

FARAD CONTINUATION SHEET NO.
 IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 APPELLATE SIDE, BENCH AT AURANGABAD
WRIT PETITION NO.893 OF 2012

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.Patil Indrale Anand V., advocate for the petitioner.
 Mrs.S.A.Dhumal, Asstt. Govt. Pleader for the State.

**CORAM : S.V.GANGAPURWALA &
 V.L.ACHLIYA, JJ.
 Date : 26.02.2015.**

PER COURT :

1. Heard.
2. Mr.Patil, learned counsel for the petitioner states that the show cause notice issued to the petitioner seeking to initiate Departmental Inquiry is an act of malafide on the part of the Respondents. It is only after the petitioner has filed proceedings against the Respondents, the Respondents have issued show cause notice. This Court in Contempt proceedings also had passed the order directing the Respondents to deposit the amount of arrears of salary and it is thereafter all these proceedings are initiated against the petitioner. When the show cause notice issued for initiation of Departmental Inquiry is an act of malafide, this Court can entertain the petition. The learned counsel submits that even salary is not

paid to the petitioner. There are arrears of salary and regular salary are not paid to the petitioner.

3. Mr.Salunke and Mr.Nimbalkar, learned counsel submit that even the charge-sheet is issued which would show grave charges are against the petitioner. According to the learned counsel, the Writ Petition only against show cause notice is not tenable. The learned counsel relies on the judgment of the Apex Court in a case of **“Union of India and another Vs. Kunisetty Satyanarayana”** reported in **AIR 2007 Supreme Court 906(1)**. According to the learned counsel, the Writ Petition is not tenable against Respondent Nos.4 and 5 as it is an unaided institution. According to the learned counsel for Respondents, the petitioner is continuously absent and has not attended the duties, as such no question arises of payment of salary.

4. We have considered the submissions. At this stage, it would not be possible for this Court to arrive at the finding about malafide or otherwise. It would be open for the petitioner to raise all possible defenses available to him in the Departmental Inquiry. The Charge-sheet is already filed.

5. The petitioner may file his say and prosecute the Departmental proceedings.

6. As far as the contention of the payment of salary is concerned, there are rival contentions against each other. The said

disputed questions of facts can not be gone into by this Court. It will be open for the petitioner to approach the Respondent No.2, making his grievance about the claim of salary. On receipt of such claim, the Respondent No.2 shall after considering the stand of Respondent Nos.4 and 5, shall take decision about the said aspect expeditiously and preferably within four (4) months from the receipt of application if filed. Similar order was passed in W.P.No.656/2010.

7. The Writ Petition is accordingly disposed of. No costs.

(V . L . ACHLIYA, J .)

(S . V . GANGAPURWALA, J .)

Dt..26.02.2015.
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