

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11987 OF 2015

Dr.Narender Omprakash Bansal, Mumbai

Petitioner

versus

1. The Additional Chief Secretary,
Medical Education and Drugs Department,
Government of Maharashtra, Mumbai.

2. The Director, Medical Education and
Research, St.George's Hospital, Mumbai.

3. The Dean, Grant Medical College and
Sir J.J.Group of Hospital, Mumbai.

4. The State of Maharashtra

Respondents

Mr.R.A.Dada, Senior Advocate, with Mr.R.D.Soni, Mr.Sujay
Gawde, Mr.Kamal Bhatt and Mr.Ajay Sharma i/by Shree & Co.
for Petitioner.

Mr.C.PYadav, Assistant Government Pleader, for Respondents-
State.

CORAM : D.H.WAGHELA, C.J. AND
M.S.SONAK, J.

DATE : 11th March 2016

ORAL JUDGMENT (Per – Chief Justice) :

1. The petition is admitted and service of Rule is waived by learned Assistant Government Pleader appearing for the respondents.

2. Heard, by consent, the petition is disposed of.

3. The petitioner is a Professor of Cardiology and Head of Department in Grant Medical College and Sir J.J.Group of Hospital. He has prayed for quashing of the judgment and order dated 16th October 2015 passed by Maharashtra Administrative Tribunal, Mumbai ('Tribunal') in Original Application No.444 of 2015 and has also prayed to quash the order dated 29th May 2016 of his suspension from service. Before partly allowing the Original Application by the impugned order, the Tribunal has recorded in the impugned order as under:

"54. The fact that the suspension is certainly the matter of hardship. In the background that in present case though four months have passed to the

suspension, charge-sheet is not served on the applicant and even review as regards continuation or revocation of suspension is not shown to have been taken.

55. Though suspension is not proved to be mala fide, the conduct of State is not shown or seen to be diligent.

56. It is evident that though power to suspend exists and material to reach a conclusion as to need of suspension exists, it is not adequate to draft the charge sheet since despite lapse of period more than four months has elapsed, charge sheet is not issued. Therefore it can be safely said that Government did hurry in issuing the order of suspension and has inordinately withheld serving of charge-sheet.

57. Be it that the Government was satisfied as to need of suspension, but needed time to gather more evidence, it should have waited to collect entire and additional material and evidence required as a basis for a comprehensive charge sheet. The Government ought to have waited for a month or two, employed appropriate devices, machinery, personnel, or agency for collecting any and entire factual data which according to the Government constitutes serious misconduct. After collecting any or all such evidence, Government should have moved forward for taking recourse of issue of order of suspension. Such a prudent step would have certainly proved the Government's action to be charged with sincerity. This hurry may not be per-se evidence of mala fides, however, is certainly evidence of the action of the Government lacking required degree of prudence. Prudence is always expected, though there are judicial limitations of enforcing it. It needs to be recorded as a word of caution that; prima facie,

appears that the Government machinery down the line, does not seems be involved and cooperating to implement the decision of the Government to suspend the applicant. Else, delay in action of preparing and serving the charge-sheet would not have occurred.

58. In the result, it is necessary to issue direction to the State to proceed or withdraw the suspension. It is necessary in the interest of justice that if charge-sheet is not served on the Applicant within 15 days from the date of receipt of this order, the suspension order shall stand automatically stayed and applicant be permitted to join duty. The Government would be free to proceed with the enquiry as and when it opts to serve the charge-sheet in due course and at its own leisure.

59. The discussion and observations in this order have become necessary in view of long drawn submissions, however, those be regarded as prima facie impressions for all purposes, and not the comments on merits of claim and contentions of both parties. The observations be contained in foregoing paragraph nos.37 to 49 be treated as 'prima facie', and not a dictum on the question of fact or law involved in present case."

4. There is no dispute about the fact that the petitioner has been suspended with effect from 9th May 2015 and the subject matter of review of the suspension is governed by Government Resolution dated 14th October 2011. The relevant paragraphs of said Government Resolution read as under :

"7 A) Besides reasons mentioned in para-3, if the government employee is suspended due to

departmental enquiry proposed or initiated against him as per the provision of Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, in such cases competent authority should take review of such suspensions after completion of three months from the date of suspension. The decision of reinstatement may be taken after review by the disciplinary authority as per the merit of the case. If the process of Departmental Inquiry is not completed within 6 months, in such cases the disciplinary authority has to take decision to reinstate the accused as per the merit of the case after taking proper review, provided that the accused is to be posted on non-executive post with the intent to avoid his interference in the process of Departmental Inquiry. Such action can be taken as per the provision of Rule 4(5)(C) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

B) Competent Authority should note that if the process of Departmental Inquiry is proposed or initiated as per the provision of Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, in such cases suspension of the delinquent employee is neither expected nor justifiable. Hence where it is decided to initiate the process of Departmental Inquiry as per the provision of Rule 10, it is necessary for the disciplinary authority to take the decision to terminate the suspension and to decide the posting of the accused on non-executive post at the same time.

C) Cases mentioned in above para no.7(a) and 7(b) need not to be referred to suspension review committee."

There is also no dispute about the fact that so far the Government has not taken the case of suspension of the petitioner in review and the matter is only stated to be lying with the disciplinary authority. Even after hearing of present petition being adjourned from time to time, the respondents have not chosen to place on record any facts explaining or justifying the delay in deciding the matter of continuation of suspension of the petitioner.

5. It appears from the averments made in the petition that after joining as a Lecturer in Grant Medical College in the year 1988, the petitioner was promoted to the post of Associate Professor and finally as a Professor and Head of Cardiology at Sir J.J.Group of Hospital since last thirteen years. He is also appointed as the Post Graduate Teacher by University of Health Sciences, State of Maharashtra since last seventeen years and due to his experience, expertise and extraordinary skills in his subject, he was appointed as an internal and external examiner for DM Cardiology, DNB Cardiology, FNB Cardiology for last twelve years across the country. He was also appointed by Medical Council of India as an Inspector. He appears to have received several international awards and published number of research papers. He is stated to have treated more than 1,00,000 patients and performed thousands of Angiographies and Angioplasties and balloon valve procedures.

6. Since by now, the charge-sheet dated 2nd November 2015 is stated to have already been issued, this Court would refrain from commenting upon gravity of the charges. However, the grievance of the petitioner is that due to mere issuance of the charge sheet, the respondents have not decided the matter of continuation of his suspension from service in terms of the obligation cast upon the Competent Authority and the Disciplinary Authority.

7. On the other hand, learned AGP submitted, on instructions, that the matter of continuation of suspension is under active consideration of the State Government and the petitioner would be reinstated with appropriate order of posting as soon as final decision is arrived at. Unfortunately, even during pendency of the present petition and in spite of grant of certain adjournments to the respondents, such decision has not been forthcoming.

8. In the above facts and peculiar circumstances, the continuation of suspension of the petitioner does not appear to be either legal or in public interest insofar as a highly qualified civil servant in-charge of cardiac care and health service is deprived of any post on the one hand and the public in general is deprived of his service on the other. Therefore, the petition is allowed with the direction to the respondents concerned to

revoke the impugned order of suspension and issue an order of appropriate posting within a period of 3 (three) days from today. The judgment is delivered in open Court and copy of the same will be supplied to learned AGP as soon as possible.

9. With the above direction, Rule is made absolute with no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)

MST