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REPORTABLE

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

WRIT PETITION NO.9808 OF 2024

Chhabubai Bhimsing Rathod,
Age: 54 years, Occu. Service,
R/o Plot No.6, Gut No. 102,
Matoshri Nagar, Beed By Pass,
Satara Parisar,
Chhatrapati Sambhajnagar

....PETITIONER

VERSUS

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

....RESPONDENTS

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Mr S. S. Thombre, Advocate for Petitioner
Ms Neha Kamble, A.G.P. for Respondent Nos.1 and 2
Mr P. R. Nangare, Advocate for Respondent Nos.3 and 4

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

DATE : 12th September, 2024

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

1. Rule. Rule made returnable forthwith and heard finally, by the consent of the parties.

2. The Petitioner, by filing this Petition on 18/08/2024, has put forth prayer clauses (B) and (C) as under :-

“B) By issuing a writ of certiorari, orders, directions or any other appropriate writ in like nature, the impugned suspension order dated 15.05.2024 thereby placing the petitioner under suspension issued by Chief Executive Officer, Zilla Parishad, Chhatrapati Sambhajinagar, may kindly be quashed and set aside and for that purpose issue necessary orders;

C) Pending hearing and final disposal of this writ petition, the impugned suspension order dated 15.05.2024 thereby placing the petitioner under suspension issued by Chief Executive Officer, Zilla Parishad, Chhatrapati Sambhajinagar, may kindly be stayed and the petitioner may be reinstated in service on his earlier post from where she is suspended and for that purpose, issue necessary orders;”

3. The Petitioner had earlier approached this Court in Writ Petition No.14409/2023, seeking issuance of a Writ of Mandamus to the Respondent/Zilla Parishad to transfer her to a particular Health Centre, as per her choice. Since we showed our disinclination to entertain the Petition, the Petitioner prayed that,

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her representation dated 30/09/2023 may be considered by the Zilla Parishad. Vide the said representation, she had prayed that, she should be posted at Chhatrapati Sambhajinagar. The Writ Petition was disposed off, expecting the Zilla Parishad to deal with her representation.

4. The grievance in this Petition is that, Respondent No.3/ Chief Executive Officer, Zilla Parishad, Chhatrapati Sambhajinagar, has placed the Petitioner under suspension vide the impugned order dated 15/05/2024. The Petitioner had made a grievance that, she was being harassed by the Medical Officer and a Health Worker. They insisted that, she should reside in the staff quarters and that the Petitioner has frequently quarreled with these two persons. Her medical bill is not cleared and kept pending. Sometimes she is not allowed to sign the muster roll, etc. etc. Hence, she has been deliberately placed under suspension.

5. The Petitioner further contends that, this Petition has been filed on the 93rd day of her suspension. The 90 days are over and this Petition, having been filed on the 3rd day after completion

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of 90 days of suspension, deserves to be entertained and the suspension order deserves to be quashed and set aside.

6. It is trite that, a Court should not step into the shoes of the Employer and assess, as to whether the Petitioner deserved to be suspended or not. The fact remains that the Petitioner has been served with the charge-sheet cum show cause notice, dated 23/08/2024. Around six charges have been levelled upon her. The Zilla Parishad has initiated a Departmental Enquiry against the Petitioner. Since the Petitioner has locked her residence (the address on the record of the Zilla Parishad), further communications attempted to be served upon her by the Respondent/Zilla Parishad, have proved to be a futile exercise. One such document dated 29/08/2024, along with the report of witnesses, is shown to the Court.

7. The learned Advocate for the Petitioner has placed heavy reliance on the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhari Vs. Union of India, [AIR 2015 SC 2389]**. In the said case, the Appellant's suspension, dated

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30/09/2011, was extended for a period of 180 days, which was followed by an extension of the same period on the 2nd occasion. On the 3rd and 4th occasions, the extension was for 90 days each. In all, his suspension continued from 30/09/2011 until June 2013, without any disciplinary proceedings. He approached the Central Administrative Tribunal (Tribunal), which ordered that, if a charge-sheet has not been issued to the Appellant until 21/06/2013, the Appellant would be reinstated in service. The Union of India approached the Delhi High Court, which set aside the order of the Tribunal and it was left to the Central Government to decide, as to whether it wished to continue with the suspension by considering the report of the Central Bureau of Investigation (CBI).

8. In paragraph No.11 of **Ajay Kumar Choudhari (supra)**, the Hon'ble Supreme Court relied upon **Abdul Rehman Antulay Vs. R. S. Nayak [1992 (1) SCC 225]** and reproduced paragraph No.86 in the said judgment. The relevant observations for the purpose of deciding the case in our hands, are noticed in paragraph Nos. 86 (10 and 11) and paragraph No.12, 14 and 15 of

the judgment in *Ajay Kumar Choudhari* (supra), which read as under :-

“86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

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(10) It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

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12. State of Punjab v. Chaman Lal Goyal (1995) 2 SCC 570 deserves mention, inter alia, because action was initiated on 25.3.1992 and a Memorandum of Charges was issued on 9.7.1992 in relation to an incident which had occurred on 1.1.1987. In the factual matrix obtaining in that case, this Court reserved and set aside the High Court decision to quash the Inquiry because of delay, but directed that the concerned officer should be immediately considered for promotion without taking the pendency of the Inquiry into perspective.

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14. 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 concerned person 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 prepare his defence.

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15. So far as the facts of the present case are concerned, the Appellant has now been served with a Charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review.”

9. It is, thus, clear that, in every case, as a matter of course, a suspension order cannot be set aside only because the suspension continued beyond 90 days, except in such cases, where the suspension has been continued without issuance of any charge-sheet and it being evident that the Employer does not intend to initiate a Departmental Enquiry.

10. In **Union of India vs Ashok Kumar Aggarwal, [2013 (16) SCC 147]**, the Hon'ble Supreme Court concluded in paragraph 9, that the power of suspension should not be exercised in an arbitrary manner. The suspension should be in a case, wherein the circumstances indicate a strong *prima facie* case against the delinquent employee and the allegations involved grave misconduct or indiscipline which, if proved, would result in awarding punishment to the employee.

11. The Hon'ble Supreme Court further held in **Ashok Kumar Aggarwal (supra)**, by relying upon **Pritam Singh Vs. the State, [AIR 1950 SC 169]**, and **Karam Kapahi and others Vs. M/s Lal Chand Public Charitable Trust and another, [AIR 2010 SC 2077]**, that, "*It is a settled legal proposition that*

jurisdiction under Article 136 of the Constitution is basically one of conscience. The jurisdiction is plenary and residuary. Therefore, even if the matter has been admitted, there is no requirement of law that court must decide it on each and every issue. The court can revoke the leave as such jurisdiction is required to be exercised only in suitable cases and very sparingly. The law is to be tempered with equity and the court can pass any equitable order considering the facts of a case. In such a situation, conduct of a party is the most relevant factor and in a given case, the court may even refuse to exercise its discretion under Article 136 of the Constitution for the reason that it is not necessary to exercise such jurisdiction just because it is lawful to do so.”

12. In **Sunita Chandrakant Kalekar Vs. Zilla Parishad, Kolhapur and others**, [2017 (1) Mh.L.J. 629], this Court concluded that suspension of a Parishad Servant can be ordered where disciplinary proceedings against the Servant is either contemplated or is pending. Merely because in the order of suspension, it is not mentioned that an enquiry is in

contemplation, the order of suspension cannot be vitiated. It has to be seen as a whole in totality of the background facts.

13. In matters of such nature, when the Employer had applied it's mind and issued an order of suspension and has also issued the charge-sheet cum show cause notice, which has been served upon the Petitioner, we do not find it appropriate to exercise our Writ jurisdiction, as if this Court is sitting in an Appeal over the order of the Employer. While exercising supervisory jurisdiction, it has to be assessed, as to whether the impugned order is evidently perverse and illegal or is issued without authority of law. There is no dispute as regards the authority of the Employer in issuing the impugned order. On merits, we are not convinced that the suspension order deserves to be interfered with.

14. Considering the above, being devoid of merits, **this Writ Petition is dismissed.**

15. Rule is discharged.

(Y. G. KHOBRADE, J.)
sjk

(RAVINDRA V. GHUGE, J.)