

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

WRIT PETITION NO. 9205 OF 2017

Trimbak Ashroba Kadam .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri. V.J. Dixit, Senior Advocate h/f Shri. Ankush N. Nagargoje for Petitioner.

Shri. M. V. Salunke, Advocate for Respondent No. 3.

Smt. A.V. Gondhalekar, Addl.G.P. for Respondent.

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATED : 21st February, 2018

PER COURT:

. The petitioner challenges the order of suspension dated 25.01.2017 (Exhibit 'D').

2. Mr. Dixit, the learned senior counsel for the petitioner submits that the petitioner is working as a lecturer with the respondent - Institution. On 25.01.2017, the petitioner is placed under suspension. The learned senior advocate further submits that without any reason the Departmental Enquiry

is shown to have been initiated. The suspension order is without permission of the Competent Authority. According to the learned senior counsel on lapse of 120 days, the suspension automatically stands revoked. He relies on 37 (2) (f) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981. The learned advocate relies on the judgment of the Division Bench of this court in a case of Hamid Khan Nayyar S/o. Habib Khan Vs. Education Officer and others reported in 2004 (4) Mh. L. J. 513.

3. Mr. Salunke, the learned counsel appearing for Respondent No. 4 submits that the Departmental Enquiry is initiated. Though the petitioner was suspended on 25.01.2017, he was not ready to leave the charge. His conduct was such that the respondent had to call the police machinery and on 23.03.2017 the charge could be taken. The petitioner at all times is intimidating the respondents, because of which the enquiry committee could not be constituted.. The petitioner was intimated about the constitution of the enquiry committee on 1st June, 2017, still the petitioner did not cooperate. The petitioner is giving threats to the members of the Enquiry Committee. One member of the Enquiry Committee Mr. Joshi, gave a letter to the Institution saying that the petitioner through two persons had given threats to him and he would not continue as a member of the Enquiry Committee. Thereafter, a fresh Enquiry Committee had to be constituted. The petitioner is at fault and the delay is caused because of the the petitioner. The learned advocate relies

on the judgment of the Division Bench of this Court in a case of Thapar Education Society and another Vs. Shyam Maroti Bhasarkars and others reported in 1997 (Supp.1) Bom.C.R. 661.

4. Mr. Kadam, the learned counsel also appears for Respondent No. 3, and states that he is empowered to appear for Respondent No. 3 and his client is the chairman of Respondent No. 3.

5. In the present writ petition we are not concerned with the interse dispute amongst the members of the management. The petitioner is suspended under order on 25.01.2017. Rule 37 (2) (f) of rule, 1981 reads thus;

“The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is not completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.”

6. Rule 37 (2) (f) was a subject matter of interpretation before the Division Bench of this court in case of Hamid Khan Nayyar S/o. Habib Khan Vs. Education Officer and others (supra) this court observed that on laps of 120 days the suspension automatically stands revoked. Paragraph 9 of the said judgment reads thus -

The stand taken by delinquent/respondent Bhasarkar, at the time of enquiry, as is revealed from the enquiry report, appears to be that it was respondent Pandhare who had come to his residence and left a message that he should contact him (Pandhare), on which Bhasarkar reached the house of Pandhare at 8.30 p.m. From there, both of them went for chewing Pan. They reached upto the Bus Stand when he (Bhasarkar) remembered that he wanted to see his sister-in-law by name Manda who stayed near Masjid near New Colony. Therefore, her brother and sister were in the house. They started returning, when they met Mandas sister whose name was Chanda and she told them that she would accompany them as she wanted to see RAM LEELA. They did not allow her to come with them but she insisted that she would return with her father and, therefore, she accompanied them. He also claimed that they were accosted by the watchman who asked him about the girl and he

replied that she was his sister-in-law and was going with him for a walk. Bhasarkar further reiterated that the girl started behaving improperly and, therefore, they wanted to extricate themselves from this girl, but the girl did not go away even when she was told and she followed them till Nalla, and on their way back, they saw an auto-rickshaw which stopped. The two teachers told the persons in the auto-rickshaw that they were mistaken, but the auto-rickshaw followed them and thereafter the girl was put forcibly in the auto-rickshaw and thereafter the auto-rickshaw left towards Chandrapur. They accordingly made the report to the Security Guards and further reported the matter to the police.

Similar such stand has been taken by respondent Pandhare and, according to him, it was the girl who herself accompanied them and they were not responsible for taking her away.

7. The Division Bench of this court in case of Thapar Education Society and another Vs. Shyam Maroti Bhasarkars and others (supra) relied upon by the learned counsel for the respondents also lays down the same law with regard to suspension. The relevant paragraph is as under -

“19.....

.....Even a cursory glimpse at these findings suggests that these findings are not only sketchy but vague also. As regards the finding on the delay in completion of the enquiry and it being extended beyond the period of 120 days, it will have to be said that the language of rule 37 (f) of the Rules itself suggests that the limit of 120 days is not a mandatory limit. The rule opens with the sentence “The enquiry shall ordinarily be completed within a period of 120 days from the date of first meeting of the Enquiry Committee, or from the date of suspension of the employee, whichever is earlier, unless the enquiry committee has, in the special circumstances of the case under enquiry, extended the period of completion of the enquiry with the prior approval of the Deputy Director. In the first place, the use of the word ordinarily, by itself, suggests that the period of 120 days is not a mandatory period. The Rule further goes on to say that in case the enquiry is not completed, the employee shall cease to be under suspension and shall be deemed to have joined the duties without prejudice to the continuance of the enquiry. The concluding words of the rule themselves suggest that the continuance of the enquiry is not prejudiced by the enquiry being extended beyond 120 days and the only result that is obtained is that a teacher, if he is under suspension, his suspension automatically gets revoked entitling him to get his full salary.”

8. In the present matter, it would appear that though the petitioner was suspended on 25.01.2017, even as per the case of respondents the Enquiry Committee for the first time was constituted on 01.06.2017, after lapse of 5

months of the suspension order. Admittedly beyond 120 days. The conduct of the petitioner would be relevant had the Enquiry Committee being constituted immediately and the petitioner would have been responsible in protracting the Departmental Enquiry. As the Enquiry Committee itself was constituted after lapse of 120 days, rule 37 (2) (f) would come into play and the suspension would not continue though the Departmental Enquiry may proceed further. Even the Deputy Director of Education has not sanctioned continuation of Departmental Enquiry. It is submitted that the application has been given by the society and the same is pending with the Deputy Director of the Education.

9. Be that as it may, we are only concerned with the order of suspension. Considering the aforesaid conspectus and facts of the matter, the suspension would not continue, as such stands revoked.

10. The writ petition is accordingly allowed in above terms. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

