

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9987 OF 2023

Shri Ashok Rama Dhonge

..... Petitioner

Vs.

The State of Maharashtra and Ors.

..... Respondents

Mr.N.V.Bandiwadekar, Senior Advocate a/w Mr.Prashant Bhavake for the
Petitioner

Mr.Ajit R. Pitale a/w Mr.Ameya Pitale and Mr.Siddharth Pitale for the
Respondent no.2

Mr.Ramesh D. Rane for the Respondent no.3

Ms.A.A.Purav, A.G.P. for the Respondent-State

**CORAM: A.S.CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ.**
DATED : 28th NOVEMBER 2023

P.C.:

1. Rule. Rule made returnable forthwith.
2. The Petitioner who is serving as an Executive Engineer with the second Respondent – Maharashtra Jeevan Authority raises a challenge to the order of suspension dated 4th August 2023 as issued by the Executive Engineer, Rural Water Supply Department, Kolhapur. It is submitted by Mr.N.V. Bandiwadekar, the learned Senior Advocate for the Petitioner, that the order of suspension has been issued in exercise of power conferred by Rule 4(1)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. A departmental enquiry has been contemplated against the Petitioner. He submits that in terms of the Government Resolution dated

9th July 2019, as the charge sheet has not been served upon the Petitioner within a period of 90 days from the date of suspension, the Petitioner's suspension ought to come to an end after 90 days. It is urged that this Government Resolution has been issued in the light of the law laid down by the Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary vs. Union of India Through Its Secretary and Another*¹. On this premise, it is submitted that the Petitioner's suspension should be put to an end.

3. Mr.R.D. Rane, the learned counsel for the third Respondent – Zilla Parishad, Kolhapur objects to the maintainability of the Writ Petition on the ground that the order of suspension that has been challenged, is merely a consequential order since such suspension has been ordered pursuant to the decision taken in the Maharashtra Legislative Assembly. Referring to Article 168 of the Constitution of India, he submits that orders passed during the course of the proceedings before the Legislative Assembly cannot be subjected to challenge under Article 226 of the Constitution of India. On this premise, it is urged that the Writ Petition is not maintainable.

4. Mr. Ajit R. Pitale, the learned counsel for the second Respondent - Maharashtra Jeevan Authority submits that it is only in view of the directions issued by the Hon'ble Minister in the Legislative Assembly that the Petitioner's suspension has been ordered. According to him, the earlier enquiries held against the Petitioner are yet to be concluded and, therefore,

¹ (2015) 7 SCC 291

the charge sheet in the present proceedings has not been issued. He submits that there being no illegality in the order of suspension, same does not call for any interference.

5. Having heard the learned counsel for the parties and having perused the documents on record, we may deal with the objection raised by the third Respondent to the maintainability of the Writ Petition. Perusal of the communication dated 4th August 2023 issued by the Desk Officer, Department of Water Supply and Sanitation indicates that a statement was made on the floor of the Assembly that a departmental enquiry would be held against the Petitioner. This assurance given on the floor of the Assembly of holding a departmental enquiry against the Petitioner cannot be equated to an order directing holding of an enquiry. It is pursuant to such assurance that the employer – Maharashtra Jeevan Authority has proceeded to suspend the services of the Petitioner by issuing the impugned order.

In these facts, therefore, we do not find that the provisions of Article 168 of the Constitution of India are attracted. Since the challenge raised is to the order of suspension issued by the employer, the Writ Petition would be maintainable.

6. Undisputedly, the Petitioner was suspended on 4th August 2023. The period of 90 days has come to an end on 3rd November 2023. The Petitioner has still not been served with any charge sheet in the proposed

employment. In these facts, therefore, the Petitioner is entitled to the benefit of the Government Resolution dated 9th July 2019. In the light of the law laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary vs. Union of India Through Its Secretary and Another** (supra), the General Administration Department has issued this Government Resolution stating that on expiry of period of 90 days, the order of suspension would come to an end if the charge sheet is not issued within such period. The case of the Petitioner falls within the ambit of this Government Resolution. We do not find any reason not to hold the Petitioner entitled to the benefit of the same.

7. Hence, for the aforesaid reasons, without interfering with the order of suspension, it is held that the suspension of the Petitioner pursuant to the order dated 4th August 2023 would come to an end on expiry of 90 days which would be 3rd November 2023. It is clarified that second Respondent is free to proceed with the departmental enquiry against the Petitioner in accordance with the law and that this Court has not examined the material on the basis of which the Petitioner had been suspended. All points in this regard are kept open.

8. Rule is made absolute in aforesaid terms with no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(A.S.CHANDURKAR, J.)