the Applicant was at liberty to move the Respondents for regularization of period of suspension with monetary benefits. Needless to say that the authorities below were duty bound to rely upon the order of this Tribunal which in turn was based on the judgments of the Hon'ble Supreme Court. There is no escape from this clear position. The Applicant made representation as envisaged by the order in the O.A. and on 05.04.2017 the impugned communication was issued in Marathi. Instead of paraphrasing , the same needs to be reproduced as under :-

“ आपल्या संदर्भाधिन पत्रास अनुसरून कळविण्यात येते की, श्रीमती प्रिती विग, अधिसेविका व इतर यांचेविरुद्ध प्रस्तावित असलेल्या विभागीय चौकशीसंबंधातील दोषारोपपत्रे जोडपत्रासहीत दि.०१.०४.२०१७ रोजी प्राप्त झाली असून, याबाबत स्वतंत्रपणे कार्यवाही सुरु आहे.

श्रीमती प्रिती विग, अधिसेविका यांचेविरुद्ध विभागीय चौकशी प्रस्तावित असून, विभागीय चौकशीअंती काढण्यात आलेल्या निष्कर्षानंतर, श्रीमती विग यांचेविरुद्ध ठेवण्यात आलेले दोषारोप सिद्ध होतात किंवा कसे हे निष्पन्न होणार आहे. श्रीमती विग यांचेवरील दोषारोपाच्या निष्कर्षानंतरच त्यांचे निलंबन समर्थनीय होते किंवा कसे याबाबत निर्णय घेणे शक्य होईल. सदर:स्थितीत, श्रीमती विग यांच्या दि.१८.०४.२०१६ ते दि.०७.११.२०१६ पर्यंतच्या निलंबन कालावधीबाबत निर्णय घेता येणार नाही. सदर बाब अर्जदार श्रीमती प्रिती विग, अधिसेविका यांना आपल्या स्तरावरून कळविण्यात यावी.”

5. The above communication will make it very clear that the maker thereof labours under an impression that despite the orders of this Tribunal, the Government was free to make any order of choice in so far as the suspension related matter was concerned. In the Affidavit-in-Reply also there are recitals to the effect that the earlier order of suspension was very much warranted and that is despite the order of this Tribunal which as mentioned above, was based on the judgment of the Hon'ble Supreme Court. **Rule 72 of the Maharashtra Civil Services (Joining time, Foreign Service and payments during Suspension, Dismissal and Removal) Rules, 1981** with particular reference to sub-rule 3 thereof was discussed at the bar. No doubt, it lays down inter-alia that, where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

6. Now, in my opinion, it is very clear that there was an order of this Tribunal. It has already been held that the suspension was wholly unjustified and as I can visualize it the authority should have acted in the same spirit and context. I am very firmly of the view that in so far as the suspension is concerned, the said authority had no other go but to follow the line demarcated by the quasi judicial order. From the submissions and the recitals in the Affidavit-in-Reply one got an impression that there was some confusion between the matters related to the suspension and the D.E. I express no opinion about the impending D.E., if any, although there could be several things that could be said in that behalf and that is precisely because I am conditioned by the ambit of this O.A.. However, in my opinion one aspect of the matter is quite clear that the suspension and the D.E. are two distinct matters and despite the order of this Tribunal in the earlier O.A. it is not open to the Respondents to force the effectuation of that order to be postponed till the final decision of the D.E., if any. In my opinion even if I presume that the D.E. would go against the Applicant still the suspension and D.E. are entirely different phenomenon and they will have to be studied in the context of the fact such as they have occurred most importantly the earlier judgments in the disposal of the O.A.

7. The learned P.O. wanted me to dispose of this O.A. by direction to complete the D.E. within a specified time limit. It is impossible for me to accede to this submission of the

learned P.O. because I express no opinion on the truism or otherwise merit of lack of it of the D.E. though if one were to go by a communication of 05.08.2017 from the Public Health Department of the State to the Respondent No.2 there could be substance in Mr. Lonkar's submission that the case against the Applicant in the impending D.E. which technically is not pending even now, could have been considerably diluted. I express no opinion about it. I have referred to it to reason out my disagreement with the learned P.O. The upshot is that the impugned communication and its implications are unsustainable. On the earlier occasion while disposing of O.A. No.405/2016, I left the whole thing on the Respondents which ought to have been exercised in accordance with the well recognized tenets and, therefore, I find no hassle or impediment in issuing clear direction that the period of suspension above referred to should be treated as the period spent on duty and that would be for all purposes including the financial benefits and other service conditions. The communication herein impugned dated 05.04.2017, Exb. 'H', page 42 of the PB is hereby quashed and set aside. The Respondents are directed to treat the period of suspension of the Applicant from 18.04.2016 to 07.11.2016 as period spent on duty for all purposes including the monetary benefits and other service benefits and also continuity of service. Compliance within six weeks from today.

8. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. MALIK)
VICE-CHAIRMAN
28.08.2017

Date : 28.08.2017

Place : Mumbai

Dictation taken by : VSM

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