

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10905/2015

Sunita Baburao Bhangire,
aged 47 yrs., occu.service as
Assistant Teacher in Sardar Vallabhbhai
Patel Primary School, Mudkhed,
Tq.Mudkhed Dist.Nanded.
r/o Mudkhed Dist.Nanded.
...Petitioner..

Versus

- 1] The State of Maharashtra,
through its Principal Secretary to the
Government of Maharashtra in
Education and Sports Department,
Maharashtra State, Mantralaya,
Mumbai-32.
- 2] The Education Officer (Primary),
Zilla Parishad, Nanded.
- 3] Shikshan Prasarak Mandal,
Mudkhed, Tq.Mudkhed Dist.Nanded.
Through its Director
Baliram s/o Pandurangrao Unhale.
- 4] Madhukar s/o Pandurangrao Unhale,
aged 45 yrs., occu.service,
r/o Mudkhed, Maratha Galli,
Tq.Mudkhed Dist.Nanded.
...Respondents...

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Shri N.P. Patil Jamalpurkar, Advocate for petitioner.
Smt.Vaishali Patil, AGP for respondent no.1.
Shri S.B. Pulkundwar, Advocate for respondent no.2.
Shri R.R. Mantri, Advocate for respondent nos.3 & 4.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

**JUDGMENT RESERVED ON 13.12.2016
JUDGMENT PRONOUNCED ON 20.12.2016**

JUDGMENT (Per K.L. Wadane, J.):

1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken up for final hearing at this stage.

2] The case of the petitioner is that the petitioner is serving as an Assistant Teacher in a school run by the respondent no.3 since 14.6.1988. The petitioner is a senior most teacher. Therefore, the then management of the respondent no.3 forwarded a proposal to the respondent no.2 for grant of approval to the appointment of the petitioner as a Head Mistress. The respondent no.2 granted temporary approval to the appointment of the petitioner as in-charge Head Master from time to time.

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3] There is dispute in the management going on between two groups of the trustees of the respondent no.3. Taking disadvantage of the situation, one group of the management by exerting pressure on the respondent no.2 obtained an order dated 20.10.2014 granting approval to the appointment of another teacher, who is junior to the petitioner on the post of Head Master. Being aggrieved by that order, the petitioner filed Writ Petition No.907/2015. During the hearing of said writ petition, a statement was made on behalf of the respondent nos.3 and 4 on 7.10.2015 that they will submit the proposal for appointment of the petitioner on the post of Head Mistress within a week. However, in spite of the statement before this Court, they have not sent such a proposal. The respondent nos.3 and 4 only with a view to circumvent the orders passed by this Court in Writ Petition No.907/2015, issued an order on 21.10.2015 by which the petitioner is placed under suspension. Hence, this writ petition.

4] We have heard the arguments of Shri N.P. Patil Jamalpurkar, learned counsel for the petitioner, Smt.Vaishali Patil, learned AGP for the respondent no.1,

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Shri S.B. Pulkundwar, learned counsel for the respondent no.2 and Shri R.R. Mantri, learned counsel for the respondent nos.3 & 4; and also perused the record.

5] The affidavit in reply on behalf of the respondent nos.3 and 4 is sworn by the President of respondent no.3 namely Balasaheb Deshmukh and thereby he contended that the petitioner was engaged in misappropriation and, therefore, she has committed serious mis-conduct. Hence, notices were issued to the petitioner, however, the petitioner is not responding to such notices. The respondent no.4 is acting as a trustee and Deputy Director of the trust as per the constitution of the trust. He further stated that the proposal to appoint the petitioner was submitted on 13.10.2015 to the respondent no.2. It has acknowledged the same. After initiation of the departmental proceedings, the respondent no.3 solicited the permission of the respondent no.2 to suspend the petitioner. On 21.10.2015, the management of the respondent no.3 took the decision to suspend the petitioner. Such decision is taken since the respondent no.2 has not passed any order regarding grant or refusal to suspend the petitioner and

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such decision was taken in the interest of justice and in the interest of the trust. The petitioner is not appearing in the departmental proceedings and considering her mis-conduct, the management has taken the decision to suspend her.

6] During the course of arguments, Mr.N.P. Patil Jamalpurkar, learned counsel appearing for the petitioner, by relying upon the provisions of Rules 33 and 35 of th Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, has argued that it is for the management to decide first whether the departmental enquiry is to be initiated and the petitioner was to be suspended or not. However, such a decision was taken by the management after about one year and four months, which is contrary to the provisions of Rule 33. According to Mr.Patil, such a decision was to be taken by the management at the initiation of the departmental proceedings and that too with the prior permission of the respondent no.2. As per provisions of Rule 35, it is mandatory to obtain prior permission of the respondent no.2 and admittedly such a permission is not obtained by the respondent no.3 from the respondent

no.2.

7] It is useful to quote the relevant provisions of Rule 33(1) and Rule 35 as under:-

"33. Procedure for inflicting major penalties -

(1) If an employee is alleged to be guilty of any of the grounds specified in sub-rule (5) of rule 28 and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an enquiry and also to place the employees under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Educational and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such orders.

35. Conditions of suspension -

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(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 Cooperative 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."

8] Looking to the above provisions, it appears that before suspension of an employee, prior permission of the appropriate authority mentioned in Rule 33 is required and looking to the provisions of Rule 33, it appears that

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the management shall first decide whether to hold an enquiry and also to place the employee under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer.

9] According to the respondent nos.3 & 4, they have requested the respondent no.2 to grant permission to suspend the petitioner, however, no orders are passed by the respondent no.2 in that behalf. Therefore, in the interest of the institution, they have taken decision to suspend the petitioner. Further, it appears from the record that the departmental proceedings are initiated against the petitioner in the month of June, 2014, and the petitioner was suspended on 21.10.2015 i.e. after about one year and four months and there is no explanation offered by the respondent no.3 as to why such decision of suspension was not taken at the time of initiation of departmental enquiry and what are the extraordinary circumstances and emergent situation by which the respondent no.3 was compelled to suspend the petitioner. Normally, an employee of the recognized school may be placed under suspension by the management

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after obtaining prior permission of the authority in view of the provisions of sub-rule (1) of Rule 33 and Rule 35 of the Rules. In extraordinary circumstances and in emergent situation, employee can be placed under suspension without obtaining prior permission of the Education Officer. The institution may place the employee under suspension and in that event, it is required to pay subsistence allowance. In the present case, no such circumstances are pleaded or stated by the respondent no.3. It would be seen that enquiry has been initiated against the petitioner in June 2014, the said enquiry is not yet completed. The petitioner is placed under suspension on 21.10.2015 i.e. more than one year after commencement of enquiry. Further, more than one year has also lapsed after her suspension, still enquiry is not completed. There was no prohibitory order against institution from proceeding with the enquiry. Considering the totality of the facts, it would be improper to allow continuation of suspension of the petitioner. In such circumstances, we are of the opinion that the suspension order dated 21.10.2015 seem to be improper.

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10] In view of above, the writ petition is allowed. The order dated 21.10.2015 passed by the respondent no.3 is quashed and set aside. Rule is made absolute in above terms. No order as to costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)