

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.56 OF 2019

DISTRICT : RAIGAD

Shri Pravin Vasant Kadam,)
Occ : Municipal Engineer (now under suspension),)
Worked at Pen Municipal Council,)
A/P/T Pen, Dist. Raigad.) **Applicant**

Versus

The State of Maharashtra,)
Through Principal Secretary,)
Urban Development Department,)
Having office at Mantralaya, Mumbai 400 032.) **Respondent**

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

Shri A.J. Chougule, learned Presenting Officer for the Respondent.

CORAM : SHRI A.P. KURHEKAR , MEMBER (J)

DATE : 25.04.2019.

J U D G M E N T

1. Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent.

2. In the present Original Application, the challenge is to the suspension order dated 20.11.2018 whereby Applicant has been kept under suspension in view of registration of offence against the employees of Kulgaon Badlapur Municipal Council.

3. Learned Advocate Shri A.V. Bandiwadekar for the Applicant urged that no offence has been registered against the Applicant and whatever offence registered by police are against other employees from the office of Kulgaon Badlapur Municipal Council, who

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were found involved in T.D.R. (Transferable Development Rights) scam. He has pointed out that Applicant joined as Municipal Engineer at Kulgaon Badlapur Municipal Council on 03.06.2013 and the alleged T.D.R. scam was of the earlier period with which Applicant had no concern. He, therefore, urged that the suspension order is apparently unsustainable as no offence is registered against the Applicant. He further urged that departmental charge-sheet has been issued against other employees but no charge-sheet has been issued to the Applicant and this also shows non involvement of the Applicant in alleged T.D.S. scam. He has further pointed out that the Applicant's period as Municipal Councilor at Kulgaon Badglapur was from 03.06.2013 to 31.05.2016 and by order dated 31.05.2016 he was transferred to Pen. He, therefore, contended that the Applicant being not continued at Kulgaon Badlapur Municipal Council his suspension was not at all warranted. On the above background, learned Advocate contended that continuous suspension of the Applicant for more than six months is contrary to law laid down by Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India : (2015)7 SC 291 (hereinafter referred to as Ajay Kumar Choudhary's case). He therefore prayed to quash the suspension order.

4. Whereas learned P.O. Shri A.J. Chougule submitted that the involvement of the Applicant is found in five matters of grant of T.D.R. scam and therefore suspension cannot be said unjustified. He therefore sought to support suspension order.

5. On hearing both, learned Advocate for the Applicant and learned Presenting Officer for the Respondent and on documents on record following factors emerges uncontroverted :-

- (i) Applicant joined as Municipal Councilor at Kulgaon Badlapur on 03.06.2013 and transferred to Pen on 31.05.2016.
- (ii) In the FIR registered under offence 166(a), 167, 406, 408, 409, 418, 420, 468 read with 120 of IPC name of the Applicant does not figure as accused (Copy of FIR is at Exhibit-31).

- (iii) Till date no charge-sheet is filed against the Applicant in criminal court.
- (iv) Though departmental enquiry has been initiated and charge-sheet has been issued against the employees whose names were in FIR, no such action of initiation of departmental enquiry is initiated against the Applicant.

6. Thus what transpires from the record is that the name of the accused is not figured in FIR but he seems to have been suspended only because at some point of time he worked in Kulgaon Badlapur Municipal Council. As stated above, the Applicant joined in Kulgaon Badlapur Municipal Council on 03.06.2013. Therefore, it was necessary for Disciplinary Authority to see whether the involvement of the Applicant is prima facie, established in the alleged TDR scam.

7. Learned P.O. for the Respondents has pointed out that in the investigation made by the E.O. Wing of Police, Applicant was found involved in 5 cases of grant of T.D.R. to M/s. Ganaraj Contraction and M/s. Mohan Life Space (the report is at page 115 to 120). However, except mentioning that the Applicant is involved in these five cases, no other material is produced to show as how he is related or was involved in the alleged T.D.R. scam. At the same time, the Applicant has produced documents (page 25 to 29) which are the letters issued by the then Chief Officer in 2011-2012. The application of M/s. Ganaraj Contraction and M/s. Mohan Life Space for grant of T.D.R. pertain to period 2011-2012. Whereas Applicant joined on 03.06.2013 and therefore Disciplinary Authority ought to have seen how applicant is involved in it.

8. Needless to mention that suspension cannot be resorted as the matter of rule and the recourse of suspension has to be taken where there is the possibility of tampering the witnesses by the delinquent by continuing him at the same place. In present matter Applicant having transferred from that place, the question of tempering of witnesses does not survive. In this behalf, it would be material to note the instructions laid down in Departmental Manual laying down the principle to be borne in mind while placing the Government servant under suspension, which are as follows :-

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"2.1 When a Government Servant may be suspended.- Public interest should be the guiding factor in deciding to place a Government servant under suspension. The Disciplinary Authorities should not suspend a Government servant lightly and without sufficient justification. They should exercise their discretion with utmost care.

Suspension should be ordered only when the circumstances are found to justify it. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against a Government servant are of a serious nature and on the basis of the evidence available there is a *prima facie* case for his dismissal or removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. In other cases, it will suffice if steps are taken to transfer the Government servant concerned to another place to ensure that he has no opportunity to interfere with witnesses or to tamper with evidence against him.

(I) By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory :-

(i) Cases where continuance in office of a Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) where the continuance in office of a Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;

(iii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i) and (ii) above) such as, for instance, where a scandal exists and it is necessary to place the Government servant under suspension to demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established."

9. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon'ble Bombay High Court in **1987 (3) Bam.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :-

"Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned."

10. Similarly, reference was made to the Judgment of Hon'ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :-

"9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted to as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post."

11. Furthermore, reference of Judgment of Hon'ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)** is imperative and the legal position is now no more *res-integra*. It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is as follows :-

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay."

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12. *Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

21. *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 person concerned 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 prepared 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 the 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 a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."*

12. The Judgment in *Ajay Kumar Choudhary's* case was also followed by Hon'ble Supreme Court in *State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21st August, 2018* wherein it has been held that, suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for a longer period and reinstatement could not be threat for fair trial or departmental enquiry, the suspension should not continue further.

13. Thus on perusal of Departmental Manual as well as catena of decisions referred to above, it is quite clear that suspension should be ordered only when circumstances warrants the same and it should not be invoked as routine. In view of law laid down by Hon'ble Supreme Court in *Ajay Kumar Choudhary's* case the suspension should not exceed 90 days and where charge-sheet is filed before expiration of 90 days, the Disciplinary Authority required to consider where extension of suspension is necessary and obliged to pass order to that effect on objective consideration of the matter. Thus in view of law laid down by Hon'ble Supreme Court in *Ajay Kumar Choudhary's* case suspension of 90 days without taking review is unsustainable.

14. At this juncture, reference can be made to G.R. dated 14.10.2019 which also *inter alia* provides that where Government servant is under suspension in pursuance of crime registered against him review is to be taken on completion of one year of suspension. Whereas in present matter, in fact there is no registration of crime against the Applicant, but he has been kept under suspension in view of registration of crime against the same of the employees of Kulgaon Badlapur Municipal Council. Therefore, this O.A. needs to be disposed of by giving directions to the Respondents to take decision about the extension or revocation of suspension of the Applicant in the light of judgment of Hon'ble Supreme Court in *Ajay Kumar Choudhary's* case as well as in the peculiar circumstances and facts of the case adverted to above and O.A. deserves to be allowed partly.

Ans. ✓

ORDER

- (i) O.A. is allowed partly.
- (ii) Respondent is directed to take review of extension or revocation of suspension within six weeks from today in the light of judgment of Hon'ble Supreme Court in *Ajay Kumar Choudhary's* case and the facts of the present case.
- (iii) The decision as the case may be communicated to the Applicant within two weeks thereafter.
- (iv) If Applicant felt aggrieved by the decision he can take recourse of law as may be available to him.
- (v) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

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