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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

907 WRIT PETITION NO. 7692 OF 2024

Gautam s/o Govindrao Wagh,
Age: 42 years, Occu. Nil,
Was serving as Pharmacist at
Primary Health Centre, Kachner,
Tq. and Dist. Chhatrapati SambhajinagarPETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Deptt.,
Mantralaya, Mumbai-400 032
2. Divisional Commissioner,
Chhatrapati Sambhajinagar
3. Chief Executive Officer,
Zilla Parishad,
Chhatrapati Sambhajinagar
4. District Health Officer,
Zilla Parishad,
Chhatrapati SambhajinagarRESPONDENTS

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Mr S. S. Thombre, Advocate for Petitioner
Mr M. M. Nerlikar, A.G.P. for Respondent Nos.1 & 2
Mr P. R. Nangare, Advocate for Respondent Nos.3 & 4

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 9th August, 2024

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ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by consent of the learned Advocates for the respective sides.

2. The Petitioner has put forth prayer clause (B), which reads as under :-

(B) By issuing a writ of certiorari, orders, directions or any other appropriate writ in like nature, the impugned order dated 01.01.2024, thereby placing the petitioner under suspension, issued by Chief Executive Officer, Zilla Parishad, Chhatrapati Sambhajinagar, may kindly be quashed and set aside.”

3. We have considered the submissions of the learned Advocates for the respective sides. With their assistance, we have gone through the Petition paper book.

4. The Petitioner submits that the Zilla Parishad's Senior Officials are anti-pathetic towards the Petitioner on account of the Petitioner being a Union leader and having lodged complaints about certain lapses/irregularities. He has specifically put forth

his contentions in paragraph Nos.6, 7 and 8 of the Petition Paper book, which read as under :-

“6. The petitioner states that since in the complaint made by the petitioner and the Sangh, in respect of irregularities in Administrative/Request transfers in General Transfer of 2023, there was substance, an enquiry committee was appointed, which in turn, submitted its report saying that there was irregularities and illegalities in the General Transfers of 2023 and, therefore, all the transfers orders were ordered to be cancelled vide order dated 5.12.2023 issued by Deputy Commissioner (Est.) Divisional Commissioner, Chhatrapati Sambhajinagar.

7. The petitioner states that the Deputy Commissioner vide communication dated 3.4.2024 addressed to Respondent No.3-Chief Executive Officer, informed that as the Divisional Commissioner has already ordered to take appropriate action against the erring officers, who were responsible for commission of irregularities in the General Transfer and since no action is taken against those erring officers, the Deputy Commissioner informed to take appropriate action and submit compliance report thereof. Hereto annexed and marked as EXHIBIT - B collectively are the copies of order dated 5.12.2023 and letter dated 3.4.2024, both issued by Deputy Commissioner (Est.) Divisional Commissioner, Chhatrapati Sambhajinagar.

8. The petitioner states that as aforesaid, the petitioner is an office bearer of said Sangh and sought an enquiry against the officials of Zilla Parishad, keeping grudge against the petitioner, District Health Officer, Zilla Parishad, Chhatrapati Sambhajinagar, under the influence

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of higher officials of ZP, issued show-cause notice dated 11/13-10-2023 against the petitioner, asking as to why appropriate action of suspension should not be taken against him and he was asked to submit his explanation and remain present for hearing, which he done. In the said show cause notice it was alleged that the petitioner while posted at Primary Health Centre at Kachner, Chhatrapati Sambhajinagar, his behavior with the patients was not proper and while distributing the medicines amongst the female patients, he misbehaved with them and such complaint was received by them. Hereto annexed and marked as EXHIBIT - C is a copy of show cause notice dated 11/13-10-2023 issued by Respondent No.4 to the petitioner.”.

5. The learned Advocate for the Respondent/Zilla Parishad, Chhatrapati Sambhajinagar has vehemently opposed this Writ Petition and submits that, a baseless cause of action is put forth and the Writ Petition deserves to be dismissed with exemplary costs.

6. He, therefore, submits that, suspension of the Petitioner, dated 01/01/2024, is strictly in accordance with the Rules. The very next date, on 02/01/2024, he was transferred out of the location from Kachner, Taluka and Dist. Chhatrapati Sambhajinagar, where he was suspended, to the Primary Health

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Centre at Borsar, Taluka Vaijapur, Dist. Chhatrapati Sambhajanagar. Since the Petitioner did not join at Borsar for the last more than seven months of his suspension, he has not been paid suspension allowance. The learned Advocate hastens to add, on instructions, that the entire suspension allowance will be credited to the salary account of the Petitioner, within 8 to 10 days.

7. The learned Advocate for the Zilla Parishad has drawn our attention to Rule 3 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. It would be apposite to reproduce Rule 3, for ready reference, as under :-

“3. Suspension :- The Appointing Authority or any other Officer of the Zilla Parishad to whom such Appointing Authority is subordinate or any other officer of the Zilla Parishad empowered by the Chief Executive Officer in that behalf may place a Parishad servant under suspension -

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation or trial :

Provided that, where the orders of suspension are made by an authority lower in rank than the Appointing Authority, such authority shall forthwith report to the

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Appointing Authority the circumstances in which the order was made.

(2) A Parishad servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

(3) Whether a penalty of dismissal, removal or compulsory retirement from service imposed upon a Parishad servant under suspension is set aside in appeal or revision under these rules, and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Parishad servant is set aside or declared or rendered void in consequence of, or by, decision of a Court of law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Parishad servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory

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retirement and shall continue to remain under suspension until further orders.

(5) An order of suspension made or deemed to have been made under this rule may, at any time, be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.”

8. It appears from Rule 3, more specifically Clause 3(1) (a) that, when a disciplinary proceeding against an employee is contemplated or is pending, the Competent Authority can suspend such an employee pending initiation of the disciplinary proceedings. However, from 01/01/2024, till this date, not even a show cause notice has been issued to the Petitioner, though, the Zilla Parishad was expected to issue a charge-sheet cum show cause notice, considering the law laid down in **Managing Director ECIL, Hyderabad, Etc. Vs. B. Karunakar, Etc, (1993) 4 Supreme Court 727**. It is stated in the order of suspension that, because the Petitioner threw medicines on the women and female minor girl from the village, a notice was issued to him on 13/10/2023 and his reply dated 18/10/2023, was considered.

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9. Further allegations are levelled in the brief suspension order. We would not lend much importance to what has been said in the order of suspension since it is trite law that the order of suspension need not assign reasons as regards allegations levelled upon an employee. The allegations are to be set out in the charge-sheet, which has to be accompanied with show cause notice, which is the first right available to the Petitioner in view of the 15th and 42nd Amendments to Article 311 of the Constitution of India. Be that as it may, the fact remains that, a charge-sheet cum show cause notice has not been issued to the Petitioner.

10. The Petitioner has been transferred from Kachner, Taluka and Dist. Chhatrapati Sambhajinagar, to the Primary Health Centre, Borsar, Tq. Vaijapur, Dist. Chhatrapati Sambhajinagar, which is around 70 Kms away from the place, where the Petitioner was working. If the Petitioner was misfit to work at Kachner, he could be suspended. We do not find any wisdom in transferring him to Borsar and asking him to report to the Primary Medical Health Centre at Borsar, primarily for the reason that it would amount to a punitive transfer.

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11. At the same time, informing him that, during his entire suspension period, he would not take up any job or assignment or work anywhere, is justified. So also, Rule 3 pertaining to Suspension of an Employee, does not authorize the Competent Authority, suspending the employee, to transfer him to another place while issuing the order of suspension. If the transfer is on account of the allegations against him, the same would tantamount to a punitive transfer, when neither a charge-sheet is issued to the Petitioner, nor any charge is proved against him. There is no criminal offence or investigation or trial pending against the Petitioner.

12. The Petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in **Ajay Kumar Choudhari Vs. Union of India (UOI) and Ors., (AIR 2015 SC 2389)**, wherein the issue of continuance of a suspension order without issuance of the memorandum of charges/charge-sheet, was considered.

13. In **Ajay Kumar Choudhari (supra)**, the Hon'ble Supreme Court held in paragraph Nos.7 to 10, as under :-

“7. Learned senior Counsel for the Appellant, however, has rightly relied on a series of Judgments of this Court, including *O.P. Gupta v. Union of India* MANU/SC/0670/1987 : 1987 (4) SCC 328, where this Court has enunciated that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, an order of suspension should not be lightly passed. Our attention has also been drawn to *K. Sukhendar Reddy v. State of A.P.* MANU/SC/0272/1999 : 1999 (6) SCC 257, which is topical in that it castigates selective suspension perpetuated indefinitely in circumstances where other involved persons had not been subjected to any scrutiny. Reliance on this decision is in the backdrop of the admitted facts that all the persons who have been privy to the making of the Office-notes have not been proceeded against departmentally. So far as the question of prejudicial treatment accorded to an employee is concerned, this Court in *State of A.P. v. N. Radhakishan* MANU/SC/0278/1998: 1998 (4) SCC 154, has observed that it would be fair to make this assumption of prejudice if there is an unexplained delay in the conclusion of proceedings. However, the decision of this Court in *Union of India v. Dipak Mali* MANU/SC/1909/2009 : 2010 (2) SCC 222 does not come to the succour of the Appellant since our inspection of the records produced in original have established that firstly, the decision to continue the suspension was carried out within the then prevailing period and secondly, that it was duly supported by elaborate reasoning.

8. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this

would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that-"We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of

the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

10. The Supreme Court of the United States struck down the use of nolle prosequi, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in Klapfer v. State of North Carolina 386 U.S. 213 (1967). In Kartar Singh v. State of Punjab MANU/SC/1597/1994: (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better the extract these paragraphs from that celebrated decision-

86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. *This Court in Hussainara Khatoon (1) v. Home Secretary, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus:*

No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right Under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right Under Article 21."

14. In view of the above, **this Writ Petition is partly allowed.** The order of suspension dated 01/01/2024, is quashed and set aside from the date of this judgment. Consequentially, the relieving order dated 01/02/2024 and the direction to report at

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Borsar, would not survive. The Petitioner shall be permitted to join duties w.e.f. 21/08/2024.

15. Since the Zilla Parishad is depositing the suspension allowance as per Rules in the salary account of the Petitioner within a period of 8 to 10 days, we are not required to pass any further order. Needless to state, if the employer desires to initiate disciplinary action against the Petitioner in accordance with law, there would be no impediment on account of this judgment, quashing and setting aside the impugned order dated 01/01/2024 with effect from the date of the Judgment. All the contention of the parties are kept open.

16. Rule is made partly absolute in the above terms.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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