

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.33 OF 2024**

**DISTRICT: PUNE  
SUBJECT : SUSPENSION**

Shri Pawan Bhila Shirsath, )  
Age:- 44 yrs, working as Physiotherapist )  
(under suspension) in B. J. Government Medical )  
College & Sassoon General Hospital, Pune. )  
R/at A-5, Home Wood Society, Doberwadi, )  
Sopan-Baug, Ghorpadigaon, Pune 411 001. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through the Additional Secretary, Medical )  
Education and Drugs Department, 9<sup>th</sup> floor, New )  
Mantralaya, G.T. Hospital Premises, Lokmanya )  
Tilak Road, Mumbai-32. )
- 2) The Commissioner, Medical Education & )  
Research, Mumbai Govt. Dental College )  
Building, 4<sup>th</sup> floor, Saint Jorjesh Hospital, P. )  
Demello Road, Fort, Mumbai 400 009. )
- 3) The Dean, B. J. Government Medical College )  
& Sassoon General Hospital, near Pune )  
Railway Station, Pune 411 001. ) ...**Respondents**

**Smt. Punam Mahajan, learned Advocate for the Applicant.**

**Smt. Archana B. K., learned Presenting Officer for the Respondents.**

**CORAM : Shri Ashutosh N. Karmarkar, Member (J)**

**DATE : 23.10.2024**

**ORDER**

1. The Applicant has prayed for revocation of suspension order dated 01.06.2023 and to reinstate him from 06.07.2023 in B. J. Government Medical College and Sassoon General Hospital, Pune. He

has also prayed for direction to Respondents to release pay and allowances for the period from 06.07.2023 till the date of reinstatement along with arrears of subsistence allowance.

2. The Applicant was serving as 'Physiotherapist' in B. J. Medical Government College and Sassoon Hospital, Pune. He was suspended by impugned order dated 01.06.2023 which took effect from 07.04.2023 as it is a case of deemed suspension. The FIR was lodged against the Applicant on 07.04.2023 under Section 7A of Prevention of Corruption Act, 1988. The Anti-Corruption Bureau (ACB), Pune has submitted special report vide order dated 20.04.2023 to Respondent No.3 mentioning about arrest of Applicant on 07.04.2023 and about his police custody till 10.04.2023. The Applicant was released on bail vide order of learned Additional Session Judge, Pune dated 12.04.2023. The Applicant has made representation on 12.07.2023 for revocation of suspension order. This matter is still pending.

3. According to Applicant, the Respondent No.2 has initiated D.E. and issued charge sheet on 24.08.2023. No charge is framed in Criminal Case. As per G.R. dated 09.07.2019, the suspension order should not be extended beyond three months, if charge sheet is not served on delinquent during that period.

4. According to Applicant, there is no review of suspension order after the period of three months from date of suspension. This Application is filed on the ground that continuation of suspension is illegal as his case is not placed before the Revenue Committee. The continuation of suspension is in violation of guidelines of the Hon'ble Supreme Court in case of **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**, wherein the Hon'ble Supreme Court directed that currency of a suspension should not extend beyond three months if memorandum of charges/charge sheet is not served upon the

delinquent and if the memorandum of charges were served, a reasoned order must be passed for extension of the suspension.

5. The Respondent No.2 has filed Affidavit in Reply. According to them, the Criminal Case as well as Departmental Enquiry is pending against the Applicant. As per G.R. dated 14.10.2011, the matter of review of suspension comes before the Committee after one year. Since, one year is over, the Respondent is going to place the matter before Review Committee.

6. Learned Advocate for Applicant has submitted that it is a case of deemed suspension and the case of petitioner was not before the Review Committee within three months from date of suspension. She has submitted as per contentions in the application.

7. On the other hand, learned Presenting Officer has submitted that as per G.R. dated 14.10.2011, the matter of suspension is to be taken up for review after one year and they are taking steps according to that. The charge sheet is served on the Applicant within three months of suspension.

8. It is undisputed fact that applicant was arrested on 07.04.2023 for the offences under Section 7A of Prevention of Corruption Act, 1988 with the allegation of accepting bribe for issuance of 'Disability Certificate'. It is undisputed fact that Applicant was placed under suspension as per order dated 01.06.2023 and the said suspension was treated from 07.04.2023 which is date of arrest.

9. The Applicant has come with a case that in view of decision of Hon'ble Supreme Court in case of **Ajay Kumar Choudhary** (cited above), the charge sheet in D.E. was not served on the Applicant within three months from the date of suspension nor there is review of continuation of suspension order.

10. The Respondents has contended in Affidavit in Reply that they have served with the charge sheet in D.E. to the Applicant on 16.08.2023. The suspension order (Exhibit A1, page 16) shows that Applicant was treated to be under suspension from 07.04.2023. So, it is clear that charge sheet in D.E. is not served on the Applicant within three months from the date of suspension. It is held in case of **Ajay Kumar Choudhar's** case that currency of suspension order should not extend beyond three months if within this period memorandum of charge sheet is not served on delinquent employee.

11. Learned Advocate for Applicant relied on judgment of this Tribunal in following cases and submitted that these matters are identical :-

- (i) **Sonal P. Gawande V/s Municipal Council, Pandharkawada), W.P. No.6304/2023** before the Hon'ble High Court of Judicature at Bombay.
- (ii) **O.A.No.1138/2023 (Kiran Lohar V/s State of Maharashtra),**
- (iii) **O.A.No.1072/2023 (Rajendra P. Patil V/s Government of Maharashtra),**
- (iv) **O.A.No.753/2023 (Shr Suresh Bawulgave V/s Commissioner of Fisheries. MS Mumbai).**

On the basis of decision of the Hon'ble Supreme Court in case of **Ajay Kumar Choudhary** (cited above), there is G.R. of the State of Maharashtra dated 09.07.2019 which is reproduced as under :-

शासन निर्णय :-

9. या अनुषंगाने शासकीय कर्मचा-याच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.
  - (i) खलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेऊन निलंबन पुढे चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह ) सक्षम प्राधिकार्याच्या स्तरावर घेण्यात यावा.
  - (ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा.सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन

समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरु करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता /खबरदारी घेण्यात यावी.

- (iii) फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरु करून दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.

12. In view of the decision of the Hon'ble Supreme Court in case of Ajay Kumar Choudhary (cited above) relied by learned Advocate for Applicant and G.R. dated 09.07.2019 referred above, the continuation of order of suspension cannot be sustained.

13. Learned Presenting Officer has submitted that in view of G.R. dated 14.10.2011, the matter of suspended employee involved in Prevention of Corruption Act is taken up for review purpose after one year from the date of suspension. It cannot be ignored that subsequent to this G.R., the judgment in case of **Ajay Kumar Choudhary** (cited above) is passed by the Hon'ble Supreme Court and on that basis another G.R. dated 09.07.2019 was issued. Even if, G.R. dated 14.10.2011 is to be considered, the matter of this suspended Applicant was not brought before the Review Committee within one year from 07.04.2023. So, the continuation of suspension of the Applicant can be said to be invalid.

14. Learned Advocate for Applicant has also claimed relief to release Pay and Allowances from the date of suspension till reinstatement. It is for the concerned authority to look into it as per relevant rules/law.

15. Learned Presenting Officer has also relied in case of **P. Kannan V/s Commissioner for Municipal Administration Municipal Administration Commission, Chennai & Ors. in W.P. No.2165/2015 and 21628/2018** in the High Court of Judicature at Madras.

16. The judgment of the Hon'ble Supreme Court in case of Ajay Kumar Choudhary is binding. Secondly, in case of P. Kannan (cited above), it is also held that issue of challenge to order of suspension should be analyzed on the fact of each case. It is already held that continuation of suspension of Applicant is not considered even on the basis of G.R. dated 14.10.2011 on which Respondents wants to rely. Therefore, the Original Application deserves to be allowed. Hence, the following order

**ORDER**

- (1) Original Application is partly allowed in following terms :-
- (2) Respondents are directed to revoke the order of suspension of the Applicant and reinstate him within 30 days from the date of order.
- (2) No order as to costs.

Sd/-

**(Ashutosh N. Karmarkar)**  
**Member (J)**

*Place: Mumbai*  
*Date: 23.10.2024.*  
*Dictation taken by: V. S. Mane*