

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 56 OF 2020

Sadeeq Khan S/o Hamid Khan
Versus
The Bruhanmumbai Municipal
Corporation, Mumbai & Anr.

....Petitioner

....Respondents

Mr. Mohsin Khan Latif Khan Pathan, Advocate for the Petitioner.
Mr. A.V. Bukhari, Senior Advocate a/w. R.S. Alange, B.V. Bukhari a/w. Ms.
Trupti Puranik, Advocate for Respondent No.1-MCGM.

**CORAM : RANJIT MORE &
SURENDRA P. TAVADE, JJ.**

DATE : 16th JANUARY, 2020.

P. C. :

1. Heard learned counsel for the respective parties.
2. By this petition filed under Article 226 of the Constitution of India, the petitioner is seeking direction to respondents to forthwith revoke the order of suspension of the petitioner dated 05.02.2019, a copy of which is annexed at page 26 and consequently reinstate him in service.
3. The petitioner was serving as Assistant Engineer with Respondent No.1. On 26.10.2018 he was arrested by Anti Corruption Bureau and is facing serious charges of corruption under Section 7 of the Prevention of Corruption Act, 1988. Thereafter, by an order dated 05.02.2019 Respondent No.1 suspended the petitioner w.e.f.26.10.2018 i.e. the date of arrest.
4. The present petition is filed relying upon the Government Resolution and decision of the Hon'ble Apex Court in the case of **Ajay Kumar**

Choudhary Vs. Union of India¹. Learned counsel for the petitioner invited our attention to the observations of the Apex Court in Paragraph 14 of the said judgment and submitted that the suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration.

5. Learned counsel for Respondent No.1-MCGM opposed the present petition by filing affidavit of Chief Officer (Enquiry) I/c of Respondent No.1. It is submitted that because of arrest of the petitioner, the image of Corporation is maligned and damaged and considering public interest at large, the respondents have suspended the petitioner from the service.

6. It is also case of the respondents that the Government Resolution as well as the decision of the Apex Court in ***Ajay Kumar Choudhary (cited supra)*** relied upon by the petitioner, is not applicable to the present facts and circumstances of the case, and therefore, the present petition be dismissed.

7. Having considered the rival submissions and having gone through the petition along with the annexures thereto, affidavit and decision cited at par, we are not inclined to entertain this petition. The petitioner is an employee of respondent No.1-MCGM and he is governed by the statutory service Conditions, Rules & Regulation duly framed under the Mumbai Municipal Corporation Act, 1888. The statutory Rules & Regulations have been framed under Sections 81(1)(b), (c), (d) and (e) of the Mumbai Municipal Corporation Act, 1888 by the Standing Committee and confirmed

¹ 2015(2) JT 487

by the corporation. The petitioner was suspended in pursuance of Rule 80 of the said Rules & Regulations. In our considered opinion, the Government Resolution relied upon by the petitioner, is not applicable to the present facts and circumstances of the case.

8. So far as decision of the Apex Court in ***Ajay Kumar Choudhary (cited supra)*** is concerned, it is worth to note that memorandum of charge is served on the petitioner in the month of December 2019. It is also pertinent to note that respondent No.1-MCGM has issued circular dated 01.08.2019 under which independent Review Committee consisting of Municipal Commissioner as Chairman, all The Additional Municipal Commissioners as Members and Deputy Commissioner (General Administration) as Secretary is formed to look over the cases of Anti Corruption and others. The suspension cases are regularly placed before the said Committee after one year from the date of suspension order and the said suspension orders are thereafter reviewed. In the present case also, the petitioner's suspension order was reviewed by the said committees and his suspension was extended by six months from 11.12.2019. Respondent No.1-MCGM has also decided the petitioner's representation as per the directions contained in the interim order dated 17.10.2019.

9. Taking into consideration the facts and circumstances of the case, we are of the opinion that the petition being devoid of merit, the same is accordingly disposed of.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]