

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

WRIT PETITION NO. 8278 OF 2018

Sunita Gorakshnath Shirsat	... Petitioner
Versus	
The State of Maharashtra & Ors.	... Respondents

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Mr Santosh S. Jadhavar, Advocate for the petitioner
Mrs A. V. Gondhalekar, AGP for respondent/State
Mr V. S. Bedre, Advocate for Respondent No. 3
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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**
DATE : 21ST JANUARY, 2019

ORAL ORDER:

1. The petitioner assails the order of suspension. The reliance is placed by Mr S. S. Jadhavar, the learned counsel for the petitioner, on Rule 35(2) of the MEPS Rules. According to the petitioner, the petitioner was suspended under order dt. 03.07.2018. Four months have elapsed, the suspension cannot continue. The petitioner is not responsible for the inquiry not completed within four months.

2. Mr Bedre, the learned counsel for respondent No. 3 submits that, the petitioner was suspended on 03.07.2018. The petitioner did not hand over the charge. The respondents could not collect the

important documents. *Ex parte* charge was required to be taken. The Inquiry Officer was appointed on 26.10.2018 and the petitioner was directed to give her nominee. The charge-sheet is served upon the petitioner on 01.12.2018 and the date of hearing was fixed as 18.12.2018. The petitioner requested for change of nominee and same was also allowed and the next date was fixed as 25.01.2019. The respondents would complete inquiry within two months from today. The learned counsel submits that, even the proposal was given to the Education Officer for extension of suspension period and payment of 75% of the suspension period, however, the Education Officer has not taken the decision on the same.

3. Rule 35(2) of the MEPS Rules categorically provides that, period of suspension would not exceed four months except with the prior permission of the authority.

4. The petitioner is suspended on 03.07.2018. As per the contention of the respondent, the respondent took *exparte* charge on 30.07.2018. Thereafter, Inquiry Officer was appointed on 26.10.2018 and charge-sheet was served on 01.12.2018, after lapse of four months. The Inquiry did not commence till 01.12.2018. In view of that, it cannot be said that, the petitioner is guilty for delay in

departmental enquiry. It is different case if the petitioner is responsible for delay in conduct of DE. No such case exist in the present case. Even the permission sought for extension of suspension period is after lapse of four months i.e. 10.12.2018.

5. In view of the above, the petitioner would be entitled for the benefit of Rule 35(2) of MEPS Rules. The suspension order as such stands revoked. With regard to the payment of subsistence allowance, according to the petitioner, the amount is not paid and according to the respondents, the amount is paid upto December-2018. The Education Officer shall consider the same and pass order on the same within 15 days. As far as the Departmental Enquiry is concerned, the petitioner shall cooperate in expeditious disposal of the same. If the petitioner does not cooperate, the respondents can after following proper procedure proceed further. The suspension being set aside, the necessary consequences would follow.

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

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE