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

WRIT PETITION NO. 10557 OF 2017

Kalidas S/o Shivajirao Patil … Petitioner

VERSUS

The State of Maharashtra & Ors. … Respondents

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Mr Ganesh A. Gadhe, Advocate for the petitioner
Mrs M. A. Deshpande, AGP for respondent/State
Mr D. P. Munde, Advocate h/f Mr V. D. Salunke, Advocate for respondent No. 4
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CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

DATE : 13TH FEBRUARY, 2018.

ORDER:

1. Mr Gadhe, the learned counsel for the petitioner submits that, on vague charges the departmental enquiry is initiated. The petitioner is suspended as per the letter dt. 05.08.2017 served upon the petitioner on 10.08.2017. The said suspension order is anti-dated. The earlier Writ Petition bearing number Writ Petition No. 3368 of 2017 filed by the respondent – society challenging the approval of the petitioner as I/c. Headmaster, was disposed of on 09.08.2017 and at that time also, the counsel for the Institution did not make any submission of the petitioner being suspended.

The petitioner was respondent no. 3 therein. This shows that, the order of suspension has been passed much subsequently and wrong date was mentioned.

2. The learned counsel submits that, even as per the proviso of Rule 37(2)(f) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "MEPS Rules"), suspension cannot continue for more than 120 days and on 121st day, the petitioner shall be deemed to have rejoined duties. The learned counsel relies on the judgment of the Division Bench of this Court in the case of **Deepali Gundu Surwase Versus Kranti Junior Adyapak Mahavidyalaya** reported in **Laws (Bom) 2007 3 194** and in case of **Hamid Khan Nayyar Habib Khan v Education Officer, Secondary, Zilla Parishad, Amravati** reported in **Mh.L.J. 2004 4 513**.

3. Learned counsel for respondent no. 4 submits that, the departmental enquiry is initiated and same is now at the final stage. Meetings have been held by the Committee. According to learned counsel, the Committee was constituted on 11.09.2017 for holding the departmental enquiry against the petitioner but after the formation of the committee, one of its member did not show

willingness to work with the Committee. Therefore, respondent no. 4 formed new committee on 15.12.2017. The Committee has conducted its proceedings on 27.12.2017, 06.01.2018, 17.01.2018 and 30.01.2018. The petitioner every time seeks leave of 15 days, as such the proceedings could not be completed. Even the leave applications are submitted directly to the Education Officer.

4. The charges framed and the departmental enquiry is not the subject matter of the present writ petition.

5. The petitioner has only assailed the suspension order. The suspension order was issued in contemplation of departmental enquiry. Rule 37(2)(f) of the MEPS Rules reads as under :

> **R.37(2)(f).** 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 to be 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. In the present case, it has not been brought on record by the respondents that Dy. Director has extended the period of enquiry nor any approval is sought from the Dy. Director for extension of the period for completion of the enquiry.

7. We could have considered the case of the respondents, had the period for completion of enquiry been extended with the prior approval of the Dy. Director.

8. No such approval appears to be on record.

9. It would also appear that Enquiry Committee was constituted for the first time on 11.09.2017 and one of its member did not join, as such the new enquiry committee was constituted on 15.12.2017 and thereafter only, the work of departmental enquiry commenced. The same was after lapse of 120 days as contemplated under Rule 37(2)(f).

10. In light of the above judgment relied on by the learned counsel for the petitioner in the case of Deepali Survase (supra),

would apply to the present case.

11. In view of that, the petitioner shall be deemed to have joined the services after completion of 120 days. The consequential benefits shall follow.

12. Writ Petition accordingly disposed of. No costs.

[A. M. DHAVALE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde