

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 4185 OF 2022
WITH
INTERIM APPLICATION NO. 1708 OF 2022**

**Mr. Nivedan Bhimrao Torne } Petitioner
Versus
The Municipal Corporation of }
Greater Mumbai and Ors. } Respondents**

Mr. Nivedan Torne, petitioner in-person.

Mr. B. B. Bukhari with Ms. Rupali
Adhate for respondents 1 to 4.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: OCTOBER 18, 2022

ORAL JUDGMENT (Per Chief Justice):

1. The petitioner is a Sub-Engineer in the employment of the Brihanmumbai Mahanagarpalika (hereafter "Mahanagarpalika", for short). He has been placed under suspension vide order dated 11th November 2021 issued by the City Engineer (in charge), pending preliminary/departmental inquiry. Although the disciplinary authority of the petitioner was under no obligation to indicate why the petitioner was being placed under suspension, we note from the order of suspension that, *prima facie*, the petitioner was found to have committed serious misconduct/negligence/irregularity, as reflected from a report of the Assistant Commissioner (Removal of Encroachment) Eastern

Suburbs and for which it was proposed that an inquiry be conducted against him. The petitioner was held entitled to subsistence allowance during the period of suspension as per the relevant rules/regulations, but only upon production of a declaration that he is not gainfully employed during the period of suspension.

2. In this writ petition, the petitioner has questioned the order of suspension primarily on the ground that disciplinary proceedings, by way of drawal of charge-sheet, have not been initiated within 90 days of the order of suspension in terms of the decision of the Supreme Court in **Ajay Kumar Choudhary vs. Union of India and Anr.**¹ and, thus, the order of suspension should be directed to be revoked. While contending as such, the petitioner has prayed for the following substantive relief: -

- "a) That this Honourable Court be pleased to issue Writ of Certiorari or any other appropriate Writ, Order or direction like in the nature of setting aside the said impugned order of suspension dated 11.12.2021 (sic, 11.11.2021) and further direction to be issued to the Respondent No.1 and 2 to allow the Petitioner to join and restore at the same position as Sub-Engineer in Building and Factory Department at "L" Ward, S. G. Barve Marg, Kurla (West), Mumbai - 400 070;
- b) That this Honourable Court be pleased to issue Writ of Mandamus or any other Order or direction for taking appropriate action for illegally and unlawfully suspending the Petitioner from the Municipal Services without any cause of action with malafide intension while working as Sub-Engineer in Building and Factory Department at "L" Ward, S. G. Barve Marg, Kurla (West), Mumbai - 400 070."

¹ (2015) 7 SCC 291

3. We have given the petitioner, appearing in-person, a patient hearing. Apart from placing reliance on the decision in **Ajay Kumar Choudhary** (supra), the petitioner contends that the report of the Assistant Commissioner based whereon the order of suspension has been issued is baseless and far from truth. He seeks to contend before us that there is no such unauthorised construction as complained of in the report and, therefore, question of any failure on his part to carry out demolition does not and cannot arise; hence this is an additional ground for which there ought to be a direction for resumption of duty by him.

4. A reply affidavit has been filed by the Mahanagarpalika. In such reply is annexed a copy of the minutes of meeting dated 18th May 2022 of the Review Committee No. 2 held under the chairmanship of Joint Commissioner (General Administration). The relevant paragraphs of such minutes read as under: -

“ In continuation of the discussion made by Assistant Commissioner (R.E.), Eastern Suburban, the Chief Officer (Enquiry) brought to attention of the committee that in the beginning orders were issued to test Audit Department and Vigilance Department for conducting enquiry. However, this department received the matter for conducting enquiry when very short period was left for completing 90 day period from date of suspension of these employees. According this department has immediately started the preliminary enquiry. Similarly, he also brought to the attention of this meeting that the enquiry of these employees in this matter is also being conducted in respect of some other matters or the enquiry has been completed. In general it is noted that the employee do not co-operate during the enquiry. They are reluctant to submit representation. This has adverse effect on the administrative work/work pertaining to enquiry.

The Dy. Commissioner (Zone-5) stated in their respect that no charge sheet has been filed on these employees within 90 days. Actually taking in consideration this aspect, it is necessary to technically break their suspension and reinstate them. However, there is a point in the matters brought to the attention by the Assistant Commissioner (R.E.), Eastern Suburban and it is a fact that even though dangerous unauthorized constructions were being made in 'L' Ward, these employees did not take actions against these constructions. This fact and the seriousness of the matter should be taken into consideration and thought should be given as to whether to continue suspension of the aforesaid four employees.

The Dy. Commissioner (Zone – 5) also stated that the Additional Municipal Commissioner (Eastern Suburban) has received the matter of Shri Pravin Bharat Vasave, the then Assistant Engineer (Civil) Building and Factories, 'L' Ward presently transferred to G/North, for remarks. The Additional Municipal Commissioner (Eastern Suburban) shall be appraised about the decision which shall be taken in this meeting regarding the matter.

The members enquired about the present status of enquiry in progress in this matter. Smt. Priya D. Hankare, Dy. Chief Officer (Enquiry) Zone 5 and Shri Vijay Kodalkar, Investigation Officer stated that the work of recording the statements of 20 employees has been completed and the enquiry report shall be submitted in next few days. In this respect, directions were issued in the meeting that the action of preliminary enquiry should be completed immediately and the memorandum of disciplinary action – charge sheets should be served on these employees up to 20.05.2022.

The matter was discussed in depth. Taking into consideration the background of this matter and seriousness, it was decided unanimously to continue the suspension of all following four employees till further orders 1) Shri Chandrakant Babu Shende, Designated officer cum Executive Engineer, Building & Factory "L" Ward 2) Shri Sagar Shantilal Karpe, Assistant Engineer (Civil), Buildings & Factory 'L' Ward 3) Shri Pravin Bharat

Vasave, the then Assistant Engineer (Building & Factory), 'L' Ward (at present work arrangement – transferred to G/North Ward and 4) Shri Nivedan Bhimrao Torane, the then Sub Engineer (Building & Factory) 'L' Ward (At present transferred to the office of Dy. Chief Engineer (Slum Sanitation Programme)).

It was decided to unanimously, decided to continue the suspension of all aforesaid four employees till further orders. Accordingly, following decision was taken in this meeting of Review Committee-2

Decision of the Committee –

The suspension of following employees shall be continued till next orders 1) Shri. Chandrakant Babu Shende, Designated officer cum Executive Engineer, Building & Factory 'L' Ward 2) Shri. Sagar Shantilal Karpe, Assistant Engineer (Civil), Building & Factory 'L' Ward 3) Shri. Pravin Bharat Vasave, the then Assistant Engineer (Building & Factory), 'L' Ward (at present work arrangement – transferred to G/North Ward and 4) Shri Nivedan Bhimrao Torane, the then sub engineer (Building & Factory), 'L' Ward (At present transferred to the office of Dy. Chief Engineer (Slum Sanitation Programme) and the preliminary enquiry in this matter should be completed at the earliest and the memorandum of disciplinary action against these employees and the charge sheet should be filed till 20.05.2022."

(bold in original)

5. The minutes have been referred to by Mr. Bukhari, learned advocate for the Mahanagarपालिका. According to him, since the preliminary inquiry was not complete, the charge-sheet could not be issued. However, the charge sheet was drawn up on 8th July 2022 containing several charges. It has been argued by Mr. Bukhari that the petitioner not having received the charge-sheet on a personal tender, the same was sent to him by e-mail on 8th July 2022 itself.

6. We have inquired of the petitioner whether he has submitted his written statement of defence after receiving the charge-sheet. The answer is in the negative. According to him, the charges are absolutely false and baseless and without he being made to participate in the inquiry, we should decide the point of validity of the charge-sheet. We have also been informed by the petitioner, while responding to our query, that he is not drawing subsistence allowance.

7. These being the undisputed facts, we are now required to consider whether based on the decision in **Ajay Kumar Choudhary** (supra), the order of suspension should be interdicted or not. In paragraph 21 of the decision, the Court emphasized the need for issuance of a charge-sheet within 3 (three) months of an order placing an employee under suspension. It was also emphasized that even if a charge-sheet is not served within 90 (ninety) days, a reasoned order must be passed for extending the period of suspension.

8. Admittedly, in the present case, the charge-sheet was drawn up well beyond the period of 3 (three) months from 11th November 2021. If indeed the Court were to consider the facts as obtaining as on 1st April 2022 (when the writ petition came to be presented) for grant of relief, as claimed, direction upon the Mahanagarपालिका for revocation of the suspension would have been the normal course. However, during the pendency of the writ petition, there have been subsequent developments which we need to bear in mind.

9. As has been noticed above, in the meeting held on 18th May 2022, it was decided by the Review Committee to extend the period of suspension for certain reasons. One of them is

that the charge-sheet will be issued upon completion of the preliminary inquiry. Definitely, the procedure that has been followed by the Mahanagarpalika is flawed. It is based on the materials collected during the preliminary inquiry that the disciplinary authority has to decide whether to initiate disciplinary proceedings or not. Once materials are collected and a *prima facie* satisfaction is formed with regard to trustworthiness thereof for proceeding further, the disciplinary authority may while initiating disciplinary proceedings place the delinquent employee under suspension in order to ensure that he does not tinker with the evidence or otherwise influence the witnesses who could be cited as prosecution witnesses. We have no doubt in our mind that the Mahanagarpalika did not follow this well settled principle. It proceeded to place the petitioner under suspension even before the preliminary inquiry was completed and materials collected which could afford ground for initiating disciplinary proceedings. However, this by itself does not render the proceedings to be completely vitiated because ordering a suspension, either in contemplation of disciplinary proceedings or pending disciplinary proceedings, is interim in nature and does not amount to a penalty. It has to be seen in the facts of a given case whether a suspension is ordered *mala fide* without the disciplinary authority having any inclination to initiate disciplinary proceedings and with intent to keep the delinquent employee away from work without justifiable reason. In the present case, however, the allegations levelled against the petitioner *prima facie* appear to be serious, the charge-sheet has also been issued, albeit

belatedly, there is an imminent need to ascertain the truth of the allegations levelled to keep the service untainted and to take the proceedings so initiated to its logical conclusion at the earliest.

10. While we have no hesitation in condemning the action of the Mahanagarपालिका in not following the laid down procedure for initiating disciplinary proceedings despite having a team of expert law officers on its roll, we cannot also be persuaded to accept the conduct of the petitioner in refusing to accept the charge-sheet when tendered, which compelled the disciplinary authority to send it to him through e-mail. Reluctance to receive the charge-sheet could itself be a ground for further proceedings against the petitioner.

11. Be that as it may, since the petitioner appeared in person and seemed to us not to have the necessary legal training to address us, we thought it appropriate to request Mr. Sanjay Singhvi, learned senior advocate, to address us on behalf of the petitioner. Such a request was made since Mr. Singhvi, who was present in Court, was listening to the deliberations while waiting for his matter to be called out.

12. We have heard Mr. Singhvi, who has also emphasized the need for completion of the proceedings within the shortest possible time. He also agreed that this was not the appropriate stage for the Court to examine whether the allegations levelled in the charge-sheet are false or baseless. However, after speaking to the petitioner, Mr. Singhvi requested us to direct the Mahanagarपालिका to complete the disciplinary proceedings after giving the petitioner adequate and reasonable opportunity to submit his written statement of

defence as well as to raise such defence in the inquiry as considered appropriate by him by allowing him to lead oral and documentary evidence. It has also been pleaded by Mr. Singhvi that the Court may consider directing the disciplinary authority not to give effect to its final decision, if the same happens to be adverse to the interest of the petitioner, for a reasonable period so that the petitioner could, if so advised, challenge the same and obtain appropriate relief from the Court.

13. We have considered the submission of Mr. Singhvi with the care and attention the same deserves.

14. There can be no gainsaying that the disciplinary proceedings must not be kept pending indefinitely and that the same ought to be completed within the shortest time. At this stage, we are reminded of the decision of the Supreme Court in **Prem Nath Bali vs. Registrar, High Court of Delhi and Anr.**² wherein, the Supreme Court had the occasion to rule as follows: -

“33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.”

² (2015) 16 SCC 415

15. However, insofar as the submission of Mr. Singhvi that the final order may not be directed to be given effect till sometime after it is passed so as to enable the petitioner to approach the Court and obtain appropriate relief is concerned, we are unable to accept such submission in view of the authoritative decision of the Supreme Court in **State of Orissa vs. Madan Gopal Rungta**³ as well as a decision of fairly recent origin in **Manish S. Pardasani vs. State Excise**⁴.

16. In the aforesaid former decision, it has been unequivocally held by the Supreme Court that by the terms of Article 226 of the Constitution of India no power is conferred on the High Courts to grant relief which is interim in nature although the Court declines the final relief as claimed in the writ petition. Such a course of action would be legally impermissible since interim relief can only be passed in aid of the final relief. When final relief cannot be granted, question of granting interim relief does not arise.

17. Incidentally, the decision in **Manish S. Pardasani** (supra) was rendered in a civil appeal which travelled to the Supreme Court from a decision of this Court and the discussions forming part of paragraphs 64 to 68 are very relevant. It was held that in anticipation of an adverse order, the Court cannot make any direction affecting the independence of the authority empowered to pass an order. It is only after an adverse order is passed and infringement of a legal right shown that relief could be granted.

³ AIR 1952 SC 12

⁴ (2019) 2 SCC 660

18. It is true, as contended by Mr. Singhvi, that orders of similar nature as prayed by him are regularly passed by this Court. With all the respect and humility at our command, we say that if such orders are passed without noticing the law laid down in **Madan Gopal Rungta** (supra) and **Manish S. Pardasani** (supra), the same would not be binding on us. Therefore, no Court, far less this Court, should ever think of considering a prayer of the nature made by Mr. Singhvi.

19. We do not see reason to interdict the impugned order of suspension. Bearing in mind the statement of law in **Prem Nath Bali** (supra) and all other attendant facts and circumstances, it is considered proper to direct the disciplinary authority of the petitioner to proceed to conclude the disciplinary proceedings in the manner that we propose to indicate. It is, accordingly, ordered as follows: -

- (i) The petitioner shall be at liberty to put in his written statement of defence to the charge-sheet within a fortnight from date.
- (ii) Not later than 7 (seven) days from the date of receipt of the written statement of defence of the petitioner, the disciplinary authority shall take a decision whether an inquiry into the petitioner's conduct is necessary.
- (iii) If a satisfaction is reached, upon reading the written statement of defence of the petitioner, that no inquiry is called for, the charge-sheet shall be withdrawn and the order placing the petitioner under suspension revoked with the result that he shall be allowed resumption of duty with full financial benefits which

he would have otherwise been entitled to had he not been suspended.

- (iv) If it is found that the written statement of defence of the petitioner is not satisfactory and that his conduct is required to be inquired into, an inquiry officer shall be appointed not later than 7 (seven) days of such decision.
- (v) Once the inquiry officer is appointed, he shall call upon the petitioner to attend the inquiry.
- (vi) Once the inquiry commences, the inquiry officer shall make sincere endeavour to conclude the same within a period of 4 (four) months from the date of first hearing.
- (vii) If the report of inquiry is adverse to the petitioner, the disciplinary authority shall furnish the same to him and grant him 10 (ten) days' time to make his representation thereagainst.
- (viii) Once the representation is received, the disciplinary authority shall proceed to pass the final order within a further period of 7 (seven) days.
- (ix) The entire exercise as above from today shall be completed within 6 (six) months.
- (x) In the event the inquiry is not complete and/or the final order concluding the disciplinary proceedings is not passed within the aforesaid period of 6 (six) months, the petitioner shall be allowed resumption of duty upon revocation of the order of suspension.
- (xi) If the petitioner wishes to receive subsistence allowance (arrears and current), he shall be under an

obligation to submit a declaration in accordance with law that since 11th November 2021, i.e., from the date of suspension, he has not been gainfully employed elsewhere. Upon such declaration being submitted, the disciplinary authority shall take steps to release arrears of subsistence allowance as well as current subsistence allowance as and when the same is payable, at the appropriate rates.

- (xii) The petitioner shall cooperate with the inquiry and shall not take unnecessary adjournments. If on his prayer the proceedings are adjourned for any particular period of time, such period shall stand excluded from the six months' period within which the proceedings have been directed to be completed.
- (xiii) The impugned order of suspension is not interdicted but it shall be subject to result of the final order that might be passed in the disciplinary proceedings.

20. With the aforesaid directions, the writ petition stands disposed of. No costs.

21. In light of disposal of the writ petition, the interim application does not survive and stands disposed of as such.

22. It is made clear that none of the allegations levelled against the petitioner has been examined on merits and all contentions are left open for him to agitate before the inquiry officer as well as the disciplinary authority, as the case may be, in terms of the aforesaid directions.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)