

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2152 OF 2016

Prajwal Narendra Bhoir

...Petitioner.

Versus

The Chief Engineer,
Maharashtra Jeevan Pradhikaran,
Thane and another

...Respondents.

....

Mr. Bhushan A. Bandiwadekar for the Petitioner.

Mr. A.R. Pitale for Respondent Nos. 1 and 2.

....

**CORAM : NARESH H. PATIL AND
Z.A. HAQ, JJ.**

06th September, 2017.

P.C. (Per: Z.A. Haq, J.)

1. The petitioner prays that the suspension order issued by the Chief Engineer of respondent-corporation be quashed and the respondent-corporation be directed to reinstate the petitioner with all the consequential benefits.

2. The petitioner was appointed as Junior Engineer on 25th May, 2004 and came to be promoted as Sectional Engineer in 2010. On 7th August, 2015, the petitioner was posted in Zilla Parishad, Palghar in the Rural Water Supply Department on deputation. On 8th August, 2015, first information report was lodged against the petitioner and Sanjay Eknath Baviskar

(Executive Engineer) for the offence punishable under Sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. In view of registration of offence, the impugned order was issued on 4th September, 2015 suspending the petitioner with effect from 8th August, 2015. The suspension order continues though the respondents have not initiated any disciplinary proceeding against the petitioner. The petitioner being aggrieved by the suspension order and its continuation has filed this petition.

3. The suspension order is challenged on the following grounds:

- (i) That it is issued by authority having no power.
- (ii) That the suspension of the petitioner is without any justification and;
- (iii) It cannot be continued for indefinite period.

4. The learned Advocate for the petitioner has submitted that as the petitioner was undisputedly working with Zilla Parishad, Palghar on deputation at the relevant time, if at all any decision regarding suspension of the petitioner was to be taken it should have been by the competent authority of Zilla Parishad, Palghar as per Rule 14(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979'). It is submitted that the impugned suspension order is issued by the Chief Engineer of the Corporation in exercise of powers under Rule 14(2) of the Rules of 1979 which does not confer power on him to suspend the employee. Relying on the Government Resolution dated 14th October, 2011, it is submitted that the respondents were

under an obligation to place the case of the petitioner before the committee after completion of period of one year of suspension and the committee constituted as per the above referred Government Resolution was under an obligation to consider whether the suspension of the petitioner is required to be continued or should be revoked. It is submitted that even after a period of two years, the respondents have not taken any action as contemplated by the above mentioned Government Resolution. It is submitted that till date the respondents have not taken any decision to initiate any disciplinary proceedings against the petitioner. It is argued that in such circumstances, the suspension of the petitioner and its continuation is bad in law. It is prayed that the impugned suspension be quashed and the respondents be directed to reinstate the petitioner with all the consequential benefits.

5. The Respondents opposed the claim of the petitioner substantially on the ground that the petitioner is suspended as he is being prosecuted for serious offence under Sections 7, 12, 13(1) (d) and Section 13(2) of the Prevention of Corruption Act, 1988. The respondents rely on the provisions of Rule 14(1) of the Rules of 1979 and submit that the action taken by the Chief Engineer of the respondent-corporation is justified.

6. After considering the rival submissions, we find that undisputedly the petitioner is an employee of the Corporation and at the relevant time he was posted with Zilla Parishad, Palghar on deputation. The suspension order dated 4th September, 2015,

states that the petitioner is suspended with effect from 8th August, 2015 after repatriating the petitionr with the parent department i.e. with the Corporation. The Chief Engineer of the Corporation has relied on the provisions of the Rule 14(2)(ii) of the Rules of 1979 to exercise his authority to suspend the petitioner. Rule 14(2)(ii) of the Rules of 1979 provides for the steps to be taken pursuant to the findings in the disciplinary proceedings. Rule 14(2)(ii) of the Rules of 1979 confers power on the lending authority (i.e. the original employer) to pass orders regarding the imposing of major penalty on the employee. Rule 14(2)(ii) of the Rules of 1979 does not confer power on the lending authority (original employer) to pass orders regarding suspension of the employee. Rule 14(1) of the Rules of 1979 lays down that if the services of an employee are lent by one department to another department or to any other Government in India or to an authority subordinate to it or to a local or other authority including any company or corporation owned or controlled by Government (hereinafter referred to as “the borrowing authority” for this Rule), the borrowing authority shall have the powers of the appointing authority for placing the employee under suspension and the borrowing authority shall have the powers of the disciplinary authority for conducting a disciplinary proceeding against the employee. As the petitioner was working with Zilla Parishad, Palghar on the date when the impugned order suspending the petitioner with retrospective effect was issued, in view of Rule 14(1) of the Rules of 1979 the corporation had no power to place the petitioner under suspension and if at all the petitioner was to be placed under suspension, the action should have been taken by

Zilla Parishad, Palghar.

In view of the above, we find that the impugned order issued by the Chief Engineer of corporation suspending the petitioner is without authority and is unsustainable in law. Hence the following order:

ORDER

(A) The impugned order dated 4th September, 2015 is quashed.

(B) The prayer made by the petitioner for grant of consequential benefits is not considered at this stage as the criminal trial against the petitioner is pending. The Petitioner is granted liberty to make this claim before appropriate authority at appropriate stage.

The Writ Petition is partly allowed in the above terms. In the circumstances, the parties to bear their own costs.

(Z.A. HAQ, J)

(NARESH H. PATIL, J)