

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6217 OF 2016

Prabha Apparao Patil
Age: 50 Years, Occu : Service,
R/o. C/o. A.D. Patil,
Jaijawan Building, Nageshwarwadi,
Aurangabad **PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
(Copy to be served on G.P.
of Bombay Bench at
Aurangabad)
2. The Deputy Director of Education,
Aurangabad
3. The Education Officer (Secondary)
Zilla Parishad, Aurangabad
4. Vyankatesh Shikshan Sanstha
Aurangabad
Through its Secretary
5. Ravindra Vidya Mandir
Samarth Nagar, Aurangabad
Through its Acting Head
Master. **RESPONDENTS**

...
Miss Surekha Mahajan, Advocate for the
Petitioner
Mr.A.G.Magare, AGP for Respondent Nos.1 to 3
Mr.R.R.Suryawanshi, Advocate for Respondent
No.4.
Respondent No.5 served
...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

DATE : 30.06.2016.

JUDGMENT: (Per S.S.Shinde, J.):

This Petition takes exception to the order dated 08.06.2016 issued by respondent no.4, thereby suspending the services of the petitioner as Headmaster.

2. The learned counsel appearing for the petitioner submits that the impugned order is the result of arbitrary and *mala fide* exercise of the powers by respondent management. It is submitted that respondent no.4 on 27th February, 2014, had given notice of termination to the entire staff including Mr. Ravindra Khanapurkar (Clerk and real

brother of respondent no.4). The teaching and non-teaching staff excluding Shri R.M.Khanapurkar filed Writ Petition No.1853/2014 and Writ Petition No.3747/2014 before the High Court, and the High Court has granted stay and protected the services of the petitioner. It is submitted that the services of Shri R.M.Khanapurkar, who is the real brother of the Secretary of respondent no.4, are already terminated. The Writ Petition was preferred by him. It is submitted that since the petitioner did not succumb to the pressure of respondent no.4 to sign the bills for payment of salary to Mr.Ravindra Khanapurkar for the period for which he did not work. Therefore, respondent no.4 has passed the impugned order and issued the charge sheet.

3. It is submitted that no prior permission of the Education Officer is sought prior to issuing the impugned order. The

charges framed against the petitioner are minor in nature and therefore, it was absolutely not necessary to suspend the services of the petitioner as Headmaster. It is submitted that the copy of Resolution of the management dated 5th June, 2016, is not received by the petitioner. It is important to note that the management has to decide first whether to hold an enquiry and place the employee under suspension and after taking such decision, after obtaining permission of respondent no.3, they have to initiate the enquiry. Unless there is *prima facie* case for removal of the incumbent or there is reason to believe that his continuance in service is likely to cause embarrassment, no order suspending services of the employees can be passed. It is submitted that the statement of imputations is needed to be issued after constitution of the Enquiry Committee under Rule 36 of the

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'MEPS Rules, 1981). Respondent no.4 has issued it prior to constitution of the Enquiry Committee. Therefore, respondent no.4 has not observed the provisions of Rule 36 prior to Rule 33. None of the allegations falls within the purview of Rule 28 (5) of the MEPS Rules, 1981. All the allegations are vague and stale and coming out of the bias attitude of the management. The allegations *prima facie* do not show that they would lead to removal of the petitioner from the services or cause embarrassment to the management. Section 4 (b) of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1971, prohibits *inter alia* suspension of an employee except in accordance with the Act and Rules. The learned counsel for the petitioner in support of her contention that the order of

suspension has to be passed by the management with prior approval of the Education Officer, pressed into service the case of *Dilip Venkatrao Patil Vs. State of Maharashtra and others*¹. Therefore, the learned counsel for the petitioner submits that the Petition deserves consideration.

4. On the other hand, the learned counsel appearing for respondent nos.4 and 5 relying upon the affidavit-in-reply filed by these respondents submits that in view of the law laid down by the Full Bench of the Bombay High Court in the case of *Awdhesh Narayan K. Singh Vs. Adarsh Vidya Mandir Trust and another*², failure to obtain prior permission of Authority under rule 33 (1) of the said Rules before suspending an employee does not affect the action of suspension pending enquiry. If prior permission is obtained, Rule 35 (3) is attracted and the suspended

1 1997 (3) Mh.L.J. 279

2 2004 (2) Mh.L.J. 676

employee is entitled for subsistence allowance under the scheme of payment through Banks for a period of four months after which period the payment is to be made by the management. If an employee is suspended without obtaining prior approval of the Education Authority, payment of subsistence allowance for the entire period has to be made by the management. The learned counsel for respondent no.4 submits that the letter was written to the Education Officer seeking prior permission for placing the petitioner under suspension. He submits that it is clear from the statement of imputations that there are serious allegations against the petitioner. He further submits that the petitioner will get opportunity to rebut the charge / allegation and therefore, this Court may not entertain this Writ Petition. It is submitted that there are serious charges against the petitioner which include

disobedience of even the orders passed by the High Court.

5. We have given careful consideration to the submissions of the learned counsel appearing for the parties. With their able assistance, perused the pleadings in the Petition, grounds taken therein, annexures thereto, the relevant provisions of the MEPS Act and Rules and reported decisions of this Court cited across the Bar. We have carefully perused the documents placed on record and in particular the statement of allegations. Since the charge sheet is served upon the petitioner, the petitioner will get opportunity to put forth her contention by way of filing reply to the notice and also to contest the charges / allegations levelled against her. Since the charge sheet is served and enquiry is at the initial stage, we do not propose to make observations on the merits of the allegations, which may cause

prejudice to the case of the petitioner. Suffice it to say that even if the petitioner is placed under suspension without prior permission of the Competent Authority, the consequences thereof which are explained in the case of *Awdhesh Narayan K. Singh (supra)* would follow and as a result respondent no.4 would have to pay subsistence allowance.

6. For the reasons afore-stated, at this stage we are not inclined to entertain the Writ Petition. Hence the Petition stands rejected. No costs.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE