

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 488 OF 2016

Madhav s/o Nagappa Hanamsshetty,
Age : 40 years, Occu.: Service,
R/o.: Lohara, Tq. Lohara,
Dist. Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department
Mantralaya, Mumbai – 32
2. The Education Officer, (Secondary)
Zilla Parishad, Osmanabad
3. The Headmaster,
High School, Lohara,
Tq. Lohara, Dist. Osmanabad
4. Lohara High School Lohara,
Through its Secretary
Shri S.K. Sutar,
Age : 56 years, Occu.: Agri,
R/o.: Lohara, Tq. Lohara,
Dist. Osmanabad

RESPONDENTS

Mr. V.D. Gunale, Advocate for the Petitioner
Mr. V.S. Badakh A.G.P. for respondent nos. 1 and 2
None for respondent no. 3
Mr. Sandeep C. Swami, Advocate for respondent no. 4

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

JUDGMENT RESERVED ON : 4th JULY, 2016
JUDGMENT PRONOUNCED ON : 19th JULY, 2016

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner has sought directions against respondent nos. 2 and 3 for his reinstatement in the service as Junior Clerk by revoking suspension order dated 1st June, 2011 and for payment of arrears of his salary from the date of his suspension till reinstatement.

3. Undisputedly, the petitioner was appointed as a Junior Clerk with respondent no. 3 – High School at Lohara on 1st November, 2000. His appointment has been duly approved by respondent no. 2 – Education Officer (Secondary), Zilla Parishad, Osmanabad. One Ragini Chanbas Ashtange, Assistant Teacher working with respondent no. 3, set herself on fire on 30th March, 2011. She succumbed to the injuries sustained by her on 30th April, 2011, while being treated in the Civil Hospital at Solapur. Her husband, namely, Dilip

Mashalkar lodged a report against the petitioner in Police Station, Lohara on 11th May, 2011 on the allegations that the petitioner assured the deceased Ragini to send the proposal for her promotion to the post of Head Master of the School and on that pretext, sexually abused her, which compelled her to commit suicide. On the basis of that report, Crime No. 21 of 2011 came to be registered against him for the offences punishable under section 354 and 306 of the Indian Penal Code. He came to be arrested and detained in police custody. Consequently, respondent no. 3 issued an order dated 1st June, 2011 suspending the petitioner with effect from that day, as per the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "the MEPS Rules").

4. After investigation of Crime No. 21 of 2011, the Police Station Officer of Police Station Lohara, submitted chargesheet against the petitioner before the learned Judicial Magistrate First Class, Lohara, for the above-mentioned offences, who, in turn, committed the case to the Sessions Court at Omerga. Sessions Case No. 9 of 2012 came to be instituted against the

petitioner, which ended in acquittal as per the judgment and order dated 4th February, 2015, passed by the learned Additional Sessions Judge, Omerga.

5. The learned counsel for the petitioner submits that a false report was lodged against the petitioner due to the groupism in the Management of the school. He submits that while acquitting the petitioner, the learned Additional Sessions Judge has passed strictures against the Investigating Officer for not conducting the investigation properly. The learned Additional Sessions Judge opined that the possibility of false implication of the petitioner due to political rivalry cannot be ruled out. He submits that Dilip Mashalkar falsely involved the petitioner in this case due to political rivalry between his family and that of the petitioner. He submits that no disciplinary proceedings have been initiated against the petitioner at any point of time. The petitioner made several applications to respondent nos. 2 and 3 for revoking his suspension and reinstating him to the post of Junior Clerk with full backwages. However, the said applications were not considered by them. Therefore, the present petition came to be filed

for the above-mentioned reliefs.

6. Respondent nos. 1 and 2 filed common affidavit-in-reply through one Ramesh Devidas Joshi, Deputy Education Officer (Secondary), Zilla Parishad, Osmanabad. It is stated that after receiving the report dated 19th May, 2011 from respondent no. 3 about arrest and detention of the petitioner in crime no. 21 of 2011 for the above-mentioned offences, respondent no. 2 directed respondent no. 3 to take action as per the provisions of the MEPS Rules. Respondent no. 3 suspended the petitioner vide letter dated 1st June, 2011. It is stated that after acquittal of the petitioner in Sessions Case No. 9 of 2012 for the above-mentioned offences, it was for the Management to take decision to revoke suspension of the petitioner and pay subsistence allowance to him. The power to revoke suspension of the petitioner and to reinstate him in service does not vest in respondent no. 2. It is further stated that the acquittal of the petitioner has been challenged by the informant, namely, Dilip Mashalkar by filing an Appeal bearing No. 256 of 2015. The State Government also has decided to challenge the said acquittal by filing an

Appeal. It is stated that there are disputes between two groups of Management at Lohara High School and Writ Petitions are pending before the Hon'ble High Court, arising out of those disputes. On the strength of the averments made in this reply, the learned A.G.P. submits that the petitioner is not entitled to get himself reinstated and seek backwages, since his acquittal is challenged before the Hon'ble High Court. He, therefore, prays that the present writ petition may be dismissed.

7. Respondent no. 3 was duly served with the notice of the writ petition, but none appeared for respondent no. 3.

8. From the facts of the case as summarised above, it is clear that it was only because of the arrest and detention of the petitioner in connection with Crime No. 21 of 2011 registered in Police Station, Lohara, for the offences punishable under sections 354 and 306 of the Indian Penal Code, that he came to be suspended with effect from 1st June, 2011 as per the suspension order of the even date issued by respondent no. 3. Admittedly, no disciplinary proceedings have been initiated against the petitioner. The petitioner was tried before the Sessions

Court at Omerga in Sessions Case No. 9 of 2012 for the above-mentioned offences and after fullfledged trial, he came to be acquitted by the learned Additional Sessions Judge, Omerga, as per the judgment and order dated 4th February, 2015. While acquitting the petitioner of the said offences, the learned Additional Sessions Judge observed in paragraph no. 22 of the judgment as under:

"Therefore all the said circumstances appeared in the cross examination of P.W. 1 Dilip Mashalkar and P.W.7 Investigating Officer that, the false F.I.R. was lodged by Shri. Dilip Mashalakar and biased Investigation was carried out by the Investigating Officer. Admittedly there is political rivalry between the complainant's family and accused's family therefore possibility can not be ruled out that the complainant Dilip Mashalkar falsely involved the accused in this case. Therefore the accused is entitled for benefit of doubt. The oral evidence given by the prosecution witnesses is not reliable and trustworthy."

9. It would be worthwhile to reproduce here the relevant provisions of Rule 33 of the MEPS Rules, relating to suspension of an employee.

"33. Procedure for inflicting major penalties.

(1)

(2)

(3)

(4)

(5) An employee against whom proceeding have been taken on criminal charge or who is detained under any law for the time being in force providing for preventive detention shall be considered as under suspension for any period during which he is under such detention or he is detained in police or judicial custody for a period of exceeding forty-eight hours or is undergoing imprisonment, and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him or until he is relieved from detention and is in a position to rejoin duty after producing documentary proof of his release (otherwise than on bail) or acquittal, as the case may be. An adjustment of his pay and allowances for such periods shall be made according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of charge or detention being held by the Court to be unjustified.

(6) After the result of the criminal prosecution, a copy of the judgment shall be obtained by the Management and if the judgment is one of conviction for the charges and if an inquiry is also initiated by the Management against the employee on the basis of the same charges, it shall not be necessary to proceed with the inquiry on the same charges and the Management shall take action to terminate the service of the employee. The Management shall not however pass any order till the period upto which the employee is entitled to prefer an appeal or revision application to the higher Court against the conviction by the lower Court is over. If the appeal or revision application is preferred, the Management shall not take any action till the conviction is finally confirmed by the higher Court. When the judgment in the criminal case appeal or revision application is one of acquittal, the Management shall consider

in the light of the judgment whether it is necessary to institute or proceed with the inquiry. If the Management agrees that the acquittal is justified, it may drop the inquiry by certifying that it agrees with the findings of the Court. If the Management does not agree with the findings, it may proceed with the inquiry and inflict proper punishment

10. In the present case, the petitioner has not only been acquitted of the offences punishable under sections 354 and 306 of Indian Penal Code for want of reliable evidence, but the learned Additional Sessions Judge has opined that the possibility of false implication of the petitioner on account of political rivalry cannot be ruled out. Albeit, the fact remains that now the petitioner has been acquitted of the above-mentioned offences and no disciplinary proceedings have been initiated against him till date. It may be noted that the President and Secretary of the Education Committee of Respondent no. 3 - High School have requested the Head Master to reinstate the petitioner in the service vide letter dated 07.03.2015 (Exh.I). There is no provision in the MEPS Rules that during pendency of the Appeal against the judgment of acquittal of the employee, his suspension shall be continued until final decision of the Appeal. In the circumstances, in view of

the above referred provisions of Rule 33 of the MEPS Rules, the suspension of the petitioner is liable to be revoked and he is liable to be reinstated in the service.

11. It is the case of the petitioner that he has not been paid subsistence allowance from 1st June, 2011 onwards. Since the petitioner is entitled to get himself reinstated in the service, he would be entitled to get backwages as admissible to him. According to MEPS Rules, for considering the question of payment of backwages, the Management or in the absence of the Management, the Administrator looking after the management of the School would consider the claim of the petitioner for payment of backwages, as per the provisions of MEPS Rules. The petition deserves to be allowed and accordingly, is allowed with the following order.

(i) The Writ Petition is allowed.

(ii) Respondent nos. 2 and 3 are directed to reinstate the petitioner to the post held by him prior to his suspension.

- (iii) The Management or Administrator, as the case may be, looking after management of the High School at Lohara shall take decision on the claim of the petitioner for payment of backwages from the date of his suspension i.e. 1st June, 2011 till the date of his reinstatement as per the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, within six weeks from the date of this order and take necessary steps within two weeks thereafter so as to enable the petitioner to get the amount to which he is legitimately entitled.
- (iv) Rule made absolute in the above terms.
- (v) The Writ Petition is accordingly disposed of.
- (vi) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE