

(2010) 10 BOM CK 0272

In the Bombay High Court

Case No : Writ Petition No. 7643 of 2010

State of Maharashtra and Another

APPELLANT

Vs

Manoj Prabhakar Lohar

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 4(1)
Penal Code, 1860 (IPC) — Section 34, 342, 347, 364A, 385

Citation : (2011) 2 ALLMR 309 : (2011) 1 MhLj 732

Hon'ble Judges : U.D. Salvi, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : A.B. Vagyan, AGP, for the Appellant; V.M. Thorat and M.V. Thorat and Kunal Cheema, instructed by Vimalnath Tiwari, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—This petition filed by the State of Maharashtra through the Home Department impugns the judgment and order dated 18th August, 2010 passed by the Maharashtra Administrative Tribunal ("Tribunal" for short) in Original Application No. 335 of 2010.

2. The Respondent was selected as Deputy Superintendent of Police on 1st March, 1996 and on 30th May, 2009, he came to be posted at Chalisgaon, on promotion to the post of Additional Superintendent of Police. On the basis of a private complaint filed by Dr. Uttam Mahajan against the Petitioner and on preliminary investigation, C.R. No. 145 of 2009 came to be registered against him for the offences punishable under Sections 347, 364A, 385 and 504 r/w Section 34 of the Indian Penal Code on 16th July, 2009. Immediately, on the next day i.e. on 17th July, 2009 he came to be transferred from Chalisgaon but he was not given any posting. He waited for few months for the posting orders during which period he was not paid his salary and, therefore, as a last resort he filed Original Application No. 24 of 2010 before the Tribunal. On 11th January,

2010, the said Original Application was disposed off by directing the State Government to issue the posting order within a week. The said order passed by the Tribunal came to be challenged in Writ Petition No. 540 of 2010. It appears that before the State Government filed Writ Petition No. 540 of 2010, a Review Petition was filed in the Original Application No. 24 of 2010 but there was no order passed on the same. In Writ Petition No. 540 of 2010, this Court granted ad interim stay on 21st January, 2010. Finally on 11th February, 2010, Writ Petition No. 540 of 2010 was allowed to be withdrawn with liberty to proceed with the review petition pending before the Tribunal.

3. The Respondent filed Contempt Petition No. 11 of 2010 in Original Application No. 24 of 2010, as he was not given posting order and was continued without salary. When the said Contempt Petition came up before the Tribunal, it was stated by the Respondent that he had received the salary from July, 2009 to January, 2010. A copy of the order dated 6th March, 2010 was also placed before the Tribunal and as per the said order the Respondent was given his posting as Superintendent of Police, State Police Control Room in the Office of the Director General of Police, Maharashtra State, Mumbai. The said order further states that the Respondent - applicant would be deemed to have taken charge of the said post with effect from 27th January, 2010 and would get salary from the said date. It was under these circumstances, the Contempt Petition was disposed off on 9th March, 2010.

4. On 5th February, 2010 while the Contempt Petition was pending before the Tribunal as also Writ Petition No. 540 of 2010 was pending before this Court, the Respondent came to be suspended under Rule 4(1)(c) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 ("the Rules" for short) by the State Government. This order of suspension came to be challenged in Original Application No. 335 of 2010 by the Respondent. The State of Maharashtra on notice appeared before the Tribunal and filed its reply, opposing the challenge to the suspension order and after hearing both the parties the impugned order has been passed by the Tribunal, setting aside the suspension order dated 5th February, 2010 and directed the Respondent -applicant to be posted in the post of Superintendent of Police in the Office of the Director General of Police, Mumbai within two weeks.

5. The Tribunal held that the suspension order was contrary to the Manual prescribed by the Government of Maharashtra for departmental enquiries and more particularly para 2.1 therein. The suspension order was passed for extraneous reasons and only on the ground that a criminal case is pending against the Respondent. The suspension order was not justifiable in law having regards to the catena of the decisions of the Supreme Court as well as this Court. In paragraph 2.1 of the impugned order, the Tribunal recorded its reasons and findings to set aside the suspension order dated 5th February, 2010, which reads thus:

2.1. From the narration of facts hereinabove, it is clear that the Respondents

have not shown any special circumstance as to why in case of P.S.I. Nimbalkar the Respondents have not even transferred him and also not suspended him and have continued him in Chalisgaon, whereas the applicant appears to have been suspended after a lapse of seven months promptly after communication from the Leader of Opposition. It is important to note that no suspension order can be passed under political pressure, which is totally unsustainable in law and which is clearly extraneous. In any event, the above is only a private complaint, wherein the applicant has not even been formally arrested after he obtained anticipatory bail. The applicant has not even been questioned with regard to the said criminal case though he was asked to attend continuously for three months in the office of C.I.D. twice a week. Even the purported offence would entail a maximum punishment of two years. There is not even a whisper of tampering with the evidence or pressurizing the witnesses. The applicant in fact was posted in Bombay in the office of the Director General of Police and the alleged incident had taken place in Chalisgaon. The Respondents have totally failed to show any public interest involved to continue the applicant under suspension. The above order apparently appears to have been passed for extraneous reasons only on the ground that a criminal case is pending, which is not justifiable in law at all, especially, having regard to the various judgments of the Hon''ble Supreme Court and the Hon''ble Bombay High Court and State Government's guidelines regarding suspension. Accordingly, the suspension order dated 5th February, 2010 stands quashed and set aside and the applicant be posted back in the very same post, which he was holding prior to his suspension in the office of the Director General of Police, Mumbai within a period of two weeks from today. The Original Application is allowed accordingly, however with no order as to costs.

6. Mr. Vagyani, the learned AGP referred to Rule 4(1)(c) of the Rules and submitted that the State Government has exercised its powers under the Service Rules and on account of a private complaint having registered against the Respondent - applicant for serious offences, he has been suspended. Thus, the order was in tune with the provisions of the Rules. He further denied that the suspension order was passed for extraneous reasons or under political pressure. It was further submitted that the Respondent - applicant is a senior officer in the Maharashtra Police and when an FIR has been registered against him for serious offences, for fair play and to conduct the enquiry / investigation without any interference, Service Rules permitted for such suspension. Mr. Vagyani further submitted that the judgments referred to in the impugned order are not applicable in the instant case so as to quash and set aside the suspension order. He also denied the allegations that the suspension order was issued belatedly and only on the consideration that the Respondent - applicant had moved the Tribunal against the State Government.

7. Mr. Thorat, the learned Counsel for the Respondent on the other hand has taken us through the reasoning set out by the Tribunal and the judgments of the Supreme Court as well as this Court referred to therein and submitted that there is no ground made out to cause interference in the order passed by the Tribunal.

Mr. Thorat also submitted that it was no longer justified to keep the Respondent - applicant under suspension or even to suspend him vide order dated 5th February, 2010 as the investigation in C.R. No. 145 of 2009 was completed. By referring to the reply received to a query under Right to Information Act, it was submitted by Mr. Thorat that the investigation in C.R. No. 145 of 2009 was completed before 20th May, 2010. Mr. Thorat also pointed that from 16th July, 2009 when the Contempt Petition was moved, the State Government did not think it appropriate to invoke its powers under Rule 4(1)(c) of the Rules, so as to suspend the Respondent - applicant pending enquiry / investigation. He also pointed out that by an application dated 9th October, 2009 submitted in the Court of the learned Chief Judicial Magistrate at Bhusawal, the offence punishable u/s 364A has been sought to be deleted and substituted by Section 342 of the Indian Penal Code. He also invited our attention to the letter dated 21st January, 2010 addressed by the Leader of Opposition in the State Legislative Assembly to the Minister for Home and submitted that the impugned order of suspension has originated from the said letter.

8. It is well settled that the order of suspension issued by the State Government exercising its powers under the Discipline and Appeal Rules is liable to be interfered with if it is passed under extraneous considerations or suffers from malice or is passed by an Authority who is not competent to do so. Justifiability of the order of suspension so long as it has been passed by invoking the Discipline and Appeal Rules cannot be gone into in the instant case as C.R. No. 145 of 2009 has been registered after preliminary enquiry against the Petitioner and one Mr. Nimbalkar, Police Sub Inspector on the basis of the complaint submitted by Dr. Mahajan. As per the said complaint of Dr. Mahajan, who is a professor with Ayurvedic Medical College at Chalisgaon and a member of the Zilla Parishad, Jalgaon, on 30th June, 2009 at about 11.00 a.m. P.S.I. Nimbalkar went to him at Dhanvantari Hospital and asked him to come to the police station as he was called by the present Respondent. He accompanied P.S.I. Nimbalkar on his motorbike and was taken to the chamber of the Respondent. The Respondent had questioned him regarding the complaint made by a contractor by name Patel and he was abused. He was also threatened that he will have to pay interest at the rate of 2 per cent per month on the contractor's recovery amount and that there was a star question in the Assembly against him. He was also threatened that the entire Board of Directors of his college will be put behind bars and that entire record of the Society will be taken in custody. The complaint further alleges that the Respondent - applicant demanded Rs. 60,00,000/- and unless the said amount was paid, he would not be relieved. One Mr. Dhiraj Yeole was acting as a intermediary between the two and this Yeole asked the complainant to pay Rs. 50,00,000/- instead of Rs. 60,00,000/-. He further proposed to pay Rs. 25,00,000/- to the Respondent and Rs. 21,00,000/- to the contractor and further to keep the cash of Rs. 46,00,000/- on the table. He was forced to call Mr. Nitin Jadhav, a clerk from the college by telephonic message and asked him to bring the cheque book. Three cheques with the following details under

signatures were forcibly taken from him: (i) Cheque No. 245756 for Rs. 8,00,000/-; (ii) Cheque No. 245757 for Rs. 7,00,000/-; and (iii) Cheque No. 245758 for Rs. 6,00,000/-. All these cheques were dated 2nd July, 2009 and were obtained in the name of Shiva Constructions. It is further alleged that the Respondent threatened the complainant to register another crime against him, if the cheques were not honored. The complainant further alleged that as he could not pay Rs. 25,00,000/- in cash to the Respondent, he was detained in the police station till 11.30 p.m. and finally he contacted his father-in-law at Shirpur, District Dhule and asked him to arrange for Rs. 25,00,000/-. His father-in-law reached the office of the Respondent between 11.30 to 12.00 in the night. The Respondent handed over the custody of the complainant to Mr. Nimbalkar by holding a revolver and on receiving the amount of Rs. 25,00,000/- the Respondent went away. The complaint sets out in further details the allegations against the Respondent and the allegations in the said complaint which came to be registered as C.R. No. 145 of 2009, are very serious in nature.

9. The Respondent approached the Aurangabad Bench of this Court in Criminal Writ Petition No. 868 of 2009 with a prayer to quash and set aside the said C.R. registered against him and by a reasoned order dated 10th December, 2009, the said petition came to be dismissed.

10. We have perused a copy of the letter dated 21st January, 2010 addressed by the Leader of Opposition to the Minister for Home and the said letter does not state anywhere that the Leader of Opposition has either demanded or suggested or requested the Minister for Home to suspend the Respondent. The letter proceeded on the purported knowledge/information that the Respondent was suspended and the suspension order was set aside by the Tribunal and, therefore, the Leader of Opposition requested the Home Minister to challenge the order of the Tribunal, after taking opinion of the Law and Judiciary Department, before this Court.

This letter in our opinion cannot be said to be the foundation or basis of the impugned order of suspension dated 5th February, 2010 and, therefore, the allegation that the suspension order was passed under political pressure is without any substance.

11. As per the Petitioner s, the Additional Director General of Police, C.I.D., Maharashtra State, Pune had reported to the Director General of Police, Maharashtra State, Mumbai, vide his letter dated 5th September, 2009 regarding the possibility of the Respondent misusing his rank of Additional Superintendent of Police for destruction of evidence against him or to diminish the gravity of the offence. Hence, the Additional Director General of Police, C.I.D., Maharashtra State, Pune suggested that the Respondent be placed under suspension. In Criminal Writ Petition No. 868 of 2009, the Respondent - applicant had prayed for quashing of C.R. No. 145 of 2009 registered against him and that petition came to be dismissed on 10th December, 2009. It is obvious that during the pendency of the said petition, the Government could not take a decision on the pending

proposal to suspend the Respondent - applicant and it, therefore, appears that after the petition was dismissed, the file moved to take a decision as recommended by the Additional Director General of Police, C.I.D., Pune. It is also pertinent to note that the Director General of Police, Maharashtra State, Mumbai also submitted a report to the Government on 15th September, 2009 concurring with the recommendations made by the Additional Director General of Police, C.I.D., Pune. After Criminal Writ Petition No. 868 of 2009 was dismissed, the State Government took a final decision on the recommendation submitted by the State C.I.D., Pune and supported by the Director General of Police and issued the impugned suspension order.

12. We, therefore, do not agree that the suspension order was issued belatedly or without application of mind. It is true that when Writ Petition No. 540 of 2010 was allowed to be withdrawn on 11th February, 2010 and the Contempt Petition No. 11 of 2010 filed in Original Application No. 24 of 2010 was disposed off by the Tribunal on 9th March, 2010, none of the parties brought to the notice of this Court or the Tribunal that the suspension order dated 5th February, 2010 was already issued against the Respondent. But that by itself cannot be a reason to suspect or question the suspension order on the grounds of delay and in any case it is not the case of the Respondent - applicant that the said order was not served on him, when the Contempt Petition was disposed off by the Tribunal.

13. Rule 4(1)(c) of the Rules states that the appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension, where a case against him in respect of any criminal offence is under investigation, inquiry or trial. What is contemplated in this rule is that the power of suspension could be invoked even when the trial is pending and it cannot be accepted that the investigation in C.R. No. 145 of 2009 has been completed way back on 20th May, 2010 and hence the suspension order was not warranted or is not required to be continued. When a senior police officer is an accused in a crime registered on a preliminary enquiry, stricter standards will be applicable and this is supported from the recommendations made by the State C.I.D., Pune as well as the Director General of Police, Maharashtra State. The Tribunal has referred to the judgment of the Supreme Court in the case of Bimal Kumar Mohanty (supra). The guidelines laid down by the Supreme Court for invoking the power of suspension against an employee pending enquiry, contemplated enquiry or investigation or when an employee is facing trial of a criminal charge are set out in paragraph 12 of the said judgment. The Supreme Court stated thus:

12. It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the

misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

14. If the Additional Director General of Police, C.I.D., Pune as well as the Director General of Police, Maharashtra State have considered the material on record, the seriousness of the charges and the post the Respondent holds and recommended to the Government for his suspension, it ought to be presumed that they were aware of the likely interference or tampering with the evidence in the ongoing investigation/enquiry if the Respondent was not placed under suspension. We are also informed that a proposal for seeking sanction u/s 197 of the Code of Criminal Procedure has already been submitted to the State Government. We do not wish to record our opinion whether such a sanction would be necessary in the instant case but the fact remains that the State Government has not closed the complaint filed by Dr. Mahajan and it appears that it is preparing to file a charge-sheet in C.R. No. 145 of 2009. The impugned order passed by the Tribunal has undoubtedly undermined the powers of the State Government under Rule 4(1)(c) of the Rules and has not taken into consideration the report submitted by the Additional Director General of Police, C.I.D., Pune and the Director General of Police, Maharashtra State.

15. The letter dated 9th October, 2009 submitted before the learned Judicial Magistrate, First Class for substitution of the offence u/s 364A by Section 342 of

the Indian Penal Code would have no bearing on the impugned suspension order and surely the Director General of Police, Maharashtra State would look into the said letter and the circumstances leading to its filing. Be that as it may, we are satisfied that the suspension order dated 5th February, 2010 does not suffer from any mala fides and arbitrariness and it cannot be said to have been issued with ulterior motives/purpose. When a senior police officer is facing investigation/trial into criminal offences, exercise of power under Rule 4(1)(c) of the Rules against him ought to be allowed and moreso in public interest. We have already and in brief referred to the allegations made against the Respondent in the complaint of Dr. Mahajan and they appear to justify the suspension order so as to arrest the scope of influence over the investigation and trial. The Tribunal has overlooked these important aspects.

16. For these reasons, the order passed by the Tribunal and challenged before us calls for interference while exercising the powers of certiorari and the order is unsustainable on any count. We, therefore, allow this petition and quash and set aside the impugned order dated 18th August, 2010 passed in Original Application No. 335 of 2010. Consequently, the order of suspension dated 5th February, 2010 stands restored against the Respondent.

17. Parties to bear their own costs.

18. We make it clear that the proposal pending for sanction u/s 197 of the Code of Criminal Procedure will have to be considered on its own merits and without being influenced by this order.