

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

WRIT PETITION NO. 12817 OF 2017

Sau Sheela Rameshchandra Bargaje
Age 58, Occu. School Teacher,
R/o Nisarg Priyadarshini Housing
Society, Siddhanth Wadi, Tal. Wai,
Dist. Satara.

... Petitioner

Versus

1. The Administrative Officer, Municipal
Education Board, Wai, Dist. Satara.
2. Shri Sunil Krushnarao Jagtap
Former Administrative Officer of thereafter
Municipal Education Board, Wai
R/o Plot No. B-17, Sayali Hill,
Near Ganpati Temple at P.O. & Tal
Baramati, Dist. Pune.
3. The Municipal Council Wai,
Dist. Satara.

4. The State of Maharashtra

... Respondents

Mr. C.M. Kothari for the Petitioner.

Ms. Gunjan P. Shah i/by Mr. Kayval P. Shah for the Respondent Nos. 1
and 3.

Mr. N. C. Walimbe, AGP for the Respondent No.4.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 29th OCTOBER, 2021.

ORAL JUDGMENT (*Per R. D. Dhanuka, J.*) :-

. Rule. Learned counsel for the respondent nos.1 and 2 waives service. Respondent no.2 has expired. Petitioner seeks leave to delete the name of the respondent no.2. Leave to amend is granted to delete the name of the respondent no.2 from the cause title of the petition. Amendment to be carried out forthwith. Re-verification is dispensed with. Learned AGP waives service for the respondent no.4. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order of suspension dated 8th June, 2016 passed by the respondent nos. 1 and 3 under Section 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short 'the said MCS Rules, 1979').

3. The petitioner is the mother-in-law of the complainant who filed FIR on 4th June, 2016 alleging offences under Sections 498A, 313, 323, etc of the Indian Penal Code against the petitioner. The petitioner was arrested and was sent to 15 days custody. On 6th June, 2016, the petitioner was suspended from service as a teacher by the respondent no.2. The petitioner thereafter filed a criminal application in the month of August 2016 *inter-alia* praying for quashing the process. On 16th June, 2017, the Criminal Application filed by the petitioner came to be admitted. Interim relief came to be granted in favour of the petitioner. This Court directed the Police not to file charge-sheet without leave of the High Court. The petitioner thereafter filed a Criminal Application

bearing No. 409 of 2017 on 28th June, 2017, in the pending criminal application for seeking discontinuation of the suspension order. The petitioner was granted liberty to withdraw the said proceeding with liberty to file a fresh petition. On 30th June, 2017, the petitioner retired from service. Since, the dues of the petitioner are not paid by the respondent no.1, the petitioner filed this writ petition *inter-alia* praying for quashing and setting aside the order of suspension dated 8th June, 2016 and for a declaration that the petitioner is regular in service since 6th June, 2017. The petitioner also seeks an order and direction to grant all benefits to the petitioner before retirement and after her retirement treating her as a regular employee.

4. In prayer clause (h) of the petition, the petitioner has prayed for an order and direction against the respondent nos. 1 to 3 to pay compensation for illegal suspension in the sum of Rs.20,00,000/- and legal expenses in the sum of Rs.5,00,000/-.

5. Mr. Kothari, learned counsel for the petitioner invited our attention to the suspension order issued by the Administrative Officer of the respondent no.1 and would submit that the service of the petitioner were suspended in view of ongoing criminal proceedings filed by the daughter-in-law of the petitioner. He submits that, at the first instant, the order of suspension itself was illegal and in any event could not have been continued beyond three months in view of the decision of the Supreme Court in the case of ***Ajay Kumar Chaudhary v/s. Union of India (2015) 7 SCC 291*** and in any event after retirement of the petitioner by superannuation.

6. It is submitted by the learned counsel that admittedly the respondent nos. 1 to 3 did not initiate any departmental enquiry against the petitioner till the date of the retirement of the petitioner by superannuation.

7. It is submitted that the respondent nos. 1 to 3 paid only part of the terminal dues of the petitioner. Learned counsel submits that the criminal proceedings filed by the daughter-in-law of the petitioner has nothing to do with the employment of the petitioner. After noticing this fact, this Court directed the Police not to file charge-sheet against the petitioner without leave of the High Court.

8. Ms. Shah, learned counsel for the respondent nos. 1 and 3 on the other hand strongly places reliance on the Rule 4 of the said MCS Rules, 1979 and would submit that since FIR was filed against the petitioner in respect of the criminal offence and the same is under investigation, the respondent no.1 was justified to suspend the services of petitioner. She also placed reliance on Rule 68 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 (for short 'the said MCS Rules, 1981') and more particularly Rule 68(2), which reads thus :-

'Rule 68(2) – When a Government servant is convicted by a competent Court and sentenced to imprisonment, the subsistence allowance shall be reduced to a nominal amount of rupee one per month with effect from the date of such conviction and he shall continue to draw the same till

the date of his removal or dismissal or re-instatement by the competent authority. If, however, he was acquitted by the Appellate Court in the meanwhile, in which case, he will draw the subsistence allowance at the normal rate from the date of acquittal by the Appellate Court.'

9. Learned counsel also placed reliance on Rule 4(2) of the MCS Rules, 1979 and would submit that the petitioner was deemed to have been placed under suspension w.e.f. from the date of her detention, since she was detained in police or judicial custody, whether on a criminal charges or otherwise, for a period exceeding forty-eight hours. It is submitted by the learned counsel for the respondent nos. 1 and 3 that under Rule 130(c) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short 'the said MCS Rules, 1982') no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

10. Learned counsel placed reliance on the Rule 17 of the said MCS Rules, 1979 and would submit that against an order of suspension made or deemed to have been made under Rule 4, the remedy of appeal is available. This Writ petition thus shall not be entertained by this Court.

11. Mr. Walimbe, learned AGP for the State also supported the case of the respondent nos. 1 and 3 and would submit that under the provisions of the said MCS Rules, 1979, the petitioner is not entitled to any dues in view of the order of suspension during pendency of criminal proceedings against the petitioner.

12. A perusal of the record indicates that the petitioner was in service of the respondent no.1. The daughter-in-law of the petitioner Mrs.Tanvee Aniruddha Bargaje filed FIR with Wai Police Station against petitioner and her husband under Section 498A, 313, 323, 504, 506 read with 534 of the Indian Penal Code on 4th June, 2016. The petitioner was arrested and was produced before the Magistrate and was in custody till 21st June, 2016. The respondent no.1 suspended the service of the petitioner vide order dated 8th June, 2016 w.e.f. 6th June, 2016. The petitioner admittedly thereafter retired on superannuation.

13. It is not in dispute that the respondent nos. 1 to 3 did not initiate any department enquiry against the petitioner till her date of superannuation. The petitioner was not paid the entire amount due to the petitioner. It is the case of the respondent nos. 1 and 2, in the affidavit-in-reply, the petitioner was paid certain amounts by way of subsistence allowance including a sum of Rs.6,71,076/- towards full and final settlement of her provident fund. It is the case of the respondent no.1 that since the investigation is still pending against the petitioner, the petitioner is not entitled to recover any further amount from the respondent no.1.

14. Rule 4 of the said MCS Rules, 1979 provides that the appointing authority may place the Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending or where the case against him in respect of criminal offence is under investigation, inquiry or trial. Rule 4(2) of the said MCS Rule, 1979

provides for deemed suspension.

15. In our view, the suspension cannot be continued after retirement of the petitioner by superannuation, since no extension is granted for holding of any enquiry by the respondent nos.1 and 3.

16. Rule 68 of the said MCS Rules, 1981 provides that for subsistence allowance and compensatory allowances during the period of suspension. Rule 68(2) clearly indicates that when a Government servant is convicted by a competent Court and sentenced to imprisonment, the subsistence allowance shall be reduced to a nominal amount of rupee one per month with effect from the date of such conviction and he shall continue to draw the same till the date of his removal or dismissal or re-instatement by the competent authority. If, however, he was acquitted by the Appellate Court in the meanwhile, in which case, he will draw the subsistence allowance at the normal rate from the date of acquittal by the Appellate Court. It is not in dispute that till date the petitioner has not been convicted by any Competent Authority nor has been sentence to imprisonment based on such conviction. The respondent nos. 1 and 3 therefore cannot refuse to pay any allowance to the petitioner which is in arrears today.

17. Rule 130 of the said MCS Rules, 1982, which is pressed into service by the learned counsel for the respondent nos. 1 and 3 provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. It is not in dispute that no such departmental

proceedings are initiated against the petitioner by the respondent nos. 1 to 3. Insofar as the expression 'judicial proceedings' prescribed in Rule 130(1)(c) is concerned, this Court has considered similar issue in case of ***Shrikant Ramchandra Inamdar v/s. Municipal Corporation of Greater Mumbai and Anr.*** in Writ Petition No. 3601 of 2018 considered by K. K. Tated, J. as his lordship then was and one of us (Abhay Ahuja, J). This Court in the said judgment considered a provision i.e. 'no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon'. After interpreting the said provision and after considering the fact that the petitioner therein had already retired however his gratuity dues were held up in view of the pending criminal proceedings in a property dispute with his family members, this Court accordingly held that those were not the proceedings relating to the service of the petitioner with the respondent-corporation. Therefore, the said Rule 45A(c) would not apply to the case of the petitioner.

18. In our view, the criminal proceedings filed at the instance of the daughter-in-law of the petitioner under Section 498A of the Indian Penal Code and other related provisions against the petitioner have nothing to do with the employment of the petitioner with respondent nos. 1 and 3. If any criminal proceedings would have been filed and pending investigation relating to the employment of the petitioner with the respondent no.1, the situation would have been different. The principle laid down by this Court in case of ***Shrikant Ramchandra Inamdar*** (supra) applies to the facts of this case. We do not propose to take any different view in the matter.

19. Insofar as the submission of the learned counsel for the respondent nos. 1 to 3 that there is a provision of appeal under Rule 17 of the said MCS Rules, 1979 and thus this writ petition shall not be entertained is concerned, in our view there is no merit in the submission of the learned counsel for the respondent nos. 1 to 3. In the facts of this case, the continuation of suspension beyond the period of retirement of superannuation and that also without any pending departmental enquiry or conviction of the petitioner being illegal, does not preclude this Court from exercising powers to entertain a writ petition under Article 226 of the Constitution of India and to interfere with such illegal and untenable order passed by the respondent nos. 1 and 3 though an appeal is provided against the order of suspension.

20. A perusal of the affidavit-in-reply filed by the respondent nos. 1 to 3 and affidavit-in-rejoinder filed by the petitioner indicates that part payment by way of subsistence allowance and under other heads have been alleged to have been paid by the respondent nos. 1 to 3 to the petitioner. According to the petitioner more amount is due and payable as set out in the affidavit-in-rejoinder. Respondent nos. 1 and 3 are liable to pay the balance amount due to the petitioner on the premise that the petitioner continued to be in service till the date of her superannuation all through out on the ground that there being no departmental enquiry having been initiated against the petitioner and till such date there being no conviction in the criminal proceedings which may not even otherwise be relevant for the purpose of the employment of the petitioner with the respondent nos. 1 to 3.

21. We accordingly pass the following order :-

- (a) Impugned order of suspension dated 8th June, 2016 is quashed and set aside. The petitioner is declared to be regular in service as prayed. The petitioner is entitled to be granted all benefits before retirement and after her retirement on superannuation by treating her as regular employee. The service dues on this premise shall be paid by the respondent nos. 1 to 3 to the petitioner within six weeks from today with interest @ 8% p.a. from the due date.
- (b) The arrears of post retirement benefits shall be paid to the petitioner within six weeks with interest @ 8% p.a. from due date payment of gratuity shall be made with interest at statutory rate.
- (c) Insofar as prayer clause (h) for compensation prayed by the petitioner is concerned, we grant liberty to the petitioner to file appropriate proceedings for claiming compensation against the respondent nos. 1 and 3 in appropriate Court.
- (d) The petitioner would be at liberty to file statement showing the amount payable with the respondent nos. 1 and 3 within one week from today according to the petitioner. Respondent nos. 1 and 3 shall verify the said

statement and shall inform the petitioner about the amount due and payable according to them within one week thereafter.

- (e) It is made clear that whatever amount is already paid to the petitioner by the respondent nos. 1 and 3 from the date of suspension, shall be taken into consideration while paying the balance amount.
- (f) Rule is made absolute accordingly.
- (g) Writ Petition is allowed in the aforesaid terms. There shall be no order as to costs.
- (h) Parties to act on an authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]

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