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

**WRIT PETITION NO.17325 OF 2024**

Shri. Prashant s/o Subhash Bedse }  
Age: 38 years, Occu: Tehsildar }  
(Revenue) Khed, }  
R/o Khed, Pune. }  
(present under suspension) } .. Petitioner

**Versus**

1. The State of Maharashtra }  
Through Additional Chief Secretary, }  
Revenue and Forest Department, }  
Mantralaya, Mumbai-32. }
2. The Divisional Commissioner, }  
Pune Division, Pune }
3. The Collector, }  
Pune, Dist. Pune. }
4. Shri. Dilip Dattatray Mohite, }  
MLA Khed-Alandi-197 Legislative }  
Assembly Constituency, }  
Khed, Pune. }
5. Smt. Jyoti Devre, }  
Tehsildar and Assistant }  
Rehabilitation Officer, }  
Vadivale Project, District Pune. } .. Respondents

...

Mr. S. B. Talekar with Ms. Madhavi Ayyappan i/by Talekar & Associates, Advocates for the Petitioner.

Mr. P. P. Kakade, Additional Government Pleader with Mr. N. K. Rajpurohit, Assistant Government Pleader for the respondent-State.

Mr. Vijay Patil, Senior Advocate with Mr. Abhijeet Desai, Mr. Ashwin Kapadnis, Mr. Digvijay Kachare, Ms. Mohini Rehpade i/by Ms. Daksha Punghera, Advocates for the respondent no.5.

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**CORAM : A.S. CHANDURKAR &  
M.M. SATHAYE, JJ**

**DATE : 31<sup>st</sup> JANUARY 2025.**

**ORAL JUDGMENT :(PER : A. S. CHANDURKAR, J)**

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. The petitioner is aggrieved by the judgment dated 29/10/2024 passed by the learned Administrative Member, Maharashtra Administrative Tribunal, Mumbai (for short, 'the Tribunal') in Original Application No.849 of 2024. By the said judgment, the aforesaid Original Application preferred by the petitioner raising a challenge to the order of suspension issued to him on 11/07/2024 as well as to the order of transfer dated 16/07/2024 of respondent no.5 on the post held by the petitioner came to be dismissed.

2. Facts relevant for considering the challenge as raised are that the petitioner is serving on the post of Tahasildar with the Department of Revenue and Forests of the State Government. By order dated 16/06/2023, the petitioner came to be transferred from the post of Tahasildar, Mohol District Solapur to an equivalent post at Khed, District Pune. While the petitioner was serving at Khed, a chargesheet was issued to him on 22/08/2023 in the departmental proceedings initiated against him. When the

said enquiry proceedings were pending, the petitioner's services were placed under suspension by an order dated 11/07/2024. Shortly thereafter, the respondent no.5 who was serving on the post of Tahasildar and Assistant Rehabilitation Officer, Vadivale Project District Pune came to be transferred to the post of Tahasildar, Khed, District Pune which had fallen vacant on account of the petitioner's suspension. Being aggrieved by the aforesaid orders, the petitioner approached the Tribunal by filing Original Application No.849 of 2024. In the said proceedings, the petitioner made a prayer for grant of interim relief by staying the order of suspension. As the prayer for interim relief was not being considered, the petitioner had approached this Court by filing Writ Petition No.9959 of 2024 raising a challenge to the order dated 15/07/2024. Though the proceedings in the writ petition were adjourned to enable the prayer for interim relief to be considered, the Original Application after being heard by the learned Member on 12/08/2024 was adjourned for passing final orders. Ultimately, the Original Application was dismissed on 29/10/2024. Hence, this writ petition.

3. Mr. S. B. Talekar, learned counsel appearing for the petitioner submitted that while the petitioner was serving on the

post of Tahsildar, Khed, District Pune interference was sought to be caused in his discharge of duties by the respondent no.4, Member of the Legislative Assembly from Khed-Alandi. As the petitioner did not oblige the respondent no.4, he was threatened by him on various occasions. He submitted that the respondent no.4 directed the petitioner to make a request for being transferred elsewhere so as to accommodate the respondent no.5 on the said post. He invited attention to the averments made in paragraphs 13 to 22 of the writ petition in that regard. Though a chargesheet was issued to the petitioner on 22/08/2023, he was not placed under suspension and he continued to discharge his regular duties. In the meanwhile, the transfer of respondent no.5 on the post held by the petitioner was recommended by the respondent no.4 on 17/01/2024. The matter was considered by the Civil Services Board sometime in March 2024 but the proposal to transfer the petitioner and the respondent no.5 inter-se came to be dropped. Shortly thereafter, the Code of Conduct in view of the ensuing general elections commenced and the petitioner continued to discharge duties on the post of Tahasildar, Khed District Pune. It was submitted that after a period of about one year from the issuance of the chargesheet, the petitioner was placed under suspension on 11/07/2024. There was no reason

whatsoever to place the petitioner under suspension considering the nature of charges levelled against him. Assuming that the petitioner was found guilty of the same, only a minor penalty was liable to be imposed. Shortly after the petitioner was placed under suspension the services of the respondent no.5 came to be transferred from her earlier post to the post held by the petitioner. It was evident that merely on the basis of a request made by the respondent no.5 on 12/07/2024 to the Hon'ble Revenue Minister, the said request came to be accepted. The order of transfer of the respondent no.5 was without complying with the requirements of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short, "Act of 2005"). The petitioner amended the Original Application and challenged the order of transfer. Inviting attention to the impugned order, he submitted that the contentions raised by the petitioner in challenge to the order of suspension had not been considered at all. It was merely observed that since a period of more than three months had elapsed from the date of suspension, a review of the same ought to be taken by the Disciplinary Authority. The learned Member failed to even consider the challenge to the order of transfer which had been specifically assailed on various grounds. To substantiate his

contentions, the learned counsel for the petitioner placed reliance on the decisions in *Kalabharati Advertising Vs. Hemant Vimalnath Narichania*, SCC Online 2010, *Union of India and Anr. Vs. Ashok Kumar Aggarwal*, SCC Online 2013, *State of Maharashtra Vs. Dr. Subhash Dhondiram Mane*, SCC Online 2015, *Bertha T. A. D' Mello e Daniel Vs. Goa University*, 2023 SCC Online Bom 1547, *Harishchandra Vs. State of Maharashtra*, 2017 SCC Online MH SAT 288, *Utkarsh Vs. State of Maharashtra and Ors.* 2022 SCC Online MH SAT 1078 and *Tanushree Basu and Ors. Vs. Ishani Prasad Basu and Ors.* 2008 4 SCC Online 791. It was thus submitted that considering the interest displayed by the respondent no.4 in having the services of respondent no.5 being transferred on the post held by the petitioner pursuant to his unwarranted suspension, a case for interference had been made out. It was thus prayed that the reliefs sought in the writ petition be granted.

4. Mr. P. P. Kakade, learned Additional Government Pleader opposed aforesaid submissions. He submitted that since the petitioner was facing a departmental enquiry, it was always permissible for the Disciplinary Authority to place him under suspension. It was not necessary in every case that immediately

after issuance of the chargesheet, the delinquent must be placed under suspension. It was open for the Disciplinary Authority to consider the gravity of the matter and take steps accordingly including placing a delinquent under suspension. Considering the gravity of charges levelled against the petitioner, he was rightly placed under suspension. He referred to Rule 4(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 ( for short, "Rules of 1979") in that regard. He then submitted that the petitioner had the remedy of appeal for challenging the order of suspension dated 11/07/2024. Without exhausting that remedy, the petitioner approached the Tribunal and sought to challenge his suspension. The Department of Revenue and Forests had raised a specific objection on this basis in its reply to the Original Application. However, cognizance of the same was not taken by the learned Member. On the aspect of challenge to the order of transfer, it was submitted that for administrative exigencies the respondent no.5 came to be transferred in the place of the petitioner. No grounds whatsoever had been made by the petitioner to interfere with the order of transfer inasmuch as it had been passed in accordance with the provisions of the Act of 2005. To substantiate his contentions, the learned Assistant Government Pleader placed reliance on the decisions in *S. A. Khan*

*Vs. State of Haryana and others*, (1993) 2 SCC 327, *Shaik Nurbi Vs. Pathan Mastanbi & Ors.* (2004) 2 AP LJ 242, *Bondar Singh and others Vs. Nihal Singh and others*, (2003) 4 SCC 161, *D. B. Gohil Vs. Union of India and others.* (2010) 12 SCC 301 and order dated 4<sup>th</sup> October 2023 passed in Writ Petition 5983 of 2023 (*The State of Maharashtra Vs. Smt. Trupti Kolte*). He therefore submitted that there was no reason to interfere with the order passed by the Tribunal.

5. Mr. Vijay Patil, learned Senior Advocate for the respondent no.5 opposed the prayers made in the writ petition. As regards challenge to the order of suspension dated 11/07/2024 it was submitted that it was the prerogative of the employer to place an employee under suspension in given circumstances. Considering the gravity of charges in the departmental enquiry, the petitioner was placed under suspension. He placed reliance on decision in *Asif Mohd. Khan Vs. State of M. P. and Others.* 2015 (4) MPLJ. Insofar as challenge to the order of transfer of the respondent no.5 was concerned, it was submitted that the learned Member failed to consider this challenge while deciding the Original Application. As a result, this Court did not have the benefit of any consideration in that regard. He however submitted that transfer being an

exigency of service and as the post of Tahasildar, Khed District Pune that was held by the petitioner was lying vacant in view of the petitioner's suspension, the respondent no.5 was posted therein. The procedure prescribed by the Act of 2005 had been duly followed while transferring the petitioner and hence it could not be said that there was any illegality in the passing of the impugned transfer order. He thus submitted that the writ petition was liable to be dismissed.

6. In rejoinder, the learned counsel for the petitioner submitted that as the petitioner had challenged the order of suspension on the ground that it was arbitrary and having been issued at the behest of the respondent no.4, it was not necessary to invoke the alternate remedy as urged. Attention was invited to paragraphs 21 to 31 of the Original Application to indicate the pleadings of the petitioner in that regard. Attention was also invited to Rules 21(3) and 22(e) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 to urge that the petitioner had lien over the post of Tahsildar. Since the issue with regard to transfer of the respondent no.5 had not been placed before the Civil Services Board, the same was liable to be set aside. It was thus urged that the prayers made by the petitioner be granted.

7. We have heard the learned counsel for the parties at length and with their assistance we have perused the material on record. We have thereafter given due consideration to the rival submissions. At the outset, it may be noted that initially the petitioner had approached the Tribunal by filing Original Application No.849 of 2024 raising a challenge to the order of suspension dated 11/07/2024. The learned Member on 15/07/2024 directed the respondents to file reply within a period of two weeks and kept the issue of interim relief open. Since consideration of the prayer for interim relief was deferred, the petitioner approached this Court by filing Writ Petition No.9959 of 2024 seeking interim relief while raising a challenge to the order of suspension dated 11/07/2024. The said writ petition was heard on 19/07/2024 and was adjourned to 26/07/2024. The writ petition was then taken up on 30/07/2024 when it was informed that on the same day, the Tribunal was to hear the proceedings at 2:30 PM. The writ petition was thus adjourned to 02/08/2024. On that day, this Court passed an order with a request to the learned Member of the Tribunal to consider the prayer for interim relief on 06/08/2024. On 13/08/2024, it was informed that the learned Member had heard the parties and the order was

awaited. The writ petition was thus adjourned to 23/08/2024. The writ petition was then taken up on 16/10/2024 on which date the following order was passed:-

*The grievance raised by the learned counsel for the petitioner is that pursuant to the orders passed in the writ petition, the prayer for interim relief made by the petitioner in Original Application No. 849 of 2024 was heard on 8th August 2024. However, till today no order has been pronounced on prayer for interim relief. He submits that a period of more than two months has since elapsed.*

*2. List under the caption of 'Directions' on 23<sup>rd</sup> October 2024.*

*3. The learned counsel for the parties are at liberty to bring this order to the notice of the learned Member, Maharashtra Administrative Tribunal.*

*4. The parties to act on the authenticated copy of this order.”*

Thereafter on 25/10/2024, the Court was informed that the Original Application had still not been decided. Hence the proceedings in the writ petition were adjourned to 14/11/2024. In the meanwhile on 29/10/2024, the Original Application was decided by the learned Member.

It is seen from the record that the arguments of the learned counsel before the Tribunal were heard on 12/08/2024 and the Original Application was decided on 29/10/2024.

8. It is material to note that during pendency of the Original Application, an order dated 16/07/2024 transferring the services of the respondent no.5 in place of the petitioner came to be issued. By amending the Original Application, the order of transfer dated 16/07/2024 was also challenged. This is clear on a reading of paragraph 35 of the impugned order. The learned Member however while considering the Original Application has merely considered the challenge to the order of suspension dated 11/07/2024. There is no consideration of the challenge to the order of transfer dated 16/07/2024. It is not in dispute that respondent no.5 came to be arrayed in the said proceedings and said respondent had filed her affidavit opposing the challenge to the order of transfer. However, in the absence of consideration of the challenge to the order of transfer, there is no finding whatsoever recorded by the learned Member in that regard.

9. Coming to the challenge to the order of suspension dated 11/07/2024, it would be material to note that when the petitioner was holding the post of Tahsildar Mohol, District Solapur, he was transferred to the post of Tahasildar, Khed District Pune on 16/06/2023. After he was so transferred, it was proposed by the Revenue and Forest Department to hold a departmental enquiry

against the petitioner under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short, 'Rules of 1979'). Articles of Charge were accordingly drawn and issued to the petitioner on 22/08/2023. It is material to note that when the petitioner was served the Articles of Charge, he was not placed under suspension and he continued to discharge duties on the post of Tahsildar, Khed District, Pune. On 24/11/2023, the authority to exercise jurisdiction under Section 155 of the Maharashtra Land Revenue Code, 1966 was taken away from the petitioner and additional charge of the same was given to the Tahsildar, Pune. Nevertheless, the petitioner was not placed under suspension. It is only on 11/07/2024 that the services of the petitioner were placed under suspension after about eleven months from the service of the Articles of Charge. The said order merely records that in exercise of the power conferred by Rule 4(1) (a) of the Rules of 1979 the services of the petitioner were being placed under suspension.

10. There cannot be any dispute with the position that it is the prerogative of the employer to place an employee under suspension especially when such employee is subjected to disciplinary proceedings. Ordinarily, on such enquiry being

proposed to be held, the delinquent can be placed under suspension. There however cannot be a universal proposition that such delinquent ought to be placed under suspension as a rule on the initiation of disciplinary proceedings. The employer undoubtedly is empowered to place an employee under suspension at any stage of the disciplinary proceedings. While accepting the power of an employer to place an employee under suspension, it may be observed that such power cannot be exercised in an arbitrary or unbridled manner. In our view, in a case where on issuing the Articles of Charge the delinquent has not been placed under suspension and the decision to place such delinquent under suspension after a lapse of almost a year thereafter is taken, there ought to be some material on record to support the decision of the employer to place such delinquent under suspension after lapse of considerable period. The power to suspend an employee not having been invoked at the initial stage and the same being exercised after a lapse of almost a year would require presence of atleast some material that prompted the employer to exercise such power and place the delinquent under suspension. Though it would not be necessary to specifically spell out the reasons for placing an employee under suspension in such circumstances in the order of

suspension, material in the form of file notings or conduct of the delinquent during the course of the disciplinary proceedings, etc ought to indicate that for some plausible reason the employer has thought it fit to place the delinquent under suspension belatedly. We say so in view of the peculiar facts of the present case namely that the Articles of Charge were issued to the petitioner on 22/08/2023 proposing to enquire into the manner of discharge of duties by the petitioner when he was posted as Tahasildar, Mohol District Solapur. After the issuance of the Articles of Charge, the petitioner was transferred from Mohol, District Solapur to Khed, District Pune on 24/11/2023. Thus when the petitioner was holding the charge of the post of Tahsildar at Mohol, District Solapur and was served the chargesheet, he was not placed under suspension. It is only after the petitioner joined the place of transfer at Khed District Pune pursuant to the order of transfer dated 24/11/2023 that he was placed under suspension on 11/07/2024.

11. One of the considerations for placing an employee under suspension is that he should not be in a position to jeopardise the enquiry proceedings by either attempting to influence witnesses or tamper with material that is germane to the enquiry proceedings.

That possibility in the present was also remote for the reason that the petitioner transferred from Mohol, District Solapur where the enquiry was being held. It is also not the stand of the Disciplinary Authority that the petitioner was attempting to do so. Another consideration that could weigh with the employer is the gravity of charges. A perusal of the Articles of Charge indicates that the charges levelled cannot be said to be of a serious nature whatsoever. They relate to breach of restrictions that were prevailing during the pandemic, Covid-19, breach of provisions of the Maharashtra Civil Services (Conduct) Rules 1979 (for short, 'Rules of 1979'), failure to constitute an Anti-Corruption Committee, etc. *Prima facie*, it may be observed that assuming the charges to be proved, the petitioner could be visited with a minor penalty under the Rules of 1979. It therefore cannot be said that considering the gravity of charges framed against the petitioner which principally related to the unsatisfactory manner of discharge of duties, he was liable to be placed under suspension in the midst of the enquiry proceedings.

12. In any event, we do not find any material whatsoever that was considered by the Disciplinary Authority so as to place the petitioner under suspension especially after lapse of almost one

year from being issued the Articles of Charge. In the passing, we may only note that on 17/01/2024, the respondent no.4 had recommended the transfer of respondent no.5 to the post of Tahasildar, Khed District Pune held by the petitioner by making such request to the Hon'ble Revenue Minister. In the meanwhile, the Code of Conduct on account of ensuing general elections was implemented. The proposal to transfer the petitioner as well as respondent no.5 came to be dropped thereafter. Though these developments by itself cannot lead to a conclusion that non-transfer of the petitioner by itself was a ground to place the petitioner under suspension, the aforesaid aspect is being referred to only to indicate that a written request was made by the respondent no.4 to transfer the respondent no.5 to the post of Tahasildar, Khed District Pune.

12. The learned Member of the Tribunal in the impugned order has referred to the decision of the Supreme Court in *Ajay Kumar Choudhary Vs. Union of India and another*, (2015) 7 SCC 291 while directing the authorities to consider the aspect of continuing the suspension of the petitioner any further. The Supreme Court in the aforesaid decision has held that the currency of a suspension order should not extend beyond three months if within this

period, the memorandum of charge/chargesheet is not served on the delinquent Officer/employee. However, if memorandum of charge/chargesheet is served, a reasoned order must be passed for the extension of the period of suspension. Taking cue from the aforesaid, we may only observe that if after service of the memorandum of charge/chargesheet a reasoned order is required to be passed for extending the period of suspension, it would be logical to expect existence of some reason for placing a delinquent who was not placed under suspension after service of the memorandum of charge that warrants placing him under suspension after almost a year thereafter. As stated above, such reason may not be made part of the order of suspension but some material must be available on the record to justify the placing of such delinquent under suspension especially when the delinquent stands transferred to another place and is not serving at the place where the enquiry is being held.

We therefore find that in absence of any material whatsoever being brought on record coupled with the nature of charges levelled against the petitioner and as the petitioner was no longer serving on the post of Tahsildar, Mohol District Solapur, the suspension of the petitioner appears to be unwarranted on these counts. Even otherwise, the petitioner's continued suspension in

these facts appears to be without any basis whatsoever and hence liable to be interfered with. The learned Member of the Tribunal having failed to exercise jurisdiction as vested, grave prejudice has been caused to the petitioner. Accordingly, the order dated 11/07/2024 suspending the services of the petitioner stands quashed.

13. As noted above despite a specific challenge being raised to the order of transfer dated 16/07/2024 of the respondent no.5 in place of the petitioner, the learned Member of the Tribunal has failed to consider such challenge despite being cognizant of the fact that the order dated 16/07/2024 was under challenge in the Original Application. Since the Original Application preferred by the petitioner was amended and the order of transfer was challenged, this aspect would require consideration. We are however not inclined to consider this challenge as a Court of first instance especially when the order of transfer has been made the subject matter of challenge in the proceedings filed by the petitioner. Hence without going into the correctness or otherwise of the order of transfer it would be in the fitness of things that the Tribunal is directed to consider the challenge to the order of transfer dated 16/07/2024 on its own merits.

14. Accordingly for the aforesaid reasons, the following order is passed:-

- i) The order of suspension issued to the petitioner on 11/07/2024 is quashed and set aside. The petitioner is entitled to be restored to the post of Tahasildar. He shall however be given a temporary posting till his challenge to the order of transfer dated 16/07/2024 is considered by the Maharashtra Administrative Tribunal.
- ii) The proceedings in Original Application No.849 of 2024 are restored before the Maharashtra Administrative Tribunal only to the extent of considering the challenge to order of transfer dated 16/07/2024. Since it is informed that the pleadings in that regard are now complete, the Tribunal is requested to decide the Original Application expeditiously and preferably within a period of six weeks from receipt of copy of this judgment. It is clarified that this Court has not examined the aforesaid challenge and all contentions of parties in that regard are kept open.
- iii) Rule is made part absolute in aforesaid terms with no order as to costs.

**[ M.M. SATHAYE, J. ]**

**[ A.S. CHANDURKAR, J. ]**