

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

WRIT PETITION NO. 125 OF 2016

Shri Baig Iftedarullah S/o Baig Saidullah
Age : 54 Years, Occu. : Service,
R/o Old Collector Office, Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Minority Development Department,
Mantralaya, Mumbai – 32.
2. The Maharashtra State Board of Wakf
(Through its Chief Executive Officer)
Panchakki, Aurangabad.
3. The Chief Executive Officer,
Panchakki, Aurangabad. .. Respondents

Miss P. S. Talekar, Advocate h/f Shri S. B. Talekar, Advocate for
the Petitioner.

Shri S. P. Tiwari, A.G.P. for the Respondent No. 1.

Shri A. N. Nagargoje, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 05TH NOVEMBER, 2018.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent
of parties take up for final hearing.

2. The petitioner assails the order of suspension dated 02nd January, 2016.

3. The petitioner at the relevant time was working as stenographer. The petitioner was suspended under order dated 02nd January, 2016 in contemplation of the departmental enquiry. Charge sheet was issued to the petitioner in July 2016.

4. Miss Talekar, the learned advocate for the petitioner submits that, as per the Government policy six months after the suspension evaluation has to be made and suspension has to be reconsidered. The petitioner is under suspension for almost three years. Enquiry has also not progressed further. Apart from issuing charge sheet in July 2016, no further steps have been taken in the enquiry. The learned counsel submits that, the order of suspension is issued solely because of the fact that the petitioner had assailed the order of transfer and on trifle charges. With regard to charge of misappropriation the criminal case was filed and A summery report has been filed by the police. The auditor has found that there is absolutely no malpractice and the purchases are as per the Government rates. The learned counsel submits that, no purpose would be served by placing the petitioner under suspension. The petitioner is not occupying any administrative post. One of the grievance of the respondents is

that, the petitioner did not join at transferred place. The order of transfer is quashed and set aside by this Court. Apart from the fact that charges are trifle, they are false.

5. Mr. Nagargoje, the learned advocate for the board submits that, the petitioner has alternate remedy of filing an appeal against the order of suspension. The office of the petitioner was inspected after issuing him relieving letter and various files of other department, blank letter heads, rubber stamps of board and Chief Executive Officer, stock of computer and its material were recovered from his office. In the year 2010, the then Chief Executive Officer sent confidential report to State of Maharashtra regarding complaints and illegalities during the tenure of the petitioner. The suspension is not by way of punishment, but to facilitate the departmental enquiry. The petition be dismissed.

6. We have also heard the learned Assistant Government Pleader for the respondent No. 1.

7. It appears that, after the petitioner was suspended on 02nd January, 2016 in contemplation of departmental enquiry, charge sheet was issued to the petitioner in July 2016. Since July 2016, there is stalemate. No further proceedings in the departmental enquiry are undertaken. The purpose of suspension is to

facilitate free and fair departmental enquiry and that the delinquent should not be in a position to tamper with the record/documents. Even under Government policy, the order of suspension has to be reviewed after six months. Same also has not been done. Almost it would be three years since the petitioner is suspended on 02nd January, 2016 and the enquiry has not proceeded further. The petitioner's remaining service is of six months as contended by the learned counsel for the petitioner. The petitioner is also not working on administrative post. The petitioner is working as a stenographer.

8. No purpose would be served by keeping the petitioner under suspension. Even A summery report has been filed in the criminal case, for which charge No. 12 has been framed against the petitioner. The police have submitted report that, there does not appear to be any misappropriation. Same is on the basis of auditor's report.

9. Considering the aforesaid conspectus of the matter, the impugned order of suspension is quashed and set aside. The respondents may reinstate the petitioner on the post he was holding prior to his suspension. However, the respondents are entitled to proceed with the enquiry in accordance with law. The petitioner would be entitled for the subsistence allowance till the

date of this order. In case there are some arrears with regard to payment of subsistence allowance, same shall be paid within a period of one month from today.

Rule is made absolute in above terms. No costs.

Sd/-

[R. G. AVACHAT, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Dec. 18