

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3110 OF 2017
WITH
CIVIL APPLICATION NO. 4372 OF 2017

Dr. Shaikh Imran S/o. Shaikh Usman,
Age: 38 Years, Occu.: Service,
R/o.: Plot No. 3, Rose Park, Manju Hill,
Damdi Mahal, Near Pakiza Hall,
Aurangabad

.. **Petitioner**

Versus

1. Maulana Azad Education Society,
Through its President,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aurangabad
2. President,
Maulana Azad Education Society,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aurangabad
3. Marathwada College of Education,
Through its Office Superintendent,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aurangabad
4. Joint Director,
Higher Education,
Aurangabad Division, Aurangabad
5. Dr. Babasaheb Ambedkar Marathwada
University, University Campus,

Aurangabad

6. Dr. Faroqui Maqdoom Mohiuddin
S/o. Riazuddin Ahmed,
Age: 50 Years, Occu.: Service,
R/o.: Principal's House,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aurangabad
7. Dr. Shaikh Imran S/o. Shaikh Ramjan,
Age: 46 Years, Occu.: Service,
O/ at Marathwada College of Education,
Dr. Rafiq zakaria Campus, Rouza Baug,
Aurangabad
8. The State of Maharashtra,
Through its Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai

.. **Respondents**

Shri V. J. Dixit, Senior Advocate i/b. S. V. Dixit, Advocate for the Petitioner.

Shri Amol Kakade, Advocate for Respondent Nos. 1, 6 and 7.

Shri R. N. Dhorde, Senior Advocate i/b. Shri V. R. Dhorde, Advocate for Respondent No. 2.

Shri P. S. Patil, Addl. G. P. for Respondent Nos. 4 and 8.

Shri S. G. Chapalgaonkar, Advocate for Respondent No. 5.

Shri N. V. Gaware, Advocate for the Intervenor (Applicant).

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

Reserved for Judgment on : 27th March, 2018

Judgment pronounced on : 26th April, 2018

JUDGMENT (*Per S. V. Gangapurwala, J.*) :

1. The petitioner has filed the present writ petition seeking directions against the respondent No. 1 to permit petitioner to work as Principal of Respondent No. 3 – College with further direction to release salary of the petitioner as Principal of Respondent No. 3 – College. The petitioner by way of amendment also prayed for setting aside the order dated 08.11.2016 suspending the petitioner and with further direction to pay the subsistence allowance / salary to the petitioner from 08.11.2016 till restoration of services of the petitioner in Respondent No. 3 – College.

2. It is with great anguish we pen this order. The job of the academician / teacher is to impart knowledge and education to the students. However, reading the allegations and counter allegations made in the present writ petition, the affidavits, rejoinder affidavits it transpires that except imparting education and knowledge to the students the teachers have engaged themselves in activities not befitting the academician / teachers.

3. College is the place where the only avowed object is to impart education to the students. The members of the academic staff are expected to concentrate on academics and strive to impart the best education to the students. The College is the place for all round development of a student. The students idolize their teachers. The manner in which the allegations and the counter allegations are made with regard to criminal antecedents of the Principal, Ex-Principal leaves us devastated.

4. It is not a matter of dispute that the present petitioner on or about 20th September, 2016, was appointed as a Principal of Respondent No. 3 – College and appointment was also approved by the Respondent No. 5 – University. On or about 8th November, 2016, petitioner was suspended by the Respondent No. 2. The cause for suspension was F.I.R. being filed against the petitioner by the Ex-Principal of Respondent No. 3 – College for the offence punishable under Section 384, 120-B, 506 read with Section 34 of Indian Penal Code and that the petitioner was arrested in said crime. The F.I.R. is filed on 03.11.2016. The petitioner was released on bail on 08.11.2016, by the learned

Judicial Magistrate First Class, Aurangabad.

5. Mr. Dixit, learned Senior Advocate for the petitioner states that the suspension of the petitioner was orally revoked by Respondent Nos. 1 and 2, upon his release on bail and the petitioner was permitted to join the services of Respondent No. 3 – College as Principal. The petitioner attended the college from 09.11.2016 to 16.11.2016 and also signed the Muster Roll. The petitioner filed an application seeking medical leave on 17.11.2016 with the Secretary of Respondent No. 1. The petitioner attempted to join the duties on 22nd February, 2017, as a Principal, but the petitioner was not permitted to enter the premises of Respondent Nos. 1 and 2 and was not allowed to sign the Muster Roll. Mr. Dixit, learned Senior Advocate submits that as the petitioner was arrested by the Police Authority several persons working against the petitioner published various news items in print and electronic media with malafide intention. Due to such continuous publication Respondent Nos. 1 and 2 are not permitting the petitioner to join and work as a Principal. Respondent No. 6 is impersonating himself as a In-

charge Principal, though there is no appointment of Respondent No. 6 as an In-charge Principal nor the said appointment is approved. The learned Senior Advocate submits that all sorts of pressure are being exerted on the petitioner. The Respondent No. 2 has a personal grudge against the petitioner, as the petitioner along with other employees had approached this court by filing Writ Petition No. 11816 of 2015, for payment of salary as per 6th Pay Commission and this court directed Respondent Nos. 1 and 2 to pay the arrears of salary as per 6th Pay Commission and also pay regular salary as per 6th Pay Commission. The learned Senior Advocate submits that the order of suspension refers to his suspension as an Associate Professor and no reference is made with regard to the designation of Principal. No departmental inquiry is also commenced against the petitioner. The learned Senior Advocate submits that no show cause notice is issued by the respondent No. 1. The act of the respondents restraining the petitioner without show cause notice stands vitiated. The learned Senior Advocate submits that the petitioner is not paid any subsistence allowance nor salary since 08.11.2016. Respondent Nos. 6 and 7

are impersonating themselves as In-charge Principal and Vice-Principal. The petitioner is with Respondent No. 3 – College since long time and has contributed for its various achievements including NAAC accreditation of 'A' category. Respondent Nos. 1 and 2 have also issued appreciation letters appreciating the good work done by the petitioner. The learned senior advocate submits that affidavit is filed on behalf of Respondent No. 3 by one Dr. Farooqui Maqdoom Mohiuddin Riazuddin Ahmed, sworn on 5th December, 2017, clearly accepting that the suspension of the petitioner was orally revoked on 09.11.2016 and the petitioner worked as a Principal from 09.11.2016 to 16.11.2016. It is further stated on affidavit by the said person that decision is taken to close the departmental inquiry initiated by the management. The affidavit further states that period of suspension and the subsequent period for which the petitioner was restrained from working as a Principal of Respondent No. 3 – College, be counted as continuous service. This affidavit establishes the case of petitioner that the suspension was orally revoked on 09.11.2016 and the petitioner thereafter also had worked as a Principal of Respondent No. 3 – College. The

learned counsel submits that said Dr. Maqdoom Farooqi, took a somersault and filed another affidavit sworn on 7th December, 2017, stating that the earlier affidavit is filed under duress. No specific acts of duress are spelt out. In fact, the second affidavit is erroneous. The learned Senior Advocate submits that false FIRs are being filed by the respondents against the petitioner. The petitioner has also filed a criminal complaint against respondent Nos. 2, 6 and others. The learned Senior Advocate submits that the theory of resignation put forth by the respondents is absolutely incorrect. The same is based on forged and fabricated documents. The F.I.R. against the petitioner is a conspiracy by Respondent Nos. 2 and 6. The criminal cases referred are false against the petitioner. Even the affidavit of Dr. Mrs. Naveed-Us-Sahar is filed, so as to damage the image of the petitioner. Dr. Mrs. Naveed-Us-Sahar, was terminated and as such has grudge against the petitioner. The learned Senior Advocate submits that the Respondent Nos. 2 and 6 are involved in fabrication of record, therefore F.I.R. No. 0126/2017 is registered with Begampura Police Station against Respondent Nos. 2 and 6 and F.I.R. bearing No. 0337/2017 is registered

against the Respondent No. 6 for use of false caste certificate. His anticipatory bail in the said F.I.R. is also rejected. The Respondent Nos. 2 and 6 have criminal antecedents and have filed contradictory affidavit before this court as per their whims and wish and contrary to the factual record. The learned Senior Advocate submits that the departmental inquiry has not proceeded further. No documents are provided to the petitioner and therefore petitioner is not able to answer charges leveled against him. No inquiry officer is appointed to conduct inquiry even after lapse of 1 ½ year. Inquiry cannot be held for indefinite period. Even suspension cannot be continued for indefinite period. The learned Senior Advocate submits that filing of the civil suit seeking declaration with regard to letter of resignation would not come in the way of petitioner. The learned Senior Advocate relies on the Judgment of Apex Court in a case of **Ajay Kumar Choudhary Vs. Union of India (UOI) and others** reported in **(2015) 7 SCC 291**.

6. Mr. Dhorde, learned Senior Advocate for the Respondents submits that the petitioner is suspended, departmental inquiry is

initiated against the petitioner. There is no oral revocation for suspension. The petitioner has filed civil suit bearing R.C.S. No. 864 of 2017 before the learned Civil Judge Senior Division challenging the resignation dated 10.10.2016, on the said count the present writ petition may not be entertained. The learned Senior Advocate submits that the petitioner has a efficacious alternate remedy available under Section 15 of the Maharashtra Universities Act, as the petitioner claims to have been removed from the post of Principal. The learned Senior Advocate submits that Ex-Principal of Respondent No. 3 had lodged F.I.R. against the petitioner. The petitioner was arrested and was in jail from 03.11.2016 to 08.11.2016. The charge-sheet is also filed in the said offence and is pending trial. The learned Senior Advocate submits that the petitioner has indulged into another serious offence bearing Crime No. I-245/2017 under Section 420, 467, 468, 471 read with 34 of the Indian Penal Code is registered against him. In the said crime the anticipatory bail application of petitioner is rejected and till today the petitioner has not surrendered. The petitioner by filing false legal proceedings is pressurizing the management to give into his illegal demands.

The learned Senior Advocate submits that the petitioner was also harassing the ladies staff and extracting money. One lady staff member has filed affidavit in this court making serious allegations of harassment and extortion against the petitioner. The copy of the said civil application is filed on record. The Management in its Board Meeting has resolved to conduct departmental inquiry against the petitioner and the petitioner was directed to attend the Headquarters at Marathwada College of Education, Aurangabad during the period of suspension. The petitioner has deliberately not attended Head Office in pursuance to the notice dated 03.05.2017. The learned Senior Advocate submits that the Respondent – Management issued inquiry notice on 03.05.2017, then again on 19.05.2017 serving the copy of article of charges. The petitioner is directed to file statement of defence. The petitioner till today has not replied the charge-sheet served upon him and is not co-operating in the commencement of departmental inquiry. The learned Senior Advocate submits that affidavit dated 05.12.2017 affirmed by Dr. Farooqui Maqdoom Mohiuddin Riazuddin Ahmed, was filed without authority and instructions of management. The learned

Senior Advocate submits that on one hand petitioner is not co-operating in the departmental inquiry and on the another hand is seeking benefit of the departmental inquiry not being conducted. The petitioner cannot take the advantage of his own wrong and seek revocation of suspension on the ground that departmental inquiry is not decided expeditiously.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The Ex-Principal of the Respondent No. 3 – College had filed a criminal case against the petitioner in which the petitioner was arrested and was behind the bars for more than 48 hours. Pursuant to the arrest, the petitioner was suspended by the management. The petitioner has come forward with the theory of oral revocation of suspension. Initially an affidavit sworn by Dr. Farooqui Maqdoom Mohiuddin, on 18th April, 2017, is filed thereby controverting the averments of the writ petition and justifying the suspension so also stating that the petitioner has resigned and his resignation is accepted. The rejoinder

affidavit is filed by the petitioner reiterating his case and denying the contentions of the affidavit filed by Dr. Farooqui Maqdoom Mohiuddin, on 18th April, 2017. Subsequently, one affidavit dated 3rd May, 2017, is filed by Dr. Farooqui Maqdoom Mohiuddin, reiterating the additional charge given to him of Respondent No. 3 and that management will appoint regular Principal and since charge-sheet is filed against the petitioner in Crime No. 0487/2016 for the offence punishable under Section 384, 120-B, 506 read with 34 of Indian Penal Code, the management had decided to proceed with the departmental inquiry. To the said affidavit rejoinder is filed by the petitioner on 9th June, 2017, stating that he has filed a police complaint with regard to the forged resignation. One affidavit again sworn by Dr. Farooqui Maqdoom Mohiuddin Riazuddin Ahmed, on 5th December, 2017, is filed accepting the case of the petitioner and further stating that the management has decided to close the departmental inquiry and his suspension was orally revoked on 09.11.2016. Two days thereafter on 7th December, 2017, affidavit is filed by Dr. Maqdoom Farooqui, stating that the affidavit on 05.12.2017 was filed by him under duress and not to consider his

affidavit. Considering the contradictory affidavits filed, we had asked the President of the society to file the affidavit. The President of the society Mrs. Fatma Rafiq Zakaria, has filed the affidavit on 14th January, 2018, stating that the petitioner was suspended. There are other criminal cases filed against the petitioner and that the petitioner has indulged in fabricating, destroying / taking away different records. The petitioner is not attending the Headquarters. The charges in departmental inquiry are sought to be served upon him but no response is received from the petitioner. It is further stated that affidavit dated 05.12.2017 of Dr. Farooqui Maqdoom Mohiuddin Riazuddin Ahmed, is without authority of the management.

9. The petitioner was working as a Principal in an Institution. He was suspended under the written orders of 08.11.2016. The order of suspension further discloses the intention of the management to initiate departmental inquiry. It is difficult to comprehend the argument of the petitioner that the suspension was orally revoked as against the written order of suspension, the theory of oral revocation of suspension does not

appear to be reasonable and probably, more particularly, when the respondent is an Institution and is supposed to maintain the record.

10. In the present matter, we would refrain from commenting upon the criminal cases filed by the parties against each other. It is for the court dealing with the criminal complaints to decide it after the evidence is led. We can only observe that serious allegations are made in each and every criminal cases filed by the parties against each other and which certainly is not in the interest of the Institution.

11. The Respondents have avered that the petitioner has tendered his resignation on 10.10.2016 as a Principal and so no question arises of considering the prayer of the petitioner to allow him to work as a Principal. The petitioner has filed civil suit bearing R.C.S. No. 864 of 2017 against the Respondent No. 2, 6 and one Altaf Qureshi, for declaration that the alleged resignation letter dated 10.10.2016 be declared to be false, forged and fabricated and injunction restraining defendants from using

the xerox copies of the alleged resignation letter dated 10.10.2016 and from pleading about the alleged resignation letter dated 10.10.2016.

12. In the present writ petition, through amendment, relief is claimed as against the order of suspension, no relief is claimed with regard to the case of the respondent about petitioners tendering resignation on 10.10.2016. In fact, the same also would not be within the realm of the writ petition. The petitioner has filed a substantive civil suit seeking declaration with regard to the alleged resignation letter dated 10.10.2016 to be forged and fabricated document. The civil court would be the competent court to decide as to whether letter of resignation is genuine or forged, after recording the evidence of the parties. This court would not venture to investigate into the disputed question of fact, more particularly, when the civil court is seized with the matter.

13. There cannot be any dispute with the proposition that during the period the petitioner is under suspension the

respondent is duty bound to pay subsistence allowance as per the rules. Payment of subsistence allowance is the responsibility of the management. Non payment of subsistence allowance as per rules has his own consequences. The order of suspension does not state that the petitioner should attend the College every day. There is nothing on record before us to suggest that the petitioner has left the Headquarters. In view of that, the respondent is under obligation to pay subsistence allowance to the petitioner for the period the petitioner was under suspension.

14. The respondents have come with the plea that the petitioner has resigned as a Principal and the said resignation letter is a subject matter of challenge before the civil court in the civil suit filed by the petitioner. The Judgment in a case of **Ajay Kumar Choudhary Vs. Union of India (UOI) and others** (supra) is dealing with the central rules governing the parties. The Apex Court in the said case observed that the currency of suspension order should not extend beyond three months if within this period Memorandum of charges / charge-sheet was not served on delinquent officer / employee. If the Memorandum

of Charges / Charge-sheet is served reasoned order must be passed for the extension of the suspension.

15. In the present case, charges are already framed as is stated in the affidavit and the same was also sought to be served upon the petitioner. The case of the respondents is that the petitioner is not co-operating in conducting the departmental inquiry. In case of **Ajay Kumar Choudhary versus Union of India and others** (*supra*), the memorandum of charge sheet was not served upon the delinquent. The court further observed in the said case that the appellant has now been served with the charge-sheet and therefore these directions may not be relevant to him any longer. In the present case also the charges are framed against the petitioner and are sought to be served on the petitioner long back. In view of that, the suspension would not be *ipso facto* revoked.

16. Considering the over all conspectus of the matter, we deem it appropriate to pass the following order.

ORDER

A] The respondents shall pay subsistence allowance to the petitioner as per rules from the date of suspension till date within four weeks and shall regularly pay the subsistence allowance.

B] The respondents shall conclude the departmental inquiry within six (6) months.

C] The petitioner shall co-operate in conclusion of the departmental inquiry.

D] In case the departmental inquiry is not concluded within six (6) months upon the petitioner co-operating the departmental inquiry, then the order of suspension shall stand revoked by culmination of six (6) months from the date of this order.

E] The aforesaid order is passed hoping that petitioner would co-operate in the departmental inquiry.

F] In case the petitioner does not co-operate in the departmental inquiry, then the respondents are at liberty

to take appropriate steps in the matter.

17. The writ petition accordingly stands disposed of with aforesaid observations and directions.

18. In view of disposal of writ petition, civil application also stands disposed of.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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