

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9961 OF 2017

Sayed Gulzarina D/o. Mohammad Usman .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Shri S. S. Thombre, Advocate for the Petitioner.

Shri K. N. Lokhande, A.G.P. for Respondent / State.

Shri Santosh S. Dambe, Advocate for Respondent Nos. 2 and 3.

Shri Sayyed Tauseef Yaseen, Advocate for Respondent Nos. 4 and 5.

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

DATE : 21st February, 2018

PER COURT :

1. The petitioner is an Assistant Teacher with the respondent - Institution. The petitioner was suspended on 28.4.2017. The petitioner assails the order of suspension.

2. It is submitted by Mr. Thombre, learned advocate for the petitioner that the petitioner since the period of suspension has not been paid the subsistence allowance. The order of

suspension is per se illegal. The petitioner had replied the notice issued to him and had submitted that the petitioner has not committed any mistake nor has withheld any question paper of the students. In spite of that suspension order is issued. The learned advocate relies on Rule 37 (2) (f) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (hereinafter referred to 'MEPS Rules'). The learned advocate also relies on the judgment of the Division Bench of this court in a case of **Hamid Khan Nayyar Habib Khan Vs. Education Officer, Secondary, Zilla Parishad, Amravati and others** reported in **2004 (4) Mh.L.J. 513**.

3. Mr. Sayyed, learned advocate for the Institution submits that the petitioner was suspended on account of the misconduct for which Departmental Enquiry is also initiated. The learned advocate submits that entire procedure is followed by the respondent - Institution. The petitioner was suspended pursuant to the Resolution dated 28.4.2017 passed by the Management. The permission from Education Officer was sought, however, the permission was not given. Thereafter for the purpose of

conducting fair enquiry, the CEO of the respondent issued a statement of allegations on 7.11.2017. The petitioner pursuant to the statement of allegations has filed reply dated 14.11.2017, the same was not satisfactory. On 6.12.2017 communication was issued to the petitioner informing him that the management has decided to conduct the enquiry and the petitioner was requested to nominate a representative. The petitioner was already informed about the other members of the committee. The petitioner replied to the letter of the management and thereafter the management passed a Resolution on 22nd December, 2017 to constitute an enquiry committee into the allegations against the petitioner. The first meeting of the committee was held on 9.1.2018 and thereafter subsequent meetings are held. The learned advocate submits that the respondent - Institution is a minority institution, as such, is not required to seek approval from the Education Officer. To buttress his submission, the learned advocate relies on the judgment of the apex court in a case of **T.M.A. Pai Foundation and Others v. State of Karnataka and Others** reported in **(2002) 8 SCC 481**. The learned advocate also relies on the judgment of the Apex Court in

a case of Committee of Management Kanya Junior High School Bal Vidya Mandir, Etah, U.P. Vs. Sachiv, U.P. Basic Shiksha Parishad Allahabad, U.P. & Others reported in 2006 (8) Scale 222.

4. We have considered the submissions canvassed by the learned advocate for respective parties.

5. The dates as narrated above are undisputed.

6. The petitioner is suspended on 28.4.2017. Rule 37 (2) (f) of MEPS Rules 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.”

7. Rule 37 (2) (f) of MEPS Rules was a subject matter of consideration before the Division Bench of this court in a case of

Hamid Khan Nayyar Habib Khan Vs. Education Officer,

Secondary, Zilla Parishad, Amravati and others (supra),

this court observed thus -

“....

8. *Rule 37 (2) (f) postulates that the inquiry has to be ordinarily completed within a period of 120 days from the date of the first meeting of the Committee or from the date of the suspension of an employee. The word “ordinarily” indicated that the period of 120 days is not an inflexible rule. The inquiry shall not stand vitiated upon the expiry thereof. Power has been conferred by the Rule to allow the inquiry Committee in “special circumstances of the case under inquiry”, to extend the period for the completion of inquiry with the prior approval of the Deputy Director of Education. However, it has been spelt out that in case the inquiry is not completed within a period of 120 days or within the extended period, the employee shall cease to be under suspension and shall be deemed to have rejoined duties without prejudice to the continuance of the inquiry. In view of the provisions of this Rule, the learned Counsel appearing on behalf of the petitioner has fairly stated that it is not his submission that the inquiry stands invalidated upon the expiry of 120 days. After the expiry of the period of 120 days the consequence that has been laid down in Rule 37 (2) (f) in regard to the suspension necessarily comes into force. In that view of the matter, the suspension ceases to operate and the employee is deemed to have*

rejoined his duties without prejudice to the continuance of the inquiry. Hence, we are of the view that there is merit in the contention of the petitioner. The petitioner is entitled to the benefit of the provisions of Rule 37 (2) (f) . In the present case the management has not convinced even the Enquiry Committee. The attention of the court is not drawn to any steps having been taken for progressing with the enquiry. Save and except for a bold averment there is nothing to show that the conduct of the petitioner is the reason for the failure to hold and complete the enquiry.”

8. The Division Bench of this court in a case of **Thapar Education Society and another Vs. Shyam Maroti Bhasarkars and others** reported in **1997 (3) Mh. L. J. 709** has observed thus -

“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.”

9. Even considering the arguments of the learned advocate for the respondents that it need not wait for the approval of the Education Officer / Deputy Director of Education for suspension and / or for extension of the period of Departmental Enquiry, the same would not be sufficient to arrest the running of time as far as the operation of suspension beyond 120 days.

10. It would appear from the affidavit filed on record by the respondents that after the petitioner is suspended on 28.4.2017 for the first time on 7.11.2017 the statement of allegations was issued by he respondent - Institution. The same was beyond 120

days. It is also not a case that the respondent had initiated enquiry within a period of 120 days. So in such a case the question of approval by the Education Officer would not be relevant so far as the extension of the suspension period is concerned. The enquiry itself had not commenced within a period of 120 days.

11. Considering the aforesaid judgments of the Division Bench of this court the suspension order cannot be continued. The enquiry is not yet concluded.

12. In view of that, the respondents shall allow the petitioner to join services immediately and the order of suspension shall stands revoked accordingly and the respondent shall also pay the petitioner subsistence allowance for the period the petitioner was under suspension.

13. The writ petition is accordingly disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]