

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1739 OF 2020

Shri. Swapnil Janaba Bokade

....Petitioner

vs.

The State of Maharashtra & Ors.

....Respondents

Mr. Prashant S. Bhavake for the Petitioner.

Mr. V.M. Mali, AGP for the Respondent-State.

Mr. Abhijit Adagule for Respondent Nos.4 and 5.

**CORAM : S.C. GUPTE AND
SURENDRA P. TAVADE, JJ.**

DATE : 20 JANUARY 2021

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule made returnable forthwith and heard with consent of counsel.
3. The controversy in this petition concerns continued suspension of the Petitioner, arraigned in a criminal prosecution, despite his release on bail. An FIR charging him and his family members under Sections 143, 147, 148, 149, 324, 323, 504, 506 and 527 of the Indian Penal code was filed. A charge under Section 326 of the Indian Penal Code was incorporated in the FIR subsequently. As a result of the FIR, which culminated into C.R. No.229 of 2019, the Petitioner and his family members were arrested on 01.11.2019. On the Petitioner's bail application, bearing Bail Application No.114 of 2019,

Additional Sessions Judge, Gadhinglaj, vide order dated 24.12.2019, was pleased to release the Petitioner on bail. After his release on bail, the Petitioner, who was working with Respondent No.4 Junior College as an 'Assistant Teacher', approached Respondent No.4 for permitting him to resume his duties. It is the grievance of the Petitioner that the Headmaster of Respondent No.4 did not permit him to resume his duties and finally passed an order on 15.01.2020, which is impugned in the present petition. The impugned order, purportedly passed under Rule 33 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, proceeds on the footing that the Petitioner shall remain under suspension till his acquittal in the criminal case.

4. Rule 33(5) provides that an employee, against whom proceedings have been taken on a criminal charge or who is detained under any law for the time being in force providing for preventive detention, shall be considered as under suspension for any period during which he is under such detention or he is detained in police for judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment. This rule has been interpreted by a Division Bench of this Court in ***Subhag S. Kavi vs. State of Maharashtra & Ors.***¹ This Court after considering the relevant rules, namely, Rule 33(1), 33(5) & (6) and 34(4), has held that suspension under Rule 33(5) would continue only during the period of arrest or period of detention in terms of that Rule. On release from judicial custody or from detention, deemed suspension under Rule 33(5) would cease to operate, though the management would be within its right to suspend the employee by exercising its separate power under Rule 33(1). For exercising such power, a domestic enquiry must precede such suspension. This is obviously not the case here. The suspension is continued in the present case purportedly under Rule 33(5) itself. That is impermissible.

1 2006(5) Mh.L.J.618

5. Accordingly, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned order passed by Respondent No.5 on 15.01.2020 and directing Respondent No.5 to forthwith permit the Petitioner to resume his duties as 'Assistant Teacher' at Respondent No.4 junior college with all consequential benefits from the date of suspension. It is clarified that in case Respondent Nos.4 and 5 have a case to proceed against the Petitioner by way of disciplinary enquiry and exercise power under Rule 33(1), they are free to do so in accordance with law.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)