

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 5957 OF 2020

Mohan Sampatrao Surwase

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr S.S. Jadhavar, Advocate for Petitioner

Mr K.N. Lokhande, A.G.P. for Respondent Nos. 1 and 2/State

Mr V.M. Humbe, Advocate for Respondent Nos. 3 and 4

**CORAM : S.V. GANGAPURWALA AND  
SHRIKANT D. KULKARNI, JJ.**

**DATE : 10<sup>th</sup> DECEMBER, 2020**

**PER COURT :**

1. The petitioner assails the order of suspension.
2. We have heard Mr Jadhavar, the learned Counsel for the Petitioner and Mr Humbe, the learned Counsel for the Management.
3. Amongsts other grounds, one of the grounds for assailing the suspension is that the inquiry is not completed within a period of 120 days. The suspension ceases and (2), Education Officer has not granted permission to extend the suspension.
4. The contention of the respondent-Management is that the letter was issued to the petitioner on 28<sup>th</sup> August, 2020 to nominate his nominee on the inquiry committee. Initially, on 8<sup>th</sup> September, 2020, the petitioner sought extension of time to nominate and the nomination was made by the

petitioner on 19<sup>th</sup> September, 2020.

5. The Management further contends that on 9<sup>th</sup> July, 2020, the petitioner had applied to the Education Officer for extending the period of inquiry. According to the respondents, as per Rule 37 (2) (f) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, the inquiry shall ordinarily be completed within a period of 120 days from the date of first meeting of inquiry committee or from the date of suspension of the employee whichever is earlier, unless 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. According to the respondents, Management because of COVID-19 pandemic, the inquiry could not be initiated immediately. It was beyond control of the Management to constitute the inquiry committee immediately. Firstly on 28<sup>th</sup> August, 2020, the letter was issued by the Management to the petitioner to nominate his nominee on the inquiry committee.

6. In light of the above, the suspension of the petitioner would not cease.

7. We have considered the submissions canvassed by the learned counsel for the parties.

8. It is undisputed that the petitioner working as an Assistant Teacher with the respondent-Management stood suspended under order dated 21<sup>st</sup> March, 2020. For the first time, on 28<sup>th</sup> August, 2020, the

Management intimated the petitioner to nominate his nominee on the inquiry committee. The same was also after 150 days, much later than the time prescribed under the Rules.

9. Under Rule 35 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, the period of suspension shall not exceed four months except with the prior permission of such appropriate authority. In the present case, though the petitioner claims to have applied for extension of inquiry, on 9<sup>th</sup> July, 2020, permission is not granted for extending suspension by the Education Officer.

10. The provisions of Rule 35(2) read with 37 (2) (f) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, are self-operative. The inquiry is also not concluded within a period of 120 days. Though we would agree that for certain period, the inquiry could not conclude because of the COVID-19 pandemic situation, still the same ought to have been done within a reasonable time. We may exclude 2-3 months of lock down, still the inquiry ought to be completed within a reasonable period. The petitioner is under suspension for more than 250 days. It cannot be said that the employee is responsible for delay in the inquiry. Considering Rule 35 (2) and 37 (2) (f) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, the suspension would cease to operate.

11. The reliance can be had on the Judgment of Division Bench in the case of ***Hamid Khan Nayyar Habib Khan Vs. Education Officer, Secondary, Zilla Parishad, Amravati and others reported in 2004 (6) Bom. C.R. 871.***

12. In light of the above, the order of suspension of the petitioner stands revoked. The petitioner shall be deemed to be reinstated on his original post and shall be entitled for full salary from today until further action is taken by the Management in accordance with the inquiry.

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

**[ SHRIKANT D. KULKARNI, J. ]**

**[ S.V. GANGAPURWALA, J. ]**

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