

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.823/2015

DISTRICT – DHULE

Gopinath s/o Rambhau Gaikwad,
Age: 57 years, Occ : Service as Assistant
Dairy Development Officer Dhule at
Present in charge District
Dairy Development Officer, Dhule
Tq. Dhule, District Dhule.

...APPLICANT

V E R S U S

The State of Maharashtra,
Through the Secretary,
Agriculture, Animal Husbandry
Dairy Development & Fishery Department,
Hutatma Rajguru Chowk,
Madam Cama Road,
Mantralaya, Mumbai-32.

...RESPONDENT

APPEARANCE :Shri K.G.Salunke learned Advocate for the
applicant.

Shri I.S.Thorat learned Presenting Officer
for the respondents.

CORAM : Shri J.D.Kulkarni, Hon'ble Member (J)

J U D G M E N T**[Delivered on 1st September, 2016]**

The applicant was serving as Assistant Dairy Development Officer, Dhule and was holding additional charge of the post of District Dairy Development Officer, Dhule at the relevant time. He has retired on superannuation on 31-05-2016. Applicant has been kept under suspension by respondent no.1. Said order of suspension is the subject matter of this O.A. Applicant has claimed that order of his suspension is illegal and as such the same be quashed and set aside.

2. Respondent has filed reply affidavit and submitted that as per Rule 4(1)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 '(MCS (D & A) Rules' for short), Government has every right to keep the officer under suspension for the reason of departmental enquiry being contemplated against the applicant. Respondent has, therefore, justified the order of suspension.

3. Applicant files affidavit in rejoinder and submits that the suspension order was served on him just prior to 5

months of his retirement and this was nothing but with an intention to harass him. As regards tenability of the application filed without exhausting alternate remedy of appeal, the applicant placed reliance on judgment of **State of Maharashtra V/s. Dr. Subhash D. Mane reported in [2015 (4) MhLJ 971]**. Respondent has also filed additional short reply to the rejoinder and justified the suspension order.

4. Only material point to be considered is whether the order of suspension of the applicant is legal and proper ?

5. The impugned order of suspension has been passed as per the provisions of Rule 4(1)(a) of the MCS (D & A) Rules, 1979 and the relevant provision reads as under:

“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 that 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”

6. Perusal of the impugned order shows that the same has been passed as per Rule 4(1)(a) on the ground that departmental enquiry is contemplated against the applicant. Plain reading of provision 4(1)(a) of the Rules, thus, clearly shows that the appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority, is empowered to keep the employee under suspension, when departmental enquiry is contemplated.

7. In the present case, admittedly, departmental enquiry has been initiated against the applicant. Learned P.O. submitted that the competent authority has passed an order on 07-07-2016 and appointed an Enquiry Officer for conducting departmental enquiry. However, the applicant has not replied to the charges framed against him. Learned P.O. has invited my attention to the charges framed against the applicant in the departmental enquiry. Memo of charge is at paper book page 52-54, from which, it seems that there are as many as 5 charges framed against the

applicant. Material charge framed against the applicant is that, he has illegally recruited 17 employees of Class-III and Class-IV without following rules, regulations and against various directions and circulars issued by the Government from time to time.

8. Considering all these aspects, I am satisfied that, there seems to be material on record to show that the applicant has been kept under suspension because the departmental enquiry was contemplated against him, and accordingly, the said departmental enquiry has been initiated.

9. Learned Advocate for the applicant submits that since the applicant has retired on superannuation, departmental enquiry cannot be initiated against him except as per Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. I am unable to accept this contention, as admittedly, the charge sheet was served on the applicant and the applicant was kept under suspension before he got retired on superannuation, and the enquiry has already been initiated. Applicant himself has admitted that charge sheet

dated 17-12-2015 was served on him i.e. before the date of his superannuation.

10. Learned P.O. submits that the applicant ought to have exhausted the remedy of filing appeal against the order of suspension. For that purpose, he placed reliance on judgment delivered by the Tribunal on 06-04-2016 in **O.A.No.1080/2015** in the case of **Mahesh Manoharrao Mule V/s. State of Maharashtra**. Paragraph 8 of the said judgment is as under:

“8. I do not find any reason to hold that the Applicant is justified in approaching this Tribunal before exhausting all remedies. In fact, he could have filed appeal or representations against his suspension. This O.A. is not maintainable as he has failed to exhaust alternate remedies available to him.”

11. In this particular case, it is material to note that the applicant was kept under suspension by the impugned order on 14-12-2015 and he was due to retire on 31-05-2016 and it is discretion of the Tribunal to entertain the O.A. on merits.

12. In the case of **State of Maharashtra V/s. Dr. Subhash D. Mane reported in [2015 (4) MhLJ 971]**, Hon'ble Bombay High Court has observed that the Tribunal can entertain an application without relegating applicant to alternate remedy in exercise of its jurisdiction.

13. In view of the discussion in the foregoing paragraphs, I do not find any illegality in the order of suspension of the applicant. There is no merit in the O.A. Hence, following order:

ORDER

- (i) O.A. is dismissed with no order as to costs.
- (ii) Since Enquiry Officer is already appointed in this case, respondents are directed to complete the departmental enquiry in all respect, as per rules, within 6 months from the date of this order.

(J. D. Kulkarni)
MEMBER (J)