

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, (AMRAVATI BENCH), A M R A V A T I.

COMPLAINT ULP No.30/2022.
CNR No.MHIC27000061-2022.

Bhimrao Tukaram Gayakwad

----- Versus -----

Chief Executive Officer, Zilla Parishad, Amravati and one other.

ORDER BELOW EXH.U-2
(Delivered On 30-06-2022)

01] Present application is filed by complainant seeking relief u/s 30(2) of MRTU & PULP Act. The complainant came with the case that, the respondent has engaged in unfair labour practices by illegally and malafidely passing impugned order of suspension dated 1.04.2022. The complainant is an ex-military man. After the completion of service in army he joined the respondent Zilla Parishad in the category of Junior Assistant Accountant in Clerical category. Since initial appointment his service record is clean and unblemished. In the respondents office there is different kind of works and the heads of sections are also different. The complainant is posted in the account section. For any work the procedure of tender is adopted and accordingly they calls tenders from various contractors. If the tender is received below the prescribed value, in that event the concern tender section is required to take the demand draft of

the prescribed amount towards additional performance security from the concern contractor. So also the respondent used to receive the fixed deposit receipt from the contractor. After receipt of D.D. by the tender section the concern clerk under the authority of the head of tender section is required to be handed over to the account section and then it comes to the cashier of account section. It is not the duty of complainant to see whether the D.D. of proper amount is deposited by the concern contractor. The respondent has not given any training to the complainant pertaining to work of tender section. The complainant cannot be held responsible for any act or misdeed done in the tender section. The duty of complainant is only to deposit the D.D. in the account of CAFO. If any D.D. returned by the concern bank without disbursement, the complainant has to take the D.D. from the bank and return it to the tender section. This is the procedure of dealing with the tender section. As per the work nature of complainant he cannot be held responsible for any mistake, misappropriation, fraud or any misdeed committed by the tender section. During the period of 2017 to 2021 the complainant was working as a cashier and he had deposited all the D.D. towards the additional performance security in the bank. The complainant is not responsible for the act of receiving the D.D. of additional performance security of the less amount, for which the tender section is responsible. In spite of this fact the

respondent has issued show cause notice dated 21.02.2022. in which it is alleged that the complainant has received the less amount of D.D. The said show cause notice is duly replied by the complainant to the satisfaction of the respondent but the same was not considered. The complainant has not committed any kind of misconduct as per the service condition. The respondent has not issued any charge-sheet to the complainant till the date. There is not at all any contemplated enquiry or no enquiry is pending against the complainant. The complainant would suffer hardship if impugned order of suspension is not stayed.

2] The respondent appeared and filed written statement below Exh.C-4. The respondent has denied the case of complainant pertaining to allegations of unfair labour practice. It is contended that, the complainant is working with PWD i.e. Bandhkam Vibhag of Zilla Parishad since 30.03.2017 to 31.03.2021 as a Cashier. The concern department found major irregularities in Account Section and for that purpose the complainant along with others were held responsible. The concern department, for any construction work calls proposals (bid) from the interested persons i.e. contractors. They have to submit the seal pack bid below the estimated cost of the total work. In that context the condition precedent is that they should deposit additional performance security within 8 days which is mandatory. As per the Government Resolution

dated 26.11.2018 additional performance security shall be deposited in the form of D.D. and not in the form of post dated cheque. The duty of complainant is to receive the D.D. of additional performance security and to deposit in the account of respondent. When the head of the department found some suspicious activities, he formed one enquiry committee of 12 members to enquire into the said irregularities. The committee held responsible the present complainant and other employees. After the report of enquiry committee the respondent issued show cause notice dated 21.02.2022 to the complainant and called his explanation. Again on 24.02.2022 the respondent issued show cause notice and provided some documents claimed by the complainant. The reply to the show cause notice filed by complainant was not satisfactory and convincing, therefore, he was suspended by the respondent to make impartial and fair departmental enquiry. The suspension is not termination or discharge from the services. It is the process that kept the complainant away from his office. If the stay is granted to the suspension order, the respondent would become helpless and deprived to conduct the enquiry against him.

3] Considering the facts and circumstances of the case and submissions of both sides following points arise for my determination and I have recorded my findings with reasons thereon.

POINTS

FINDINGS

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| 1] | Whether complainant has proves prima facie case in his favour ? |Yes. |
| 2] | Whether balance of convenience lies in his favour ? |Yes. |
| 3] | To whom irreparable loss would be caused ? | To complainant if application rejected. |
| 4] | What Order ? | Application is allowed. |

REASONS

4] **As to point No.1 to 4** :- Heard both sides. I have gone through the record. The complainant alleged that the respondents are engaged in unfair labour practice by passing impugned suspension order. On the other hand such type of allegations are denied by the respondents. For consideration of this application it is necessary to see whether the complainant is having prima facie case or not. It is admitted position that the complainant is working in construction department of respondent in Account Section. He is working in Clerical category on the post of Junior Assistant Accountant. Ld. Advocate for complainant submitted that there is a specific procedure for adopting the tenders from the contractors and their payment. It is further submitted that, to receive the additional performance security through D.D. is the responsibility of tender section

and after receipt of it, the concern Clerk under the authority of the head of that section is required to hand over the same to the Account Section of the respondent and then it comes to the Cashier of Account Section. It is not the duty of complainant to see whether the D.D. of proper amount is deposited by the concern contractor. The complainant cannot be held responsible for any act or misdeed done in the tender section. On the other hand Ld. Advocate for respondent submitted that as per the Government Resolution dated 26.11.2018 the additional performance security shall be deposited in the form of D.D. and not in the form of post dated cheque. It is the duty of complainant to receive such amount by D.D. and deposit in the account of respondent. This is not done by him. It is submitted that, the enquiry committee found such irregularities of Account section and, therefore, on the basis of that enquiry suspension order is issued.

5] The record indicates that on 1.04.2022 the CEO of Zilla Parishad has issued suspension order of complainant under Rule 3, Part II of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules 1964. Such order prima facie indicates that on the basis of enquiry report some irregularities are found in the construction department and, therefore, such order of suspension was issued. Ld. Advocate for complainant submitted that, in the impugned order there is no mentioning

of any contemplated enquiry/proposed enquiry or pending enquiry against the complainant. He submitted that, there is not at all any misconduct on the part of complainant and, therefore, he is not required to be kept away from the place of his working.

6] I have gone through the relevant provisions of MCS (Discipline and Appeal) Rules. Part II relates to suspension of an employee. Rule 4 is reproduced as below for proper understanding.

4. Suspension :-

(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension-

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

b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or

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

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.

2. A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

(a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) With effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

7] Ld. Advocate for complainant submitted that, though the preliminary enquiry is held by the respondent, in that enquiry there was no role of complainant and, therefore, it cannot be said that any enquiry is contemplated or proposed or pending in order to pass such impugned order. It is submitted that the requirements of MCS Rules pertaining to suspension are not complied with by the respondent. I am prima facie agree with the submissions of Ld. Advocate for complainant because in the impugned order nothing is mentioned as to whether the Disciplinary proceeding is contemplated or pending or whether regarding alleged misconduct, any criminal offence or investigation is pending. It is true that the respondent has every authority to pass suspension order of employees but at the same time rules framed pertaining to Discipline and Appeal should be complied with. Prima facie there is nothing on record to show that the respondent while passing the order of suspension mentioned the

reasons for suspension of an employee. Mere stating that in preliminary enquiry complainant has committed financial irregularities, is not sufficient.

08] Ld. Advocate for complainant has relied on the observations of the following cases :-

- 1] **Hari Nath Sharma Vs. State of U.P. and others, 1998 (78) FLR 449.**
- 2] **Lalta Prasad Vs. Director, Panchayat Raj, U.P. and others, 2001 (88) FLR 372.**
- 3] **Smt. Meera Tiwari Vs. The Chief Medical Officer and others, 2001 (89) FLR 1110.**
- 4] **M.C. Bhat Vs. Syndicate Bank, 1994 D.G.S.L. (Kar.) 213.**
- 5] **Azizul Rehman Vs. District Magistrate Deoria and another, Allahabad High Court, 1997 DGLS 1381.**
- 6] **Jagannath Yadava Vs. The Senior Superintendent of Police, Varanasi 1991 (62) FLR 864.**
- 7] **Pralhad S/o Namdeorao Telang Vs. CEO, Zilla Parishad Amravarti (order of Industrial Court, Amravati in Comp. (ULP) No.70/2021 dated 08.06.2021).**

09] In the case of **Hari Nath Sharma (supra)** Hon'ble Allahabad High Court observed that, if no enquiry officer appointed nor any charge-sheet was directed to be issued, it cannot be said that suspension is in contemplation of an enquiry or pending enquiry. In another case of

Lalta Prasad (supra) no charge-sheet was served upon the employee and the suspension order was not passed by appointing authority. Under such circumstances the order of suspension was quashed. Near about same ratio is mentioned in the cases of **Smt. Meera Tiwari (supra)**, **Azizul Rehman (supra)** and **Jagannath Yadav (supra)**.

10] Though it is the contention of respondent that as per Government Circular dated 26.11.2018 the additional performance security shall be deposited in the form of D.D. and not in the form of post dated cheque, it is not prima facie brought on record that to accept the D.D. is the responsibility of present complainant. The role of complainant in the account section is not clarified by the respondent and, therefore, prima facie he cannot be held responsible for non acceptance of D.D., therefore, submissions of Ld. Advocate for respondents in that regard cannot be acceptable.

11] Prima facie in this case it appears that the base of suspension order is enquiry held by the committee formed by the respondent. The complainant was not a part of that enquiry and, therefore, I find substance in the submissions of Ld. Advocate for complainant that the procedure for suspension is not followed in accordance with the MCS Rules. Considering all these circumstances I am of the view that it would be justifiable to stay the effect and operation of suspension order but at the

same time it is necessary to expedite the hearing. Hence I answer my findings as above and proceed to pass following order.

ORDER

- 1] Application Exh.U-2 is allowed.
- 2] The effect and operation of impugned suspension order dated 1.04.2022 passed by the respondent in connection with complainant is hereby stayed till final disposal of the complaint.
- 3] No order as to costs.
- 4] The hearing of case is expedited.
- 5] Parties to note.

Amravati
Date :- 30.06.2022.

(D. N. Surwase)
Member,
Industrial Court, Amravati.