

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7687 OF 2016

Bharat Rambhau Kumbhar,
Age-Major, Occu-Service,
R/o At Post : Vanjarvadi, Tq.Bhoom,
Dist.Osmanabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through,
School Education Department,
Mantralaya, Mumbai.
2. The Director,
Maharashtra State Examination
Department,
17, Dr.Ambedkar Road, Pune-1.
3. Deputy Director of Education,
Regional Deputy Director of Education
Department,
Latur Division, Latur.
4. Education Officer, (Secondary)
Zilla Parishad, Osmanabad,
5. Banganga Charitable Trust, Bhoom
Through its President/Secretary,
Bhoom, Tq.Bhoom, Dist.Osmanabad,
6. Head Master,
Banganga High School,
Bhoom, Tq. Bhoom,
Dist. Osmanabad

-- RESPONDENTS

Mr.N.S.Tekale, Advocate for the petitioner.
Mr.P.N.Kutti, AGP for the respondent/State.
Mr.Y.B.Bolkar, Advocate for respondent Nos. 5 and 6.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/08/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The only issue raised in this petition is as to whether the Education Officer has the power to direct the Management to place an employee under suspension, either under Rule 35 or under Rule 33(5), of the MEPS Rules, 1981.

3. Rule 33(5), 33(6) and 35 of the MEPS Rules, 1981 read as under :-

“33(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 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.

33(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 services 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.

35. Conditions of suspension -

(1) in cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in rule 33.

(2) The period of suspension shall not exceed four months except with the prior permission of such appropriate authority.

(3) In case where the employee is suspended with prior approval he shall be paid subsistence allowance under the scheme of payment through Co-operative Banks for a period of four months only and thereafter, the payment shall be made by the Management concerned.

(4) In case where the employee is suspended by the Management without obtaining prior approval of the appropriate authority as aforesaid, the payment of subsistence allowance even during the first four months of suspension and for further period thereafter till the completion of inquiry shall be made by the Management itself.

(5) The subsistence allowance shall not be withheld except in cases of breach of provisions of sub-rules (3) or (4) of rule 33."

4. There is no dispute as regards the facts of this case. The petitioner was arrested on the ground of having committed an offence punishable u/s 420, 511 of the IPC r/w Section 6 and 7 of the Maharashtra Prevention of Malpractices at University Board and Other Specified Examinations Act, 1982. He was arrested and was under detention from 18/01/2016 till 04/05/2016. He acquired bail

and was released from jail on 05/05/2016. Respondent No.4 herein had passed an order dated 19/03/2016 directing the suspension of the petitioner.

5. Despite the strenuous efforts of the learned AGP, he could not indicate from any Section of the MEPS Act, 1977 and the 1981 Rules that the Education Officer can *suo-motu* or on representation/complaint from any other person, without the Management having applied to it for seeking permission to suspend, could have directed the suspension of an employee.

6. The learned Division Bench of this Court, in the matter of Dilip Venkatrao Patil Vs. State of Maharashtra and others, [1997(3) Mh..J. 279] dealt with a somewhat similar issue and concluded that an employee against whom proceedings have been taken on a criminal charge or has been detained under any Law for the time being in force providing for preventive detention, would be considered as being under suspension for the duration for which he is under detention or is detained in the police or judicial custody. Such detention would lead to deemed suspension for the period of detention and such employee would not be entitled for any pay and allowances.

7. The learned Division Bench of this Court in the matter of Madhukar Namdeo Patil Vs. Chairman, Sudhagad Education Society and others, [2000(4) Mh.L.J. 206] considered a similar situation, and concluded that Rule 33(5) is to be interpreted to mean deemed suspension and which cannot be longer than the period for which the employee was in judicial or police custody. The sanction accorded by the Education Officer cannot validate the action which was taken under Rule 33(5) for a period beyond that which is stipulated in the said Sub Rule. This Court, therefore, concluded that there is no necessity to direct the continuance of the petitioner under suspension on the ground that the criminal case is pending.

8. As such, this petition is allowed by directing that the petitioner shall now be reinstated in service. He has tendered the copy of the order granting him bail, by the representation dated 10/05/2016 before respondent Nos.5 and 6 Management. He shall be reinstated with effect from the date on which he has served the copy of the said order on the Management and the Head Master. However, considering the offence charged to have been committed by the petitioner of leaking the teacher's eligibility test question papers, the respondents shall ensure that the petitioner is kept away from all examination work including the work of setting question papers, if any, until the

decision of the criminal case.

9. With the above directions, the order of suspension dated 18/03/2016 issued by the Education Officer, being without authority, stands quashed and set aside, however, by placing the petitioner under deemed suspension from 18/01/2016 till his reinstatement.

10. Needless to state, the directions to the respondents as set out in the foregoing paragraphs shall scrupulously be followed. It is made clear that the period of suspension shall not be treated as break in service.

11. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)