

PMB

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

WRIT PETITION NO. 7138 OF 2022

Pragathi Malle

.. Petitioner

VS.

Dhiraj Shankarao Patil and ors.

.. Respondents

Mr. Girish Godbole a/w Ms. Pavitra Pillay for petitioner.

Mr. Satyavrat Joshi a/w Mr. Sumant Deshpande for
respondent no. 1.

Ms. R.A. Salunkhe, AGP for State-respondent nos. 2 and 3.

Mr. Ajay S. Paiaondkar i/b. Kshitija Wadtkar and
Associates for respondent no. 4-MSEDCL.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JUNE 22, 2022.

P.C. :

1. The petitioner in this writ petition dated May 30, 2022 is aggrieved by the order dated May 2, 2022 passed by the Member (J) of the Maharashtra Administrative Tribunal, Mumbai. By the said order, the Tribunal dismissed the petitioner's application for intervention (M.A. No. 229 of 2022) filed in O.A. No. 244 of 2022, being an original application under Section 19 of the Administrative Tribunals Act, 1985 instituted before the Tribunal by the respondent no. 1.

2. The disciplinary authority of the respondent no. 1 has initiated disciplinary proceedings against him by issuing a memorandum of charge-sheet on February 14, 2022 under Rule 4(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The respondent no.1 has also been placed under suspension by an order dated March 2, 2022, pending such proceedings. Several incidents have been referred to in the said order which, according to the disciplinary authority, prompted him to place the respondent no.1 under suspension.

3. A bare reading of the order of suspension and the charge-sheet reveals that complaints were lodged, *inter alia*, by the petitioner before the relevant authority complaining of she being subjected to sexual harassment by the respondent no. 1. One of the grounds urged by the respondent no. 1 in his original application before the Tribunal is that because of the pressure exerted by the petitioner, the order of suspension came to be issued. Such an averment is found in paragraph 10 of the original application.

4. The petitioner having found that she had not been arrayed as a respondent in the original application, despite such allegation, sought intervention by filing M.A. No. 229 of 2022 which, as noted above, has been rejected by the impugned order.

5. Perusal of the impugned order would reveal that the Tribunal placed reliance on the decision of the Supreme

Court reported in (1998) 7 SCC 273 (**Dr. Duryodhan Sahu and ors. vs. Jitendra K. Mishra and ors**). In such decision, the Court held that the Administrative Tribunals constituted under the 1985 Act do not have the power or jurisdiction to entertain public interest litigation at the instance of strangers. It was also held therein that the Administrative Tribunals under the 1985 Act are constituted for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts and since the jurisdiction and powers have been well-defined in the relevant enactment, such tribunals do not enjoy any plenary power.

6. After quoting paragraphs 18 and 19 of the decision in **Dr. Duryodhan Sahu and ors.** (*supra*), the Tribunal observed in paragraph 5 as follows: -

"5. These observations shows that a total stranger to the service concerned cannot be said to be the person aggrieved within the meaning of the Act. It is apparent that though enquiry against the Applicant was started on compliant of the proposed intervener, the proposed intervener is a total stranger to the service concerned i.e. service held by the Applicant in the Original Application."

7. Mr. Godbole, learned advocate appearing for the petitioner takes exception to this finding of the Tribunal. According to him, the petitioner had not approached the Tribunal in respect of any service matter as a public interest litigant; on the contrary, she had moved the Tribunal

because the respondent no. 1 had made a specific allegation against her and it would have been her endeavour, if intervention were allowed, to ensure that the Tribunal does not pass any order behind her back based on such allegation. Mr. Godbole also submits that the Tribunal misconstrued and misread the judgment of the Supreme Court in case of **Dr. Duryodhan Sahu and ors.** (*supra*) and arrived at an absolutely erroneous finding that the petitioner was a stranger to the proceedings.

8. *Per contra*, Mr. Joshi, learned advocate appearing for the respondent no. 1 contends that the Tribunal was perfectly justified in rejecting the application for intervention. According to him, the respondent no. 1 has not sought for any relief against the petitioner and, therefore, she is neither a necessary nor a proper party to the proceedings before the Tribunal. However, on instructions from the respondent no. 1 who is present in Court, Mr. Joshi submits that, in any event, he is willing to have the contents of paragraph 10 of the original application struck off from the pleadings.

9. Having heard learned advocates for the parties and on perusal of the impugned order of the Tribunal, we are of the considered opinion that the Tribunal erred in law in rejecting the application for intervention.

10. Although, generally, the petitioner could be a stranger insofar as service and duty that the respondent no. 1 is bound to discharge as a public servant or in relation to the

conditions of service applicable to the respondent no. 1, having regard to the facts and circumstances of the present case, she is not a total stranger. Disciplinary proceedings were first initiated against the respondent no. 1 by issuance of a charge-sheet dated February 14, 2022, followed by the order of suspension dated March 2, 2022. Both are based on, *inter alia*, the complaint of the petitioner alleging sexual harassment by a public servant, *albeit* not in course of discharge of official duty. Not only that, the petitioner is listed as a witness in the list of witnesses by whom the charges against the respondent no. 1 are sought to be proved by the prosecution. If the allegation levelled against the respondent no. 1 by the petitioner is ultimately proved in the enquiry, it could lead to a finding of moral turpitude having been committed by him. In its turn, this could lead to disciplinary action against the respondent no. 1. The underlying reason for the complaint is to have the respondent no. 1 punished. Given these circumstances, the finding of the Tribunal does not commend to us to be justified on facts. It would not, however, be proper to dilate on this issue any further since the original application is pending before the Tribunal. It is open for the Tribunal to decide the same in accordance with law.

11. We are also of the considered view that even if not a necessary party since no relief is claimed by the respondent no. 1 in the application before the Tribunal against her, the petitioner is indeed a proper party to the proceedings before

the Tribunal having regard to the case run by the respondent no. 1 in the original application. The respondent no. 1 seeks to have the order of suspension interdicted by the Tribunal, *inter alia*, on the ground that the relevant authority had placed him under suspension upon pressure being exerted by the petitioner. An order of suspension in contemplation of/pending disciplinary proceedings, which is interim in nature, has to be passed within the framework of the 1979 Rules authorizing suspension. External pressure, if proved, could render such order vulnerable. We do not know whether the Tribunal would accept such a ground raised by the respondent no. 1. In case of acceptance of such a ground, the same would result in the Tribunal's approval of the case of the respondent no.1 that the petitioner had exerted pressure. Such a finding, if at all, cannot be returned by the Tribunal without hearing the petitioner who ought to be given a chance to place her version of the matter. Any finding, without notice to her, could be in breach of natural justice. The other consequence that such acceptance of the case run by the respondent no. 1 behind the back of the petitioner could bring about, is the prejudice that she may have to suffer, without being extended opportunity of a hearing, in other proceedings that might arise between the parties. It is for such reasons that the petitioner's presence in the proceedings is considered proper for the Tribunal to decide the original application according to law.

12. Viewed from the aforesaid perspective, we are of the considered opinion that the respondent no. 1 while building up his case in the original application and urging the Tribunal to grant him relief on the grounds of challenge, which includes the ground of alleged pressure exerted by the petitioner upon the relevant authority to have the respondent no. 1 suspended from service, ought to have impleaded her as a party-respondent in the original application. The Tribunal, manifestly, has not posed unto itself the right question and has consequently rendered an erroneous decision based on **Dr. Duryodhan Sahu and ors.** (*supra*), which has no application in the facts of the case.

13. The submission of Mr. Joshi that the respondent no. 1 be granted liberty to strike off the pleadings in paragraph 10 of the original application has been considered. Inasmuch as we have held that the petitioner is a proper party to the proceedings before the Tribunal, we allow the Tribunal to decide the original application on all points that are available to the parties, in accordance with law.

14. Consequently, we set aside the order dated May 2, 2022 and allow M.A. No. 229 of 2022. Cause-title of the original application before the Tribunal shall be amended by the respondent no.1 within seven days from today, whereupon the petitioner is entitled to a copy of the original application.

15. We are informed that the Tribunal has fixed July 5,

2022 as the date of final hearing of the original application. In such view of the matter, we grant liberty to the petitioner to file her reply-affidavit by June 30, 2022; rejoinder thereto, if any, may be filed by July 4, 2022.

16. The writ petition stands allowed. There shall be no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)