

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

WRIT PETITION NO. 4023 OF 2017

Naseem Banu Nazir Patel

... Petitioner

VERSUS

The State of Maharashtra & Ors.

... Respondents

.....

Mr V. J. Dixit, Sr. Advocate i/b Mr A. N. Nagargoje, Advocate for the
petitioner

Mr G. O. Wattamwar, AGP for respondent/State

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

DATE : 15TH JANUARY, 2018.

ORDER:

1. The petitioner is appointed in the Revenue Department and was working as Superintendent of Land Records, Aurangabad. At the time the petitioner was working as Superintendent of Land Records Aurangabad, the post of Chief Executive Officer, Maharashtra Wakf Tribunal, Aurangabad, was vacant. The petitioner was given additional charge of Chief Executive Officer, Maharashtra Wakfs Tribunal at Aurangabad on 02.09.2015.

2. The petitioner was suspended on 03.03.2017 and Departmental Enquiry was purported to be initiated against the

petitioner. The petitioner filed Original Application before the Maharashtra Administrative Tribunal, Aurangabad bearing Original Application No. 154 of 2017. The Tribunal stayed the Departmental Enquiry against the petitioner, however, did not grant any relief to the extent of suspension. The petitioner has assailed the said order in the present writ petition.

3. Mr. Dixit, the learned senior counsel for the petitioner submits that, the Tribunal *prima facie* was convinced that the charges upon which the enquiry is initiated against the petitioner are unfounded, as such has stayed the departmental enquiry. No purpose would be served by keeping the petitioner under suspension. According to the learned senior counsel, the departmental enquiry and the order of suspension are based on the order passed by the petitioner in her capacity as Chief Executive Officer of Wakf Board u/s 40 of the Wakf Act. The ld. Counsel submits that, the *quasi judicial* powers were exercised by the petitioner and the order passed by the petitioner was confirmed upto the Supreme Court, still the departmental enquiry was initiated on the same ground. The ld. advocate submits that, almost 10 months have lapsed, the petitioner is under suspension and the departmental enquiry is also stayed. The order of suspension be revoked. The learned Sr. counsel relies on the circular of the Government dt. 18.09.1974 and the judgment of the

Division Bench of this Court (Nagpur Bench) in a case of **Khushal Janbaji Gaidhane v. State of Maharashtra and others** reported in **1986 Mh.L.J. 235**, so also another judgment of this Court in a case of **Dr. Namdeo G. Kalwale v. Stat of Maharashtra & Others** reported in **1998 (1) Mh.L.J. 909**.

4. The learned AGP submits that, serious charges are levelled against the petitioner for which departmental enquiry is initiated. Revoking suspension would be granting a final relief to the petitioner and precisely on that ground the Tribunal has refused to stay the suspension order. The suspension order has already taken effect.

5. We have considered the submissions canvassed by the ld. counsel for the respective parties.

6. It is undisputed that the petitioner at the relevant time was working as a Superintendent of Land Records and was given additional charge of CEO, Wakf Board, Aurangabad. The order of suspension dt. 03.03.2017 is on the ground that the departmental inquiry is initiated against the petitioner. Departmental inquiry was to be initiated and pending departmental inquiry, the petitioner was suspended. The cause for the said action was an order under Section 40 of the Wakf Act, 1995, in respect of the property Survey No. 980

and 981 purportedly claimed as Masjid Dudadhar @ Kathade @ Kazipura, Tq & Dist. Nashik, passed by the petitioner on 04.02.2016.

7. In the original application filed by the petitioner bearing No. 154/2017, the Tribunal *prima facie* observed that the petitioner is discharging *quasi judicial* function and that the material against her is the order in the capacity of CEO performing *quasi judicial* function and it appears that the Wakf Tribunal has passed the similar order and as such has stayed the departmental inquiry.

8. More than 10 months have lapsed, the departmental inquiry is stayed. No purpose would be served by keeping the petitioner under suspension.

9. In case the respondents are allowed to proceed with the departmental inquiry, then the respondents can again resort to their power of suspending the petitioner. However, till the departmental inquiry is stayed, it would not be in fitness of things to keep the petitioner under suspension. The respondents will be entitled to take further course of action depending upon the judgment that would be delivered by the Tribunal in Original Application No. 154/2017 or upon such further order being passed by the Tribunal.

10. Even the circular issued by the respondents/State suggests that if the inquiry is not concluded within six months then the review can be taken with regard to the suspension order.

11. It is stated that, after the petitioner was suspended, a full-fledged CEO was appointed and the said CEO was promoted and now the Principal Secretary of the Department is officiating as acting CEO. Naturally, the respondents would not post the petitioner as CEO even if the suspension order is revoked. The respondents can place the petitioner on any other non-administrative post of the same rank which the petitioner was holding.

12. In view of the above, we pass the following order.

ORDER

- (i) The order dt. 03.03.2017 suspending the petitioner is revoked.
- (ii) Depending upon further order that may be passed by the Tribunal in Original Application No. 154/2017, the respondent may take a fresh course of action with regard to suspension of the petitioner.

(iii) The respondents are entitled to place the petitioner on any other non-administrative post of the same rank held by the petitioner at the time of suspension in the parent department.

13. The Writ Petition is, accordingly, allowed. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde