

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

WRIT PETITION NO. 1277 OF 2018

The Government of Maharashtra
and anr. ...Petitioners
Versus
Govindraj V. Naik ...Respondent

Mr. O.M. Kulkarni, AAGP for the State – Petitioner.
Ms Usha Purohit i/b Ms Rumana Bagdadi for the
Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE OF RESERVING THE JUDGMENT : 6th MARCH 2018.
DATE OF PRONOUNCING THE JUDGMENT : 14th MARCH 2018.

JUDGMENT:

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 26th July 2017 made by the Maharashtra Administrative Tribunal, Mumbai (MAT) allowing O.A. No. 1094 of 2016 instituted by the respondent to question the

suspension order dated 29th October 2016 imposed upon him pending department inquiry.

4] Mr. O.M. Kulkarni, learned AAGP for the petitioners – State, submits that it is settled position in law that the courts and tribunals must not ordinarily interfere with the orders of suspension pending department inquiry, unless, it is established that the suspension order was made *mala fide* or the authority making the suspension order was not legally competent to do so. Mr. Kulkarni submits that neither of these circumstances were either pleaded or established in the present case. Therefore, the MAT, exceeded jurisdiction in interfering with the suspension order.

5] Mr. Kulkarni submits that the charges against the respondent are quite serious and if the respondent is permitted to resume duties, the same may hamper the conduct of departmental proceedings. He submits that the charge-sheet has already been issued on 5th July 2017 and the petitioners will complete the inquiry within a reasonable period. Mr. Kulkarni submits that the MAT has

virtually examined the suspension order on merits and the observations in the impugned order might have been impact the departmental inquiry in pursuance of the charge-sheet dated 5th July 2017. Mr. Kulkarni relies upon the decision of the Hon'ble Supreme Court in ***Union of India and anr. vs. Ashok Kumar Aggarwal - 2013 (16) SCC 147*** and ***State of Maharashtra vs. Subhashchandra B. Patankar, Deputy Education Officer (Secondary) - 2006 (4) MhLJ 751*** in support of his submissions.

6] Ms Usha Purohit, learned counsel for the respondent, submits that the MAT has examined the matter in great details and there is neither any jurisdictional error nor perversity of approach. In such circumstances, Ms Purohit submits that this Court may not interfere with the well reasoned order of the MAT.

7] Ms Purohit submits that no charges of corruption as such have been levied against the respondent. She submits that though the suspension order was made on 29th October 2016, for an unreasonable length of time, the

department inquiry did not commence. She submits that there was no periodic review of the suspension order. She submits that a charge-sheet has been issued after considerable delay only on 5th July 2017, i.e., almost after one year from the date of issuance of suspension order. She submits that since charge-sheet is already issued, there is no question of any apprehension of tampering with evidence or otherwise influencing the witnesses. For all these reasons, Ms Purohit submits that the MAT has quite rightly interfered with the suspension order and the impugned judgment and order made by the MAT warrants no interference. Ms Purohit refers to the decision of this Court ***Madanlal Sharma vs. State of Maharashtra and ors. - 2004 (1) MhLJ 581*** in support of her submissions.

8] The rival contentions now fall for our determination.

9] The respondent, on the date, on which, he was placed under suspension, i.e., 29th October 2016 was working as Assistant Controller of Legal Metrology in charge of Mumbai District - 4. In pursuance of directions from the State Government, an inspection was ordered at all '11' districts

including Mumbai District - 4, as regards the functioning of Legal Metrology Centers. At the inspection held on 3rd August 2016, it was alleged that the respondent failed to provide the necessary documents to the inspection team. The team found that the documents, which are normally required to be maintained were far from complete. The same was position with regard to the maintenance of records of users inspection, weights and measures renewal, registered cases and records relating to fees and fines collected. The inspection team noted that there was no inward outward register maintained as per the Rules. It was found that the respondent has failed to follow the administrative rules of business and the respondent even went to the extent of giving misleading information to the inspection team that there is no application for licence renewal pending in the office of the respondent's center. The inspection team submitted reports that the inspection, though time bound, could not be completed due to lack of cooperation from the respondent. Taking all these materials, it was proposed to hold a departmental inquiry against the respondent and pending the same, the respondent was placed under suspension by order dated

29th October 2016.

10] Admittedly, the charge-sheet has been issued to the respondent on 5th July 2017 and the petitioners made a statement that they will proceed with and complete the inquiry expeditiously. It is necessary to note that the suspension order was issued on 29th October 2016 and the charge-sheet has been filed on 5th July 2017. Although, there is delay in the issuance of charge-sheet and completion of departmental inquiry, it cannot be said that such delay, in the peculiar facts and circumstances of the present case, is either inordinate or totally without any justification.

11] The MAT, after delineating the parameters of its jurisdiction in such matters by reference to several decisions of the Hon'ble Supreme Court, has failed to remain within the restrictive parameters of its jurisdiction. This is because the MAT, has gone into the aspect like the constitution of inspection team, inclusion of some members who were junior to the respondent in the inspection team, the mode and manner in which the

inspection was said to have been held and all such matters. The MAT, without there being any material on record, has made observations like it is too ritualistic to accept that the respondent was in a position to tamper with the record or that everything has become too much solidified to become amenable to tampering. The MAT, has criticized the department for its over sensitive approach. Such observations were clearly not warranted in the facts and circumstances of the present case. The MAT, has time and again referred to its jurisdictional limitations but ultimately, has transgressed such limitations and interfered with the suspension order.

12] The MAT, has in fact relied upon the decision in the case of ***State of Maharashtra vs. Shivram S. Sadawarte - (2001) ILLJ 1198 (Bombay)*** and reproduced the passages and conclusions recorded therein. In this decision, it is held that there should be a periodic review regards orders of suspension. The employee placed under suspension can file representation seeking such review, even though, earlier representation may have been rejected. If representation is made, the same has to be

decided within a reasonable period of 2-3 months by taking into consideration the nature of charges, progress in inquiry etc. Most importantly, this decision lays down that challenges to orders of suspension should not ordinarily be entertained by the tribunal/court directly unless remedy provided under the rules is exhausted by the delinquent employee. If the representation made by the employee is not decided within 2-3 months or if the same is rejected, the employee has the right to approach the tribunal and the order of the Government is subject to the judicial review. The competent authority must review the suspension order every quarter and take steps to conclude the inquiry as early as possible. Despite this ruling, the MAT has interfered with the suspension order without requiring the respondent to represent against the same or without requiring the review committee or the competent authority to review the same.

13] In *Madanlal Sharma (supra)*, the Division Bench of this court was concerned with indefinite continuation of suspension and inordinate delay in issuance of charge-sheet and completion of departmental proceeding. In the

present case, though, there may be some delay, it cannot be said that this is a case of some inordinate delay and certainly, this is not a case of some indefinite continuation of suspension. Therefore, the decision in *Madanlal Sharma (supra)* could not have been basis for the MAT to interfere with the suspension order. In the present case, considering the nature of the charge and the necessity of collection of documents, period of about 10 months in issuing the charge-sheet cannot be regarded as inordinate or unreasonable. The petitioners have now offered to complete the inquiry proceedings with reasonable despatch, in fact, before the MAT made its impugned order, the charge-sheet dated 5th July 2017 had already been issued.

14] In *Ashok Kumar Aggarwal (supra)*, the Hon'ble Supreme Court has held that a suspension order can be interfered with where charges are baseless, *mala fide* or vindictive and are framed only to keep delinquent employee out of a job. Where court finds that authority is not proceeding expeditiously as it ought to have, and it results in prolongation of sufferings for delinquent

employee, court may direct completion of enquiry within stipulated period. However, mere delay in conclusion of trial or enquiry cannot be a ground for quashing suspension order, if the charges are grave in nature. The court and tribunal cannot act as appellate forum *de hors* powers of judicial review.

15] In *Ashok Kumar Aggarwal (supra)*, the Supreme Court has held that the courts and tribunals can direct the competent authority to consider representation of a suspended employee where such representation is statutorily provided for. However, the courts should not pass an order directing any authority to decide representation after the first representation stands rejected for the reason that many a time, unwarranted or time-barred claims are sought to be entertained before the authority. The Supreme Court has held that suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position.

More so, at this stage, it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum *de hors* the powers of judicial review.

16] In ***Secretary to Government, Prohibition and Excise Department vs. L. Srinivasan - (1996) 3 SCC 157***, the Hon'ble Supreme Court has held that it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. In such circumstances, therefore, the tribunal committed grossest error in interfering with the suspension order on the ground of delay in initiation of disciplinary proceedings. The tribunal has exercised power as if it were an appellate forum *de hors* the limitation of judicial review.

17] In ***New India Assurance Co. Ltd. vs. S.M.I. Kazim and ors. - (2001) 111 JLR 1700 SC***, the Hon'ble Supreme Court has held that an order of suspension during the pendency of a department inquiry is ordinarily not interfered with by the High Court in exercise of its

jurisdiction under Article 226 of the Constitution until and unless the Court comes to a conclusion that the order has been *mala fide* passed or that the appropriate authority has not passed the order of suspension.

18] In ***U.P. Rajya Krishi Utpadan Mandi Praishad and ors vs. Sanjiv Rajan - 1993 Supp (3) SCC 483***, the Hon'ble Supreme Court has held that where there is an accusation of defalcation of monies the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Where the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered. Even in cases of prolongation of suspension due to delay in filing charge-sheet, the suspension may not be ordinarily revoked. The remedy lies in calling for explanation of delay and if found unsatisfactory, to direct the authorities to complete the inquiry within a stipulated period and to

increase the subsistence allowance adequately. Even in this case, the Supreme Court reiterated that the court should not ordinarily interfere with the suspension order, unless passed *mala fide* and without there being even a *prima facie* evidence connecting the delinquent with the misconduct in question.

19] The Division Bench of this court in *Subhashchandra Patankar (supra)* set aside the order of the tribunal which had interfered with a suspension order pending disciplinary proceedings. The tribunal in the said case had held that where criminal cases are likely to take a long time to conclude and the delinquent is not likely to tampering with the witnesses, the authorities should revoke the order of suspension. The Division Bench of this court held that it finds absolutely no basis for this propositions of law enunciated by the tribunal. The power to institute disciplinary proceedings against an erring employee on a charge of misconduct lies solely within the province and jurisdiction of the employer and the position is no different when the employer happens to be the State. In every case it is for the employer to determine as to whether the

charges are of a nature that should be examined or investigated into by convening disciplinary proceedings. Whether an employee should be suspended during the pendency of disciplinary proceedings is a matter for the employer to determine, a decision which the employer will arrive at in the best interest of the service. The question as to whether an employee who is under a cloud is likely to tamper with witnesses pending a disciplinary inquiry, may at the highest be one of the factors that would be considered by the employer. Equally if not more important, the employer is required to consider the nature of the charges, the surrounding circumstances of the case, and the impact on the morale of the establishment of keeping an employee who is being proceeded against with, on a serious charge of misconduct on duty pending disciplinary proceedings.

20] In *Subhashchandra Patankar (supra)*, the Division Bench of this court has referred to another decision of the Division Bench rendered on 30th September 2005 (***State of Maharashtra vs. Raghunath Eknath Mundhe, Writ Petition No. 6313 of 2005***). Therein, the Division Bench

had held that in the normal course, it is the disciplinary authority who is the best Judge as to whether the person should be continued in suspension or not. If the delinquent is suspended, it is open to the disciplinary authority to review the order of suspension. In that context, the court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend is arbitrary and or is a *mala fide* exercise of power and or colourable exercise of power and/or the State or the authorities are not able to explain the reasons for suspension when it is for a unduly long period and adequate reasons are not forthcoming for the order of suspension. These must be the parameters on which every authority including M.A.T. must consider whilst dealing with an order of suspension more so in the cases of delinquent employees who hold the sensitive posts under Police services and such other services. It is not for the courts including the tribunal to interfere with exercise of discretion by the disciplinary authority otherwise than in circumstances set out. The Division Bench noted that it was coming across large number of matters, where the tribunal is interfering with the orders of suspension issued

by the disciplinary authority merely on the ground that the charge-sheets have not been issued and or that that some time has elapsed from the date of suspension. The Division Bench expressed their unhappiness with the approach of the tribunal in such matters. The MAT, in the present case, does not appear to have deferred to the principles laid down by the Honb'le Supreme Court and this court in the matter of interference with orders of suspension pending departmental inquiries.

21] Upon cumulative consideration of the aforesaid, we allow this petition and quash and set aside the impugned judgment and order dated 26th July 2017. However, we direct the petitioners to complete the departmental inquiry against the respondent in pursuance of the charge-sheet dated 5th July 2017, as expeditiously as possible and in any case within a period of six months from today. Further, we also direct the petitioners to place the issue of respondent's suspension before the review committee, if constituted or before the disciplinary authority, if review committee is not constituted within a period of four weeks from today. The review committee or the disciplinary

authority , as the case may be, to consider the issue of continuation of suspension and/or increase in the quantum of subsistence allowances within a period of four weeks thereafter. Such decision has to be communicated to the respondent within a period of ten days.

22] Rule in the petition is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)