

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL APPLICATION NO. 2355 OF 2018

IN

WRIT PETITION NO. 2792 OF 2017

Shri Shivaji Mahadev Koli

... Applicant/Petitioner

Vs

1 The President / General Secretary,
Mahatma Phule Shikshan Sanstha
& Ors.

... Respondents

WITH

WRIT PETITION NO. 2792 OF 2017

Mr. Vinod N. Tayade for the Applicant/Petitioner.

Mr. Narendra V. Bandiwadekar for the Respondent Nos.1 & 2.

Mr. S.B. Kalel, AGP, for the Respondent Nos.3 & 4-State.

CORAM : S.C. DHARMADHIKARI &

SMT. BHARATI H. DANGRE, JJ.

TUESDAY, 27TH NOVEMBER, 2018

P.C. :

1 The petitioner before this Court had filed this Writ
Petition and in which a Civil Application has been moved.

2 The Writ Petition also is placed before us for admission. Hence both are taken up together.

3 It is common ground that the petitioner joined the services of the respondent No.1 - Educational Institution/ Management on 1st August, 1986. He was then promoted as a Laboratory Attendant with effect from 1st January, 1990 and claims to have worked continuously. First Information Report No.134 of 2015 was registered at the Dabki Road Police Station, Akola, alleging an offence punishable under sections 417 and 420 read with 34 of the Indian Penal Code.

4 The petitioner was in police custody and later on in judicial custody from 3rd December, 2015 to 30th July, 2016, until an order came to be passed on a Bail Application No.477 of 2016, releasing him on bail. This order was passed on 27th July, 2016.

5 He claims to have made representations to the Management to permit him to resume duties or alternatively treat him as under suspension and pay him the subsistence allowance.

6 No cognizance has been taken of this request and now the Civil Application is moved on 9th September, 2018, seeking to highlight the hardship, particularly of a loan being obtained by the petitioner-applicant from a Co-operative Credit Society and he being unable to repay a default occurred in repayment of the instalments of the loan amount. For these reasons, he claims the following reliefs in the Civil Application :

“(a) That the Civil Application be allowed;

(b) That the Respondent Nos.1 and 2 be directed to pay the arrears of subsistence allowance for the period commencing from August 2016 till date within 15 days from the date of order; and

(c) That this Hon’ble Court be pleased to direct the Respondents to allow the Applicant to resume his duty in the Respondent College as Lab Attendant within 15 days from the date of order;

(d) Any other further reliefs be granted in favour of the Applicant;”

7 On such a Civil Application and Writ Petition, we have heard both sides.

8 Mr. Bandiwadekar, learned counsel appearing on behalf of respondent Nos.1 and 2 would submit that the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, are inapplicable for this is a senior college. The petitioner's case is entirely misconceived for the simple reason that he cannot be treated as a suspended employee on par with those who are facing Departmental proceedings or impending disciplinary action. It is such an employee who is placed under suspension and held eligible for drawal of subsistence allowance. The petitioner's case cannot be equated with such an employee.

9 Mr. Tayade appearing on behalf of the petitioner would submit that the criminal case may not see the end of the day soon. The petitioner is to retire on attaining the age of superannuation in May, 2019. Presently, he is jobless and has no means of livelihood to support him. He has no financial support as well. For these reasons, it is submitted that the Writ Petition and the Civil Application be allowed.

10 We have carefully considered these rival contentions. We have perused the Writ Petition and all the annexures. Equally, we have perused the Civil Application. The petitioner-applicant does not dispute that there is an FIR registered against him arraying him as an accused. He does not dispute that he was arrested and was in police custody and later on judicial custody before his release on bail. He does not dispute that the criminal case is pending. He also does not dispute that the charge is serious in nature. The Management has informed the Joint Director, Higher Education, Kolhapur Region, Kolhapur on 21st September, 2016, as to how the petitioner-applicant was booked by the police machinery. It is in these circumstances that we are unable to agree with Mr. Tayade that the case of the petitioner should be considered on the touchstone of the language of the MEPS Act and the Rules. The petitioner's case is covered undisputedly by the Rules applicable to the State Government employees. It is further common ground that the petitioner has been placed in custody and the dates of his police and judicial custody remand are also not disputed. In the circumstances, Rule 4 of the Maharashtra Civil Services (Discipline and Appeal)

Rules, 1979 comes into play. This is a case of a deemed suspension within the meaning of sub-rule (2) thereof. The provisions enabling him to draw subsistence allowance has to be construed in the light of the object of the Rule. In terms of the procedure prescribed and imposing major penalty, it is quite likely that the Government may take a call and in the event it is of the opinion that the disciplinary proceedings cannot be completed in an unbiased and impartial manner without undue influence from any quarters, including the apprehension of the witnesses being won over, it can place the concerned employee under suspension. In the mandate of Rule 4 sub-rule (2), it is evident that where a penalty of dismissal, removal or compulsory retirement from service is in contemplation and proceedings for inflicting such a major penalty is proposed, then, the appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any State authority empowered in this behalf by the Governor by general or special order may place a Government servant under suspension and the eventualities contemplated by clauses (a) to (c) of sub-rule (1) of Rule 4 would then come into play. The power to suspend is also conferred so as to suspend an employee against whom a criminal

offence is under investigation, inquiry or trial. Such an employee is deemed to be placed under suspension. Once the language of the Rule and the sub-rule is clear but nothing has been pointed out to us which would enable us to hold that in the case of the employee like the petitioner-applicant, the subsistence allowance is denied, we cannot direct the Management to release such subsistence allowance and at the rate specified in law. Such a relief cannot be granted now on the vague plea in para 2 of the Civil Application.

11 In the circumstances, we are not in agreement with Mr. Tayade that we should direct payment of subsistence allowance. Such a payment is contemplated in terms of the distinct Rules and that is Rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

12 The subsistence allowance as claimed is payable provided the conditions are satisfied. Secondly, how that payment has to be adjusted or dealt with on conclusion of the criminal proceedings is also provided in the Rules falling in this Chapter itself. A combined reading of these Rules, according to

us, does not confer an absolute right on such employee as the petitioner who is facing serious charges.

13 The Management, in fact, has informed the Joint Director, Higher Education, Kolhapur Region, Kolhapur that the employee was found to be involved allegedly in organs sale contrary to the provisions of law enabling such organs to be donated to save a precious life. The person facing a threat to his life is allowed to approach the authorities if there is a willing donor who is otherwise found to be fit and in a position to donate his organs, then, such organs can be donated to save the life of a person facing serious illness or undergoing treatment for serious ailments which may result in a loss of an organ. In these circumstances, it is entirely for the Joint Director and the Management to examine as to whether the subsistence allowance and at the rate specified has to be released.

14 We do not have anything presently on record which would enable us to direct payment. There is no question of allowing the petitioner to resume duties either.

15 All that we, therefore do is to direct the Joint Director, Higher Education, Kolhapur Region, Kolhapur to treat this Writ Petition and the Civil Application as a representation of the petitioner for releasing subsistence allowance and in the event the petitioner is eligible and entitled to draw such subsistence allowance, then, the rate thereof and the mode and manner in which it should be released be determined by the Joint Director at the earliest. Let all the records in the pending criminal case and the stand of the Management be placed before the Joint Director who shall take a decision in this representation as expeditiously as possible and, in any event, by 31st January, 2019. We dispose of this writ petition with these directions but by clarifying that our opinion or observation, which is entirely *prima facie*, shall not influence the decision of the Joint Director. He shall decide the matter strictly in accordance with law.

16 The Civil Application as also the Writ Petition, accordingly stand disposed of.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.