

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

937 WRIT PETITION NO.1236 OF 2021

**ISHWAR SUKHADEV SURASE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners : Mr.Ajay D. Pawar
AGP for Respondent Nos. 1 to 4-State : Mrs. M.A.Deshpande
Advocate for Respondent No. 5 : Mr. Ganesh A. Ambildhage h/f Mr.
Kanade Angad L.

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 12.08.2022.

PER COURT : [PER - SANDEEP V. MARNE, J.]

1. By way of present petition, the petitioners are challenging the communication dated 21.09.2020 of the Desk Officer, Government of Maharashtra, by which, it has been directed that the suspension period of the petitioners cannot be treated as a period spent on duty.

2. The facts of the case are in narrow compass. The petitioners are working as Assistant Teacher and Hostel Superintendent respectively, in respondent No. 6 School, run by respondent No. 5, the Management. On allegation of outraging the modesty of one of the resident girl of the School, a crime came to be

registered in Pathardi Police Station. On account of registration of crime, both the petitioners were placed under the suspension on 07.09.2018. After carrying out the investigation, the Investigating Officer submitted "C" Summary report in the Sessions Court, Ahmednagar, which came to accepted on 20.10.2018.

3. Independently, an inquiry was initiated by the District Woman and Child Development Officer, Ahmednagar in respect of the incident. The report was submitted by the Committee on 25.09.2018, that no incident as alleged had taken place.

4. Despite being given a clean chit, not only by the police authorities, but also in the independent inquiry, the petitioners were not being reinstated. Therefore, they filed appeal before respondent No. 1. On 16.09.2019, an order came to be passed by respondent No.1, inter-alia, holding that no incident as alleged had taken place in the Ashram School on 04.09.2018. Therefore, respondent No. 1 directed that the suspension order dated 07.09.2018 be cancelled and the petitioners be reinstated in the service.

5. What is done in the present case is not only revocation of the petitioners' suspension but cancellation of the suspension order itself after recording a finding that the incident on account of which

the petitioners were suspended had never taken place. Despite this, it has been directed by the order dated 21.09.2020 that the period of suspension of the petitioners cannot be treated as duty.

6. Mrs. Deshpande, the learned AGP, appearing for the State Government has supported the order dated 21.09.2020 by contending that the period of suspension cannot be treated as duty as the petitioners were facing the inquiries.

7. We are unable to accept the contention of the learned AGP, Mrs. Deshpande. The suspension order has already been cancelled by respondent No.1, by recording a specific finding that the incident on account of which the petitioners were suspended had never taken place. It would therefore be unfair not to treat the period of suspension as duty. The petitioners were kept under suspension with a view to hold an inquiry into the incident. Once it is found that the petitioners were not guilty in respect of the alleged incident, the suspension itself becomes unwarranted. It is otherwise a settled law that if an employee is exonerated in respect of any inquiry, the period of suspension has to be treated as duty. We, therefore, allow the present petition by directing the respondents to treat the period of suspension of both the petitioners as duty for all purposes.

8. The respondents are further directed to pass an appropriate order for the payment of salary and allowances of the petitioners for a period of suspension.

9. The petition is disposed off. No costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

mahajansb/