

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1100 OF 2019

DISTRICT : Mumbai

Shri Rajendra M. Shirwadkar)
Aged 56 years, Occ : Sub Divisional)
Engineer (under suspension))
R/o. Building 'C' Flat No.8, Thakkar)
Treasure, New Pandit Colony, Nashik.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 400 032.)....**Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicant.

Smt. Archana B. K., Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 11.12.2020.

JUDGMENT

The Applicant has challenged the suspension order dated 13.09.2019 and further sought declaration of entitlement to full pay and allowances after expiration of 90 days from the date of suspension.

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2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant was serving as Sub-Divisional Engineer, Pune-gaon Canal Sub Division, Unanda Nagar, Tal. Dindori, Dist. Nashik. On 17.07.2019, he was arrested by A.C.B. while accepting bribe of Rs.30,000/- from Agriculturist Shri Jadhav for handing over the cheque of the amount of compensation of land acquisition. He was retained in custody for more than 48 hours. Consequent to it, Respondent/Government suspended him invoking deemed suspension of Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 (herein after referred to as 'Rules 1979' for brevity). The Applicant was continued in suspension for more than 90 days. He, therefore, challenged the suspension order contending that suspension beyond 90 days in view of the decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, is illegal.

3. The Respondents resisted the Original Application by filing Affidavit in Reply justifying suspension of the Applicant in view of the registration of crime under provision of Prevention of Corruption Act, 1988 against him. Besides, during the pendency of O.A., the Applicant has been reinstated in service at Shahapur by order dated 13.09.2019. The Respondents, therefore, contend that O.A. has become infructuous.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant submits that O.A. be decided on merit since he had challenged the suspension order and secondly sought declaration that suspension beyond 90 days is illegal and Applicant is entitled for all service benefits immediately after expiration of 90 days. According to him, as the Applicant has been reinstated beyond the period of 90 days, he is

entitled to such declaration in view of the decision of the Hon'ble High Supreme Court in **Ajay Kumar Chowdhary's** case (cited supra).

5. Per contra, Smt. Archana B. K., learned Presenting Officer has sought to justify the suspension order contending that in view of the registration of crime under provision of Prevention of Corruption of Act, 1988, it was legal. She further submits that in view of entitlement of the Applicant, O.A. has become infructuous.
6. In so far as the powers of Tribunal in the matter of suspension is concerned, needless to mention, unless the order of suspension is shown *ex-facie* illegal or malicious or without jurisdiction, the same cannot be interfered with. The Tribunal should not act as an appellate forum in the matter of suspension. The adequacy of the material before the competent authority for suspending the employee normally cannot be questioned in judicial review. It be administrative order of interim nature. At the same time, one need to see whether there was enough material before the competent authority about serious misconduct of the Government servant so as to warrant suspension.
7. Admittedly, the ACB has registered offences under the provisions of Prevention of Corruption Act and the Applicant was in custody of ACB for more than 48 hours. It is on this background, the Government being competent authority invoked Rule 4(2)(a) of Rules 1979 which *inter-alia* provides for deemed suspension of Government servant where he is detained in judicial or police custody for the period exceeding 48 hours. The object of suspension is to maintain public probity and to ensure free and fair enquiry. As such, the competent authority is statutorily empowered to suspend the Government servant where criminal offence is registered against him and in case. the government servant is in custody for more than 48 hours, he is deemed to be suspended by operation of law. This being



the position, suspension of the Applicant cannot be said illegal, malicious or without jurisdiction.

8. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to place reliance on the decision of **Allahabad High Court 1995 (1) SLR 536 Jagjeet Singh V/s State of Uttar Pradesh & Anr.** wherein the petitioner had challenged Rule 49-A(2)(a) of Civil Services (Classification, Control & Appeal) Rules, which is in *paramateria* with Rule 4(2)(a) of Rules 1979. The Hon'ble Allahabad High Court held that the Government servant may not be able to get bail within 48 hours for reasons beyond his control i.e. if there is strike in the court, or if there is a holiday or for some other reasons and held that Rule 49 (A)(2)(a) is violative of Article 14 and 21 of the Constitution of India. In my humble opinion, this judgment is of little assistance to the Applicant for two reasons. Firstly, there is no such prayer to declare Rule 4(2)(a) of Rules 1979 null and void and secondly, in view of judgment of the Hon'ble **Supreme Court (2003) 6 SCC 516 Union of India V/s Rajiv Kumar Bani** wherein the Hon'ble Supreme Court while considering legality of Rule 10(2) of Central Service Rules 1965 which is in *paramateria* with Rule 4 of Rules 1979 held that Rule 10(2) is deemed provision and creates a legal fixation. The Hon'ble Supreme Court further held that even actual order of suspension is not required to be passed and a Government servant deemed to have been suspended by operation of the legal fiction. In view of this latest pronouncement of the Apex Court, reliance on decision of Allahabad High Court is misplaced. In O.A., there is no challenge to the virus of Rules 1979. Suffice to say, submission advanced by the learned Counsel for the Applicant that Rule 4(2)(a) of Rules 1979 is void and suspension order is illegal is totally unpalatable.

9. Shri A.V. Bandiwadekar, learned Counsel for the Applicant on the basis of the decision of Hon'ble Supreme Court in **Ajay Kumar**

Chowdhary's Case submits that the suspension beyond 90 days is illegal even if the Applicant is reinstated by order dated 14.01.2020. The decision in **Ajay Kumar Chowdhary's** Case was arising from suspension in departmental enquiry. It is in that contest, the Hon'ble Supreme Cour in Para 21 held as follows :-

"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."

10. Whereas in the present case, the Applicant has been suspended in view of registration of serious crime under the provision of Prevention of Corruption Act. Therefore, it is not possible to infer that even if suspension is on account of registration of criminal case, if such suspension is continued beyond 90 days then *epso facto* further suspension beyond 90 days is totally illegal and a Government servant is entitled to pay and allowances immediately after expiration of period of 90 days.

11. Shri A. V. Bandiwadekar, learned Counsel for the Applicant has cited the decision of Maharashtra Administrative Tribunal, Nagpur Bench in **O.A. No.570/2020 Vikas S. Totawar V/s State of**

Vikas

Maharashtra & Anr. wherein on the basis of decision in **Ajay Kumar Chowdhary's** case, suspension order dated 17.06.2020 was quashed and directions were issued to pay salary after deducting subsistence allowance. Operative order in O.A.570/2020 is as follows:-

"1. The order dated 17th June, 2020 (Annexure A-2, P.B.Pg. No.20) is hereby by quashed and set aside.

2. The Respondents are also directed to issue suitable posting order to the applicant as per observations made by the Hon'ble Apex Court in its Judgment in Civil Appeal No.8427-8428 of 2018 (Arising out of S.L.P. (Civil) No.12112-12113 of 2017) in the case of State of Tamil Nadu Vs. Pramod Kumar IPS and Anr. Delivered on 21.08.2018 in its para no.23 it has been observed as follows:-

23. This Court in *Ajay Kumar Choudhary Vs. Union of India* (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant Stat has the liberty to appoint the first Respondent in a non sensitive post.

3. Respondents are further directed to pay salary after deducting subsistence allowance which has already been paid for suspension period of applicant.

4. No order as to cost."

12. In view of the order of M.A.T. Nagpur Bench, learned Counsel for the Applicant tried to contend that once there is judicial pronouncement declaring Government servant entitled to pay and allowances during the period of suspension, this Tribunal needs to follow the same view or to make reference to full bench, if the Tribunal is of different view. In this behalf, he referred to the decision of the Hon'ble Supreme Court in **2000 SCC (L & S) 213 Sub Inspector Rooplal and Anr V/s Lt. Governor through Chief Secretary, Delhi and Ors** wherein it has been held that if the Tribunal is of opinion that earlier view taken by the coordinate bench of the same Tribunal was incorrect it needs to refer the matter to larger bench so that difference of opinion between two coordinate benches could be avoided.

13. There could be no dispute about legal proposition reiterated by the Hon'ble Supreme Court that court is bound by the precedent of coordinate bench and where subsequently bench is of the opinion that view taken by other coordinate bench is incorrect then the matter needs to be referred to larger bench so as to maintain judicial propriety and to avoid conflicting decision. However, in the decision of Nagpur Bench referred by the learned Counsel for the Applicant, the Tribunal only issued the direction of payment of salary in operative order. There is no such discussion in the judgment so as to consider it as a precedent that in every case after expiration of 90 days period, a Government servant is automatically entitled for full pay and allowances. Decision of Court/Tribunal cannot be equated to the level of precedent unless matter was in issue, argued and finding to that effect is recorded in the judgment. This being the position, there is no need to make any such reference to a larger bench as canvassed by the learned Counsel for the Applicant.

14. As rightly pointed out by the learned P.O. even if the Applicant was serving at Dindori by way of reinstatement, he was posted at different place i.e at Shahapur, in view of G.R. dated 14.10.2011 which *inter-alia* empowered the Government to reinstate the Government servant who is suspended in view of registration of crime on any other non executive post. This being the position, the Applicant cannot claim reinstatement at the same place.

15. In view of above, I have no hesitation to sum up that O.A. indeed has become infructuous in view of the reinstatement of the Applicant in service. In view of registration of serious crime under provision of Prevention of Corruption Act and detention in custody for more than 48 hours, suspension cannot be said illegal in law. In so far as, pay and allowances for the period of suspension is concerned, it needs to be decided by the competent authority at appropriate time.

W. K. S.

Criminal case is not yet concluded, therefore, relief claimed in this behalf is again premature. Original Application is, therefore, dismissed.

ORDER

(A) Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 11.12.2020

Dictation taken by : Vaishali Mane

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