

Shephali

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9214 OF 2022**

PRAGATHI MALLE,
Age 38 years, Profession: Lawyer, Residing
at: Neha Residency, 2101, 2012, Sri Ram
Tekdi, Sewri, Mumbai 400 013

... PETITIONER

~ VERSUS ~

- 1. DHIRAJ SHANKARAO PATIL,**
Residing at Saudamini Building, Haji
Ali, Mumbai
- 2. STATE OF MAHARASHTRA,**
Through Add Chief Secretary,
Home Department, Maharashtra,
Mantralaya, Mumbai
- 3. THE DIRECTOR GENERAL OF
POLICE,**
Maharashtra Police Head Quarters,
Shahid Bhagat Singh Marg,
Colaba, Mumbai
- 4. THE CHAIRMAN AND MANAGING
DIRECTOR MAHARASHTRA
STATE ELECTRICITY
DISTRIBUTION CO LTD,**
Prakasgad, Bandra, Mumbai

... RESPONDENTS

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2022.08.23
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APPEARANCES

FOR THE PETITIONER **Mr Girish Godbole, with Raj Patel & Pavitra Pillay.**

FOR RESPONDENT NO.1 **Mr Anil Anturkar, Senior Advocate, with Satyavrat Joshi, Harshvardhan Suryawanshi, i/b Sumant Deshpande.**

FOR RESPONDENT NO.4 **Mr Ajays Pai Asnodkar, i/b Kshitija MSEDCL Wadatkar & Associates.**

FOR RESPONDENT-STATE **Mr BV Samant, AGP.**

CORAM : G.S.Patel & Gauri Godse, JJ

DATED : 18th August 2022

ORAL JUDGMENT (Per Gauri Godse J):-

1. **Rule.** By consent rule made returnable forthwith.

2. This Writ Petition is filed invoking the extraordinary jurisdiction of this court under Articles 226 and 227 of the Constitution of India. It takes exception to the judgment and order dated 26th July 2022 passed by the Maharashtra Administrative Tribunal (“the MAT”). By this judgment and order, the MAT partly allowed the Original Application filed by the Respondent No. 1, revoked the order of suspension of the Respondent No. 1, and directed his reinstatement in service. The MAT also directed that

the pending Departmental Enquiry against Respondent No.1 be completed by passing final orders thereon within three months of the date of the MAT's judgment and order.

3. This Writ Petition was partly heard on 3rd August 2022. On the same day, 3rd August 2022, the State Government issued an order No. MPS-1022/PK 99/POL-2 revoking the order of suspension of the Respondent No.1, relying upon the recommendation of the Review Committee. The Petitioner was allowed to amend the Writ Petition to include a challenge to this order of the State Government.

4. It is necessary to note few facts in brief. The Petitioner, a lawyer by profession, had filed a complaint on 31st July 2021 addressed to the Respondent No. 3, the Director General of Police, making allegations against Respondent No. 1. From the record, it is seen that Respondent No. 1 is serving in the post of Superintendent of Police and was, at the relevant time, posted as Sub-Divisional Officer at Ichalkaranji. In 2018, he was promoted and was posted as Additional Superintendent of Police at Satara. Later, on 9th September 2021, he was transferred and deputed at Mumbai. Perusal of the complaint as well as the averments in the Writ Petition shows that the allegations made by the Petitioner against the Respondent No. 1 are personal in nature. In view of the complaint made by the Petitioner, Respondent No. 3 ordered a preliminary inquiry by an order dated 9th August 2021. Pursuant to the said order, the Inquiry Officer made the necessary inquiry and submitted a report on 2nd December 2021. Considering the

preliminary report, a Departmental Enquiry was initiated on 14th February 2022. By an order dated 2nd March 2022, Respondent No. 1 was placed under suspension. Pending the departmental enquiry, a charge-sheet was also prepared and the same was served on Respondent No. 1 on 7th March 2022. Respondent No. 1 challenged the said order dated 2nd March 2022 placing him under suspension by filing an Original Application before the MAT. By the impugned judgment and order, the MAT revoked the said order of suspension assailed in the OA filed by Respondent No.1.

5. To the Original Application filed before the MAT by Respondent No. 1, the Petitioner was initially not made a party. Having found this, the Petitioner filed an application for intervention before the MAT. However, her application for intervention was rejected. Hence, the Petitioner assailed that rejection order by filing Writ Petition No. 7138 of 2022. This Writ Petition was allowed by an order dated 22nd June 2022: the Petitioners' application before the MAT was allowed, and Respondent No. 1 was ordered to amend his Original Application to make her party to it before the MAT. The Petitioner's Writ Petition was allowed by holding that, in view of the allegations that were made against her, in the Original Application, she was a proper party before the MAT. It is necessary to quote here the relevant observations in paragraphs No. 9 to 12 of the said order dated 22nd June 2022.

“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.”

6. Before us in the present Writ Petition, it was submitted on behalf of the Petitioner by Shri Godbole that it was only on the complaint made by her that a preliminary inquiry was carried out. It was on the basis of the report of the Inquiry Officer that Respondent No. 1 was placed under suspension and a departmental enquiry was initiated. It was submitted that, considering the allegations made by the Petitioner, the MAT ought not to have revoked the order of suspension. Shri Godbole submitted that the MAT has incorrectly applied the law on suspension. It was further submitted that the State Government ought to have correctly appreciated the recommendations of the Review Committee. According to Shri Godbole, the report of the Review Committee clearly sets out that considering the allegations made by the Petitioner, the Respondent No. 1 was placed under suspension, and hence there was no reason to revoke the order of suspension. Shri Godbole also stressed the point that the members of the Review Committee had signed the report on different dates. It was further submitted that there was non-application of mind by the members of the Review Committee. Some decisions were cited in support.

7. Shri Anturkar, learned Senior Counsel for Respondent No. 1, urged that neither the impugned judgment and order by the MAT nor the order by the State Government call for any interference, as the findings therein are supported by material on record.

8. Both Shri Anturkar and Shri Samant, learned AGP, also submit that this Writ Petition is not maintainable at the instance of the Petitioner. They point out that the Petitioner herself is not a

government servant and therefore could not have been an original applicant before the MAT under any circumstances. She had been joined to the Original Application filed by Respondent No.1 not as of right but by this Court exercising its extraordinary jurisdiction and equitable discretion, and only because she was found to be a proper, but not necessary, party.

9. Shri Godbole concedes that the Petitioner could not herself have maintained an Original Application before the MAT, but that, in his submission, is immaterial for the Petitioner is certainly a 'person aggrieved' within the meaning of the law.

10. We have carefully considered the submissions made by the learned Counsel appearing for the respective parties. We have perused the reasons recorded in the said order passed by this court in Writ Petition No. 7138 of 2022. For the reasons that we have recorded below, we agree with Shri Samant and Shri Anturkar. We are of the opinion that we cannot interfere with the impugned orders at the instance of the Petitioner.

11. The Petitioner has alleged that there is a violation of various Rules of the Maharashtra Civil Services (Conduct) Rules 1979 ("MCSR"). The allegations made by the Petitioner against the Respondent No. 1 in her complaint are personal in nature and the same are reproduced by the Petitioner in the present Writ Petition. In paragraph 5.4 of the Petition, the Petitioner has reserved her right to file a criminal complaint against Respondent No. 1 for offences punishable under Sections 376, 420, 406 read with other

provisions of Indian Penal Code 1860 (“IPC”) and other relevant laws. Further, these very allegations are definitely the subject matter of the Disciplinary Enquiry, which is pending. Thirdly, we find that while the MAT has mentioned or narrated a summary of these allegations, it has not rendered any finding one way or the other on the substance of the allegations, i.e., on their correctness or otherwise. In such circumstances, we do not find it appropriate to deal with these allegations.

12. A perusal of the said order passed Writ Petition No. 7138 of 2022 shows that the Petitioner was directed to be made a party as the specific case of the Respondent No. 1 in the original application before the MAT was that the order of suspension was passed by the State Government at the instance and due to the pressure exerted by the Petitioner. It is because of this allegation that the Petitioner was found to be a *proper* party. In paragraph 16 of the impugned judgment and order, the MAT has made it clear that this grievance made by the Respondent No. 1 cannot be accepted. In fact, the MAT has not recorded even a prima facie finding on the allegations levelled by the Petitioner and the Respondent No. 1 against each other. There is no adverse finding recorded against the Petitioner in the impugned judgment on facts. Therefore, in exercise of our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, it is not necessary to interfere with the impugned orders at the instance of the Petitioner.

13. Since submissions were also made on merits of the impugned judgment and order of the MAT and the order of the State

Government, we have independently examined both. A careful perusal of the impugned judgment and order passed by the MAT shows that the MAT has referred to the allegations made by the Petitioner. However, it has revoked the order of suspension on the grounds specifically stated in paragraphs 18 to 20 of the impugned judgment and order. It is necessary to note that the MAT has dealt with the contention of the Respondent No. 1 that the order of suspension was influenced for extraneous considerations and that it was mala fide. For the reasons recorded in the impugned judgment and order, the MAT has specifically held in paragraph 21 read with paragraph 16 of the impugned judgment and order, that the suspension can neither be termed as influenced for extraneous consideration nor it could be termed as mala fide. The MAT has specifically noted the long pendency of the Departmental Enquiry without any further progress and has also noted the fact that the charge-sheet is already served upon Respondent No. 1. Thus, by taking into consideration these aspects in paragraphs 16, 18 and 19, the MAT has partly allowed the application filed by the Respondent No. 1, on the limited ground of the pendency of the Departmental Enquiry without any further progress. The relevant paragraphs 16, 18 and 19 are reproduced below:

“16. In this view of the matter, the submission advanced by learned Advocate for the Applicant that suspension is for extraneous reason or *malafide* is totally unacceptable. There was enough material before the competent authority and suspension has to be said in public interest as well as to maintain discipline and decorum in the Department. If despite such sufficient material attributing serious misconduct of moral turpitude suspension was not done, it would have sent wrong signals. Therefore, it cannot be said

that Government has suspended the Applicant for extraneous consideration or it is bad in law.

17. Reliance placed by learned Advocate for the Applicant in *1987(3) BOM CR 327 [Dr. Tukaram Patil Vs. Bhagwantrao Gaikwad & Ors.]* is misplaced. In that case, Petitioner was to retire within six months and there was no witness to be examined and documents on which Government wants to place reliance were already in the custody of the Department. It is in that fact situation, Hon'ble High Court held that the suspension was unwarranted and unjustified. This is not a case where it could be said that suspension is restored as a matter of Rule. Indeed, initially, the Government was not inclined to suspend the Applicant, but later in view of further development of threats, etc., the Government reconsidered the issue and suspended the Applicant.

18. However, I find merits in the submission advanced by the learned Advocate for the Applicant on the point of inaction on the part of Government for not taking review of suspension in view of decision of Hon'ble Supreme Court in *Ajay Kumar Choudhary's case*. Para No.21 of the Judgment is as under :-

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also

prohibit him from contacting any person, or handling records and documents till the stage of his having to prepared his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

19. As such, as per dicta of Hon’ble Supreme Court, the currency of suspension order should not extend beyond three months if within this period, the memorandum of charges is not served on the delinquent Officer and if memorandum of charges is served, a reasoned order must be passed for extension of suspension. Thus, where suspension is ordered and later charge-sheet is served, in that event, the competent authority is under obligation to pass further order for the extension of suspension. **In the present case, the Government suspended the Applicant by order dated 02.03.2022 which was served upon the Applicant on 07.03.2022. Needless to mention, it is the date of service of charge-sheet on which DE deemed to have been instituted against a Government servant. Thus, position emerges that Applicant was suspended on 02.03.2022 and DE was initiated on 07.03.2022. This being the factual position, it was incumbent on the part of Government to pass reasoned order for extension of suspension, which is admittedly not done in the present**

case. The period of more than five months in suspension is already over. The DE is simply pending without any progress. Therefore, in my considered opinion, no purpose would serve by continuing Applicant's suspension for indefinite period. Indeed, the Government ought to have expedited the DE, since it is based on record and evidence of Respondent No.4. speedy disposal of departmental proceeding is recognized right of a Government servant. It is for this reason, Hon'ble Supreme Court in *Ajay Kumar Choudhary's* case frowned upon prolong suspension and cast obligation upon Government to pass reasoned order for extension of the suspension. In the present case, specific query was raised to learned P.O, but she sought time to appraise the Tribunal about review of suspension, if any, but nothing is informed in this behalf when the matter was finally argued."

(Emphasis added)

14. The order dated 3rd August 2022 passed by the State Government thereby revoking the order of suspension on the basis of the recommendation of the Review Committee is annexed to the Petition as Exhibit "J". A perusal of the said order shows that the order of suspension is revoked on the same grounds. The report of the Review Committee refers to the earlier orders passed for initiating Departmental Enquiry as well as the order of suspension, which was passed on the basis of recommendation made by the Inquiry Officer. The report of the Review Committee refers to the earlier Government Resolutions laying down the norms with respect to the order of suspension. The Review Committee has relied upon the Government Resolution dated 9th July 2019 which lays down the norms for suspension by relying upon the settled law of

suspension as per the judgments of the Supreme Court. The Government Resolution dated 9th July 2019 is annexed as Exhibit “N” to the Petition at page 104. The norms laid down by the State Government in the said resolution state that, if within three months of the period of suspension, a Departmental Enquiry is initiated and the charge-sheet is served, then within three months of the suspension period, the suspension order is to be reviewed and if suspension is to be continued further, then, in that case, a detailed order with reasons is required to be passed by the competent authority. Thus, it is clear that, if the order of suspension is to be continued after chargesheet is served, the same can be done only by passing an order giving detailed reasons. In the facts of this case, we find that no such order is placed on record.

15. The Review Committee while recommending the revocation of suspension has relied upon the said Government Resolution dated 9th July 2019.

16. It was sought to be argued on behalf of the Petitioner by Shri Godbole that the report of the Review Committee shows that the members of the Review Committee had signed the report on different dates, and one of them, the Hon’ble the Chief Minister, had signed after the date of the MAT order. However, we are unable to understand how this will make the report of the Review Committee vulnerable. In fact, a perusal of the report of the Review Committee shows that the recommendation by the Review Committee is on the basis of the settled law of suspension and the

norms laid down by the State Government by its Government Resolution dated 9th July 2019.

17. The law on the orders of suspension is well settled. Ordinarily, the Court would not interfere with the orders of suspension unless passed in mala fide manner or is otherwise shown to be illegal. We have already observed earlier that the MAT has taken into consideration this argument and has correctly concluded in paragraph 21 of the impugned judgment and order that the order of suspension cannot continue. It has specifically rejected the grounds of extraneous considerations and mala fides. The MAT has followed the settled law and has further also ensured that the Departmental Enquiry is completed in a time-bound manner. The MAT has also rightly relied upon the law laid down in the case *Ajay Kumar Chaoudhary vs Union of India & Ors.*¹

18. Thus, we find no illegality or perversity in the judgment and order passed by the MAT. Hence, we find no reason to interfere with the order passed by the MAT as well as the order passed by the State Government, in exercise of extra ordinary jurisdiction under articles 226 and 227 of the Constitution of India.

19. The following decisions are relied upon by Shri Godbole in support of his contention that the Petitioner is ‘an aggrieved party’:

(a) *Jasbhai Motibhai Desai v Roshan Kumar Haji Bashir Ahmed & Ors.*²

1 (2015) 7 SCC 291.

2 (1976) 1 SCC 671.

(b) *Calcutta Gas Company (Proprietary) Ltd v State of West Bengal & Ors.*³

(c) *Dr Duryodhan Sahu & Ors v Jitendra Kumar Mishra Ors.*⁴

20. There cannot be any quarrel with the propositions laid down in these judgments. We have already recorded our reasons as to why at the instance of the Petitioner we cannot interfere with the impugned orders. Hence, the propositions in the authorities cited are not relevant given the peculiar facts of this case.

21. It was sought to be argued on behalf of the Petitioner by Shri Godbole that the Petitioner has been receiving threats from the Respondent No. 1. With respect to these submissions, it is necessary to note here that the Petitioner has already reserved her right to set the criminal law in motion as stated by her in the present Petition. We do not find that any material is produced before us in support of these allegations of being threatened. It is not the case of the Petitioner that any criminal proceedings are pending with respect to the same. In the additional compilation produced by the Petitioner at page 100, there is an order dated 5th July 2021 passed by the learned Lokayukta, thereby issuing directions for passing an appropriate order for grant of police protection as prayed for by the Petitioner. Thus, it will be open to the Petitioner to make appropriate application as permissible under the law with respect to her grievances as against the Respondent No. 1. The same cannot be

3 1962 Supp (3) SCR 1 : AIR 1962 SC 1044.

4 (1998) 7 SCC 273.

made a subject matter of this Petition, nor can it be a ground for interfering with the impugned orders.

22. As observed earlier, the MAT has already issued necessary directions for completing the Departmental Enquiry including passing of final orders within three months from the date of the impugned judgment and order dated 26th July 2022. The MAT has further directed that Respondent No. 1 shall not tamper or influence the witnesses in any manner and shall cooperate for the expeditious completion of the Departmental Enquiry.

23. Finally, there is one fundamental problem in the Petitioner's way. By filing the present writ petition, the Petitioner is seeking the issuance of a high prerogative remedy under Articles 226 and 227 of the Constitution of India. Necessarily, this has to be a prayer or plea for the enforcement of some legal or constitutional right, or a plea to command the Respondent-State to perform some legal or constitutional duty. In fact, what the Petitioner seeks is nothing but the continuance of suspension of Respondent No.1 possibly for some indefinite period or until her assertions are accepted by the MAT or some other authority. The Petitioner has no such legally enforceable right to demand continuance of the suspension of Respondent No.1. In fact, such a plea is contrary to the settled law regarding suspension from government service. The State has no duty to continue suspension from government service for an indefinite period. Its duty is the opposite, to ensure, following the law settled by the Supreme Court, that suspension is *not* continued indefinitely. Further, the only reason the Petitioner was even arrayed

as a party to OA of Respondent No.1 was because Respondent No.1 made specific allegations regarding the Petitioner's allegations. If Respondent No.1 had not made those allegations, the Petitioner would not have had any locus. Those very allegations are clearly the subject matter of the Departmental Enquiry. Thus, viewed from any perspective, there is no basis on which this Court can interfere with the impugned order passed by the MAT at the instance of the Petitioner.

24. Thus, we do not find any reason to interfere with either the judgment and order passed by the MAT or the order passed by the State Government.

25. The Writ Petition is dismissed. Rule is discharged.

26. There will be no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)