

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

WRIT PETITION NO. 382 OF 2016

Swapnil s/o. Keshavraj Jadhav .. Petitioner

Versus

The State of Maharashtra & Others .. Respondents

Mr.A.V. Patil Indrale, Advocate for the petitioner.

Ms.R.P. Gour, A.G.P. for respondent/State.

Ms.P.V. Diggikar, Advocate for respondent No.3.

Mr.S.R. Choukidar, Advocate for respondent Nos. 4 & 5.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 03.10.2017

P.C. :-

1. The petitioner takes exception to the order of suspension dated 10.11.2015 and communication dated 21.12.2015. We will consider the prayer only to the extent of suspension and not to the extent of communication dated 21.12.2015. Mr.Patil, learned Counsel for the petitioner states that the petitioner was arrested on 18.06.2015 for offence punishable under section 304-B, 498-A read with section 34 of the Indian

Penal Code. On 21.08.2015 the petitioner was released on bail and thereafter on 10.11.2015 the petitioner was suspended only on the ground that the petitioner was in custody, as criminal case is pending against the petitioner. Learned Counsel submits that as per M.E.P.S. Rules, the suspension can be only for a period, the petitioner was in custody and it cannot travel beyond the said period. The learned Counsel submits that even the Departmental Enquiry is not proceeded with. No charges are framed against the petitioner in the Departmental Enquiry, which is sought to be initiated pursuant to the communication dated 21.12.2015. Learned Counsel submits that the petitioner cannot be kept under suspension for indefinite period. At least for two years the petitioner is under suspension.

2. Mr.Choukidar, learned Counsel for the respondent submits that the petitioner is facing prosecution for heinous crime for the offence punishable under section 304-B, 498-A read with section 34 of the Indian Penal

Code. Learned Counsel submits that if the petitioner is reinstated by revoking the suspension, then it will have far reaching ramification in as much as it would send wrong signal to the students at large. In the newspaper and media the arrest of the petitioner was highlighted. Learned Counsel submits that even Departmental Enquiry was initiated against the petitioner by constituting Enquiry Committee. First meeting was scheduled on 11.01.2016. On the said date, the petitioner gave an application that he has already filed writ petition, so the Department Enquiry could not be proceeded further. Learned Counsel submits that independent of the criminal prosecution, the Departmental Enquiry can be proceeded with and for the said charges the petitioner is also required to be kept under suspension.

3. We have considered the submissions. It is almost two years the petitioner is under suspension. Neither Departmental Enquiry has progressed nor the criminal prosecution has progressed further.

4. Be that as it may, in-case the petitioner is taken in custody, then such person is deemed to be under suspension for the period he is in custody. The order of suspension refers to the factum of criminal case being filed against the petitioner and the petitioner is taken in custody and hence being suspended. The suspension order does not state about the petitioner being suspended on account of Departmental Enquiry being initiated.

5. The petitioner is not yet convicted. The petitioner can be said to be an offender, only if the charges are proved. Almost two years have lapsed. The petitioner is entitled for subsistence allowance without any work being discharged. It is stated that respondent institution has two schools. The petitioner can be transferred to other school also, in-case, suspension is revoked. That is the prerogative of the management. However, keeping the petitioner under suspension for long period without any fruitful purpose, may not be in the

interest of anyone. The respondent is not in a position to fill in the said post. The post of one Assistant Teacher remains vacant. That will be loss to the students also.

6. Considering the aforesaid conspectus of the matter in its entirety i.e. the order of suspension refers only to the petitioner being taken in custody, more than two years have lapsed, no Departmental Enquiry is proceeded, the petitioner can be transferred to other school, the order of suspension requires to be set aside.

7. In view of above, the order of suspension dated 10.11.2015 is set aside.

8. The communication dated 21.12.2015 by virtue of which the enquiry is sought to be initiated is the prerogative of the management. As such, the same need no interference.

9. The writ petition is accordingly disposed of in
above terms. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]