



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3795 OF 2024

1. The State of Maharashtra,
Through Principal Secretary,
Revenue and Forest Department,
Maharashtra State,
3rd Floor, New Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai – 32.
2. The Additional Secretary,
Revenue and Forest Department,
Maharashtra State, 3rd Floor,
New Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai – 400 032.
3. The District Collector,
Collector Office,
Chhatrapati Sambhajinagar

.. Petitioners
(Orig. Respondents)

Versus

Jyoti D/o Rajaram Pawar,
Age : 49 years, Occu : Tahsildar,
(Now under Suspension),
R/o. Pride Plaza, Vedant Nagar,
Chhatrapati Sambhajinagar

.. Respondents
(Orig. Applicant)

**WITH
WRIT PETITION NO. 12280 OF 2024**

Ramesh S/o Sayanna Mundlod
Age : 53 years, Occu. Service as Tahsildar,
Aurangabad,
R/o. Tahsil Office, Aurangabad,
Tq. & Dist. Aurangabad

.. Petitioner

Versus

- 1] The State of Maharashtra
Through the Principal Secretary,
Revenue & Forest Department,
Maharashtra State, 3rd Floor,

New Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai – 400 032.

2] The Additional Secretary,
Revenue & Forest Department,
Maharashtra State, 3rd Floor,
New Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai – 400 032

3] The District Collector,
Aurangabad Alamgir Colony,d
Maulana Azad Research Centre Rd.
Collector Office Campus,
Aurangabad – 431 003

4] Jyoti D/o Rajaram Pawar
Age : 49 years, Occu. Tahsildar,
(now under suspension)
R/o. Pride Plaza, Vedant Nagar,
Aurangabad

.. Respondents

AND

CIVIL APPLICATION NO. 12175 OF 2024 IN WP/12280/2024

(Ramesh Sayanna Mundlod

Vs.

The State of Maharashtra through the Principal Secretary and others)

...

Advocate for petitioners in both WPs : Mr. Sachin Deshmukh i/by

Mr. J.G. Toshniwal & Mr. P.N. Kalani

AGP for the State : Mr. R.S. Wani

Advocate for respondent no. 4 : Mr. S.S. Thombre in WP/12280/2024 and
for respondent in WP/3795/2024

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CORAM

**: MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

RESERVED ON : 04 DECEMBER 2024

PRONOUNCED ON : 19 DECEMBER 2024

JUDGMENT (MANGESH S. PATIL, J.) :

Heard both the sides in both the petitions. Rule. It is
made returnable forthwith. Learned advocates for the respective

respondents waive service. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. In both these writ petitions, there is a common challenge to the judgment and order dated 24-11-2023 of the Maharashtra Administrative Tribunal in Original Application no. 792 of 2023, whereby, the original application preferred by respondent no. 1 from writ petition no. 3795 of 2024, which is arrayed as respondent no. 4 in the other writ petition, had put up a challenge to the order of her suspension dated 14-07-2023 issued by respondent no. 2, who is the Additional Secretary of the Revenue and Forest Department of the Maharashtra State, whereby, it has quashed and set aside the suspension and directed to forthwith reinstate her on the post from which she was suspended. The state has put up a challenge to this order of the tribunal in writ petition no. 3795 of 2024.

3. Pursuant to the order of suspension, the petitioner from writ petition no. 12280 of 2024 was posted in her place and resumed the office on 06-09-2023. Since he was not a party to the original application, he is now challenging the order of the tribunal on the premise that implementation of the order of the tribunal would displace him.

4. As can be gathered, the issue in hand to the extent of petitioner in writ petition no. 12280 of 2024, is limited. Though he was

not a party before the tribunal which passed the order under challenge and its implementation gives rise for him to a cause of action, inasmuch as he would be displaced from the post pursuant to the suspension of the original applicant, as laid down in the matter of **K. Ajit Babu and others Vs. Union of India and others; (1997) 6 S.C.C. 473**, the remedy for him would be to apply for review, by making an appropriate application to the tribunal or to prefer an independent original application.

5. Even if it is a matter that the impugned judgment and order is germane to his apprehended transfer, in our considered view, though he is aggrieved by and threatened of the transfer pursuant to the order of the tribunal, that would not give rise to any cause for him to challenge the impugned judgment and order and does not have any *locus standi* to challenge the order of the tribunal to the extent it has quashed suspension of the other petitioner, by resorting to Article 226 of the Constitution of India when he was not a party before the tribunal. Precisely to meet such a contingency, the Supreme Court in the matter of **K. Ajit Babu** (supra), in paragraph no. 5 has observed as under :-

“5. The Tribunal rejected the application of the appellant merely on the ground that the appellant was seeking setting aside of the judgment rendered by the Central Administrative Tribunal, Ahmedabad in the case of PS. John (supra) in TA No. 263 of 1986. It is here that the Tribunal apparently fell in error. No doubt the decision of the Tribunal in the case P.S. John was against the appellant but the application filed by the appellant under Section 19 of the Act has to be dealt with in accordance with law.”

6. In view of such trite law, writ petition no. 12280 of 2024 is liable to be dismissed, keeping open the avenue for that petitioner to resort to the remedy as indicated in **K. Ajit Babu** (supra), if needed.

7. This takes us to the challenge to the impugned judgment and order at the instance of the State. One need not elaborate the facts in detail and it would suffice to observe that the petitioner - original applicant was suspended under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, on the ground that while working as the Tahsildar, Aurangabad (Rural) since 01-03-2021. She had failed to take suitable action and it was further directed that during the period of suspension, her headquarter would be the office of the Collector at Aurangabad. It was done pursuant to the discussion in the State Legislative Assembly wherein Attention Notice was debated and noticing that the Divisional Commissioner, Aurangabad, in his report had mentioned that mines and minerals were illegally excavated from the land belonging to Devgiri Sahakari Sakhar Karkhana, Phulambri, Taluka - Phulambri, District – Aurangabad. Powers to initiate action in accordance with the Maharashtra Land Revenue Code, 1966 were vested in her on a proposal received from the Divisional Commissioner. It is such order of suspension, that she was aggrieved about and preferred the original application.

8. As can be discerned, by government resolution dated 03-01-2023, it was resolved to cancel all the penal actions in respect of the alleged illegal excavation of mines and minerals used for the construction of Samurddhi Highway since it was considered to be a vital public project for the development of the State. Finding that the alleged misconduct for not initiating action, attributed to the original applicant in respect of alleged illegal excavation of mines and minerals from the lands belonging to the co-operative sugar factory was for the construction of Samruddhi Highway and the government had resolved to waive the royalty and to cancel the action initiated by the revenue officials, being the only reason for initiating the departmental proceedings, the decision to suspend her was quashed by the tribunal, holding that it was unconscionable.

9. It was also noticed that the original applicant had joined the post of Tahsildar, Aurangabad (Rural) on 25-02-2021 and the complaint was lodged by an individual to the Collector regarding the illegal excavation in September 2021. It was forwarded to her on 16-11-2021. She had directed to conduct enquiry and to take appropriate action. Pursuant thereto, she directed the Circle Officer and the Talathi concerned, to conduct spot inspection and to submit a report. It revealed that the alleged excavation had taken place prior to 6-7 years. By letter dated 16-09-2022 addressed to the Recovery

Officer of the Debts Recovery Tribunal, Aurangabad, it was informed that it was his responsibility to protect the lands and avoid theft and directed him to lodge a FIR. It was, accordingly, on facts concluded by the tribunal that there was no strong *prima facie* case against the original applicant and in the light of ***Balwantrai Ratilal Patel Vs. State of Maharashtra; AIR 1968 SC 800***, the order of suspension was perfunctory and was passed in a casual manner and allowed the original application, quashed and set aside the order of suspension dated 24-08-2023 and directed her to be reinstated on the post from which she was suspended.

10. Learned AGP would submit that the whole basis for the tribunal to allow the original application, was the government resolution, whereby it had decided to waive the royalty and to drop the action initiated against the contractors engaged in carrying out construction of Samruddhi Highway, initiated under the provisions of the Maharashtra Land Revenue Code. However, it was not brought to the notice of the tribunal that the government resolution dated 03-01-2023 was challenged before the Nagpur bench of the Bombay High Court in writ petition no. 4680 of 2023 and by the order dated 26-07-2023, its effect and operation was stayed.

11. He would submit that the impugned judgment and order was passed under the assumption that the government resolution

dated 03-01-2023 was in operation when, in fact, it was already stayed on 26-07-2023 and was not in operation when the tribunal passed the impugned judgment and order on 24-11-2023. He would, therefore, submit that the ground on which the suspension of the original applicant was set aside, was based on the government resolution, which was not in operation when the order was passed.

12. Learned AGP would further submit that even if one proceeds on the premise that by the government resolution dated 03-01-2023, the state had resolved to drop action initiated under the Maharashtra Land Revenue Code, the charge against the original applicant was in respect of misconduct in not taking appropriate steps under the provisions of the Maharashtra Land Revenue Code against the culprits who had indulged in illegal excavation even prior to the passing of the government resolution dated 03-01-2023. He would submit that the inaction leading to the allegations about the misconduct, will have to be examined when actually she was supposed to take steps. Any subsequent decision of the state government even to waive the royalty and thereby the penal action, would not obliterate the allegation regarding misconduct. He would submit that any such subsequent resolution of the State government would not negate the misconduct. The tribunal has completely ignored this aspect and merely because the state government has subsequently taken some

decision for waiving the penalty and royalty, has questioned sustainability of the suspension order.

13. The learned AGP would further submit that even if the tribunal has hinted at some politics behind the order of the suspension, it would depend upon the proof regarding the allegations. Merely because the action was initiated at the behest of a member of the Legislative Assembly, one cannot *ipso facto* overlook the allegations, if otherwise the allegations turn out to be factually correct. There is a limited scope for judicial review in the matters of suspension, which the tribunal has overlooked while passing the order under challenge.

14. The order of suspension was not a vindictive order but was passed upon a detailed enquiry, by a committee comprising of several members and on a report submitted by the high ranking official holding the post of the Divisional Commissioner of the Revenue division. The order of suspension was not without any substance or taken arbitrarily with some *mala fide* intention.

15. The learned advocate Mr. Thombre for the original applicant would submit that the order passed in the writ petition by the division bench at Nagpur, was in a matter wherein the state and its same department were parties. They could have easily brought to the notice of the tribunal such order whereby the government resolution

dated 03-01-2023 was stayed. The state now cannot be allowed to take a spacious plea of stay to the operation of the government resolution. The view of the tribunal, in resorting to it to reach a conclusion that when the state had waived royalty and penalty, there was no propriety in allowing the suspension, is quite plausible one.

16. Mr. Thombre would further submit that it is not that the original applicant had not taken any steps pursuant to the complaint. Soon after she resumed the post, she had directed the subordinates, who visited the spot and gathered the information and had expressly opined that the excavation was 6-7 years old and she could not have been blamed for this excavation done even prior to her joining the post.

17. Mr. Thombre would further submit that there is enough record to demonstrate that the order of suspension was passed at the behest of a political person, who had raised this issue in the State Legislative Assembly and the public employee, like the original applicant was being made a scapegoat.

18. Lastly, Mr. Thombre would submit that in exercise of the powers under Article 226, this Court cannot cause any interference in the order of the tribunal under challenge, which takes a plausible and reasonable view of the matter.

19. We have considered the rival submissions and perused the record.

20. Admittedly, the operation of the government resolution dated 03-01-2023 was already stayed by the division bench, when the impugned order was passed. Once having noticed this, even if it is a matter of fact that the state and its concerned departments which were also before the division bench at Nagpur, could have but had not brought to the notice of the tribunal while passing the impugned order that it was already stayed.

21. In our considered view, passing of such government resolution and staying its effect and operation, could hardly be going to the root of the order of suspension. If it is a matter of alleged misconduct on the part of the original applicant in not initiating the appropriate action under the Maharashtra Land Revenue Code for the alleged illegal excavation during her tenure as a Tahsildar, Aurangabad (Rural), such subsequent and supervening event of the state waiving the royalty as well as the penalty, by directing dropping of such penal action, would not *ipso facto* turn on anything, as far as the alleged misconduct is concerned. If it was misconduct on the date it was committed, any such subsequent waiver would not obliterate it. The tribunal has completely overlooked the effect of such supervening

event. It has proceeded as if even the earlier misconduct is set at naught.

22. In this regard, there is one more aspect which has been completely ignored by the tribunal. A plain reading of the government resolution dated 03-01-2023, shows that it is only the royalty and the penal action under the Maharashtra Land Revenue Code have been resolved to be dropped. Simultaneously, there is not even a whisper in the government resolution, even to drop the prosecution against such offenders who had indulged in the illegal excavation. It is only the civil remedies which have been spoken about and not the criminal action against the culprits. If such is the state-of-affairs, even if the state has resolved to waive the royalty and penalty under the civil laws, the government resolution being conspicuously silent much less does not resolve to drop even the criminal action. If really, there was an unauthorized and illegal excavation in respect of which the original applicant could have set the criminal law in motion, not doing so, may constitute a misconduct, for which she would be answerable in the disciplinary proceeding. In our considered view, such effect which is not intended by the government resolution dated 03-01-2023, has been illegally resorted to by the tribunal, in questioning the order of suspension. This would make the inference arbitrary, perverse and capricious.

23. Reference of the tribunal to the observations in the matter of **Balwantrai Ratilal Patel** (supra) is also misplaced. The tribunal, with a limited jurisdiction to undertake a judicial review, could not have legally undertaken scrutiny of the facts which were still to be established during a full fledged enquiry to be conducted pursuant to the order of suspension that was under challenge. It was not a case of there being nothing before the state to decide to initiate a disciplinary enquiry by putting her on suspension. As is observed hereinabove, pursuant to an enquiry on a recommendation of the Divisional Commissioner, that the decision to conduct disciplinary inquiry was taken putting her under suspension.

24. The observations and the conclusions of the tribunal in readily accepting the material to reach a conclusion that the decision was arbitrary, vindictive and perfunctory are jumping conclusions which it could not have reached when the material on record *prima facie* demonstrated that there was some illegal excavation and the original applicant being Tahsildar, Aurangabad (Rural), could have, but had not taken any initiative in taking action under the relevant laws for the alleged excavation when it was in huge quantity. Whether it was a new or old one, would have been a matter to be enquired into but questioning the order of suspension and attributing it as *mala fide*, vindictive and arbitrary, in our considered view, is too harsh.

25. Merely because, the issue was taken up at the behest of a MLA and was a subject matter of debate in the Legislative Assembly, which ultimately culminated in passing the order of suspension having decided to proceed against the original applicant for the alleged misconduct, it cannot be said that the decision is *mala fide*. It would depend upon the facts and circumstances which would be revealed during the course of the departmental enquiry.

26. In our considered view, therefore, the tribunal has erred in setting aside the order of suspension. The order is indeed perverse, arbitrary and is liable to be quashed and set aside.

27. Writ petition no. 12280 of 2024 is allowed.

28. Impugned judgment and order of the tribunal is quashed and set aside.

29. Writ petition no. 3795 of 2024 is disposed of.

30. Rule is made absolute accordingly in both petitions.

31. Pending civil application is disposed of.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/