

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.634 OF 2023

DISTRICT : MUMBAI

Shri Mahesh Satyawar Botle,)
Aged 55 years, Chief Administrative Officer)
[Now under suspension], Civil Hospital, Thane,)
R/o Kamgar Hospital Colony Type-5, Building No.2,)
Room No.12, LBS Road, Mulund (W), Mumbai 400080)..Applicant

Versus

1. The Commissioner,)
Health Services Commissionerate,)
Arogya Bhavan, St. George's Hospital Campus,)
P.D'Mello Road, Mumbai 400001)
2. The State of Maharashtra,)
Through Secretary, Public Health Department,)
Dhobi Talao, CST, GT Hospital Campus, Fort,)
Mumbai 400001)..Respondents

Shri A.V. Bandiwadkar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 13th June, 2024

PRONOUNCED ON: 11th July, 2024

J U D G M E N T

1. The applicant challenges the impugned order dated 9.12.2021 passed by respondent no.1 by which he was placed under deemed suspension w.e.f. the date of arrest viz. 8.12.2021 in contemplation of Departmental Enquiry (DE).

2. The applicant joined as Chief Administrative Officer (CAO), Group-A on 20.3.2012. During the period 2020-2021 the applicant was posted at Civil Hospital, Thane as CAO and he was holding the additional charge of Joint Director (Non-Technical) at the Public Health Commissionerate. During COVID-19 Pandemic the Public Health Department issued advertisement for recruitment of Group-D employees. The department established an Examination Committee and the applicant was one of the Members and was assigned the duty of managing examination papers and other activities. The department held the written examination for the Group-D post on 31.10.2021.

3. In the meanwhile the office of Public Health Department received many complaints regarding examination paper leak and therefore the CAO, Pune lodged a complaint regarding Group-D examination paper leak to the Cyber Police Station, Pune city and registered offence No.53/21 with IPC 406, 420, 120-B, 34. Thereafter the Cyber Police, Pune arrested 11 accused, 5 of whom are employees of the Public Health Department. As per the Cyber Police report to the respondents, the applicant is the prime accused in the whole investigation. As per above complaint, the applicant was arrested on 8.12.2021 as main accused by the Cyber Police, Pune.

4. Thereafter, as per Rule 4(1)(c) and Rule 4(2)(a) of the MCS (Discipline & Appeal) Rules, 1989 (hereinafter referred to as the 'said Rules') the respondent no.1 has suspended the applicant on 9.12.2021 and kept his headquarter at Civil Hospital, Chandrapur after considering circular dated 19.3.2008. The Government gave post facto sanction on 28.12.2021 to suspension order dated 9.12.2021.

5. Ld. Advocate for the applicant states that respondent no.1 had no authority, competence and jurisdiction to issue the order of suspension of the applicant which is why he made a report to the State Government on 20.12.2021 seeking post facto approval to the order of suspension. Accordingly, vide letter dated 28.12.2021 the State Government accorded post facto approval to the order of suspension. He reiterated that the applicant is a Group-A Gazetted officer being appointed to the post of Chief Administrative Officer by the State Government and for all legal and practical purposes it is respondent no.2, who is the appointing authority and the disciplinary authority of the applicant in terms of Rule 4(1) of the said Rules.

6. Ld. Advocate for the applicant also pointed out that there is reference to Rule 4(2)(a) of the said Rules in the order of suspension dated 9.12.2021. He states that till then the applicant had not completed 48 hours in police custody/judicial custody and therefore the said order describing to be the order of deemed suspension of the applicant passed by respondent no.1 is illegal. He further pointed out that the applicant has been under suspension from 8.1.2021 which is prolonged suspension and contrary to law settled by the Hon'ble Supreme Court in **(2015) 7 SCC 291 Ajay Kumar Choudhary Vs. Union of India Through its Secretary & Anr.**

7. Ld. Advocate for the applicant further pointed out that though a Departmental Enquiry has been initiated against the applicant vide charge sheet dated 27.6.2022 and though the applicant has filed reply on 1.8.2022, there is no further progress in the matter such as appointment of enquiry officer.

8. He pointed out that the charge sheets have been filed against the applicant in respect of crimes on 24.2.2022 and 24.3.2022 in the Court of JMFC Court No.6, Shivajinagar, Pune. He further pointed out that there is not much progress in the criminal case. Therefore, he prays that the order be set aside and he be reposted as Chief Administrative Officer, Civil Hospital, Thane. He relied on the following judgments:

(1) State of Bihar & Ors. Vs. Arbind, Civil Appeal No.6265/2013 decided by the Hon'ble Supreme Court on 26.7.2013.

(2) Sonal P. Gawande Vs. The Municipal Council, Pandharkawada, Yavatmal through its Chief Officer, W.P. No.6304 of 2023 decided by the Hon'ble Bombay High Court, Bench at Nagpur on 21.3.2024.

(3) Judgment and order dated 11.1.2022 passed by this Tribunal in OA No.325/2020 Vijay D. Sulochane Vs. The State of Maharashtra & Anr.

(4) Judgment and order dated 7.7.2021 passed by this Tribunal, Bench at Aurangabad in OA No.69/2020 Suresh G. Tandale Vs. The State of Maharashtra & Ors.

(5) Judgment and order dated 3.3.2023 passed by this Tribunal in OA No.168/2023 in Ganesh V. Kulkarni Vs. The Secretary, MPSC.

9. Ld. PO vehemently opposes the contentions raised by the Ld. Advocate for the applicant. She pointed out that after COVID-19 Pandemic, the Public Health Department has issued advertisement regarding recruitment of Group-C and D posts. The department had established the Examination Committee and the applicant was one of the Members of the committee and he was assigned to manage the examination papers and other activities. On 31.10.2021 the department held the written examination for the Group-D post in the State. However, the office of the Public Health Department received many complaints regarding examination paper leak and therefore the Chief Administrative Officer, Pune lodged complaint regarding Group-D examination paper leak to the Cyber Police Station, Pune City. As per the Cyber Police report of the respondents, the applicant is the prime accused person in the whole investigation. As per the above complaint, the applicant was arrested on 8.12.2021 as the main accused by Cyber Police, Pune.

10. Ld. PO further pointed out that suspension review committee meeting has been conducted 3 times on 18.11.2022, 25.1.2023 and 8.8.2023. Considering all the facts of the alleged crime, the committee decided to continue the suspension of the applicant as he is the prime accused person.

11. Ld. PO further submitted that GAD GRs dated 14.10.2011 and 28.3.2018 directs that the suspension review committee while recommending continuance of suspension shall consider the gravity of the criminal offence and the maximum sentence which can be given after conviction. The suspension review committee decided to recommend continuing suspension after perusing the record sent by the Police Department and considering the gravity of the offence. She further submitted that the police investigation revealed that the applicant was in contact with the candidates prior to exam and the hard copy of the leaked

examination paper was not yet recovered. The applicant was member of the committee entrusted with examination question paper setting and was holding a key administrative post in handling of exam process. Therefore, the assumption that the applicant might tamper with evidence or he may influence witnesses is reasonable and can explain his continuance of suspension.

12. Ld. PO further submitted that applicant was a Member of the Committee for handling the work of recruitment process of Group C and D posts. The applicant was handed over the responsibility to select 100 questions in the examination and send them to the Nyasa Communications. It is a fact that applicant is one of the accused in CR No.53/21 and 60/21 registered at Cyber Police Station, Pune.

13. Considered the submissions of both the sides. This suspension relates to a serious offence. The applicant is the prime accused as per Cyber Police Report. In this connection it is necessary to refer to GR dated 9.7.2019. As per para 1(i) of the GR the suspension review committee has taken three meetings on 18.11.2022, 25.1.2023 and 8.8.2023 and considering the gravity of the charges a decision was taken to continue his suspension.

14. It is important to consider the arguments of the Ld. Advocate for the applicant that order of suspension was passed by the Commissioner of Health Services, who is not the appointing authority of the applicant and therefore he is not the competent authority to issue the suspension order of the applicant. In this connection it would be worthwhile to reproduce Rule 4(1) and (2) of the MCS (Discipline & Appeal) Rules, 1979, which is quoted below:

“4. Suspension.- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

(a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.- The period of forty eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment

after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.”

15. It is to be noted that although the Commissioner, Health Services was not the competent authority to order the suspension, the applicant's suspension order dated 9.12.2021 issued by the Commissioner was sanctioned post facto by the competent authority of Government on 28.12.2021. Therefore the suspension order is legal and valid. It is seen that as per GR dated 18.10.2016 the Commissioner, Health Services has been appointed as Head of Department. Moreover, it is noted that the applicant's suspension order issued by the Commissioner is as per the provisions of Rule 4 of MCS (Discipline & Appeal) Rules, 1979 and Government has given post facto sanction to the said suspension order vide letter dated 28.12.2021. Therefore the suspension order is legal. It is not the case that the suspension of the applicant is issued by the authority who is nowhere related to the suspension of the applicant but is the empowered authority as per Rule 9(22) of the MCS (General Conditions of Services) Rules, 1981.

16. Although the applicant is a Class-I officer from the General State Services, Group-A (Scale S-20) and his appointing authority is Government as per Rule 4(1)(c) of the said Rules. Rule 4(1)(c) clearly states that:

“4. Suspension.- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension-

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.”

17. It is noted that the applicant's suspension order dated 9.12.2021 was issued by the Commissioner, Health Services as per Rule 4 of the MCS (Discipline & Appeal) Rules, 1979 and Government has given post facto sanction to the said suspension vide letter dated 28.12.2021. It is seen that as per GR dated 18.10.2016 the Commissioner has been appointed as the Head of Department. Efficacy of the said suspension order is not lost merely because not mentioning the words “Mission Director, National Health Mission, Mumbai”. Therefore, the suspension order is legal and valid.

18. Looking into the totality of the facts of the case, I pass the following order.

ORDER

- (i) The Original Application is dismissed.
- (ii) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
11.7.2024

Dictation taken by: S.G. Jawalkar.