

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

WRIT PETITION NO. 12888 OF 2022

Smt. Manisha Baban Bhujbal

.. Petitioner

Vs.

The State of Maharashtra,
Through Principle Secretary, Education
School Education & Anr.

.. Respondents

Ms. Bhairavi A. Ranpise for the petitioner

Smt. P. N. Diwan, AGP for the respondent-State

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ**

DATED : 9th DECEMBER, 2022

P.C.:

1. Pursuant to complaint lodged by the petitioner, Assistant Teacher in Crime No. 317 of 2021 punishable u/s. 354, 354-A, 354-D & 506 of IPC came to be registered against the respondent no. 3. The respondent no. 3 was accordingly charge-sheeted. During his arrest the respondent no. 3 remained in custody for a period of 24 hours.

2. As a sequel of registration of aforesaid offence, the respondent no. 3 came to be suspended, which order was subject matter of challenge before the Maharashtra Administrative Tribunal (MAT), Mumbai in Original Application No. 524 of 2021.

The said original application came to be allowed vide impugned order dated 13/12/2021. As such, this petition.

3. Learned counsel for the petitioner has made two fold submissions viz. considering the nature of allegations against the Respondent No. 3 and the fact that he has already charge-sheeted, the Tribunal has exceeded its jurisdiction in ordering revocation of suspension. The other contention is, even if the suspension order is revoked or set aside by the Tribunal, the Government be issued directions to initiate de-novo action against the Respondent No. 3 thereby issuing fresh suspension order. It is urged that the Respondent No. 3 is again indulging into similar type of acts viz. issuing threats in the matter for withdrawal of the proceeding against him initiated by the petitioner.

4. The learned AGP would assist the Court and submits that in the facts and circumstances appropriate order may be passed.

5. The fact remains that the Respondent No. 3, a State Government employee was charge-sheeted for the aforesaid offense. During the investigation of the offense in question, the said respondent remained in custody of the police for a period less than 48 hours.

6. However, considering the duty discharged and gravity of

allegations, it appears that he was suspended under provisions of sub-rule 2(a) of rule 4 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

7. As the respondent No. 3 has demonstrated before the Tribunal that he was arrested on 28/06/2021 and was released by the Court of Magistrate on 29/06/2021, the Tribunal on appreciation of facts has rightly inferred that the detention period of respondent no. 3 was less than 48 hours. In this background claim of the petitioner that the provisions of rule 4 sub rule 1 were incorrectly invoked cannot be accepted. Once on factual side based on the documentary evidence it is established that petitioner was detained in police custody for less than 48 hours, the Tribunal was justified in ordering revocation of suspension.

8. In the aforesaid background no illegality could be noticed in the order impugned, particularly when the Respondent No. 3 was released from police custody within 48 hours of his arrest.

9. As far as, the prayer for issuance of fresh order of suspension of the Respondent No. 3 is concerned, the said issue clearly within the ambit of the Respondent No. 1 and Respondent No. 3 i.e. the employer and the employee. It is for the State Government to take appropriate action in the matter if so desired

in accordance with law. At least we haven't noticed any provision of law under which respondent no. 3 can be saddled with fresh order of suspension for same cause.

10. In the aforesaid background it cannot be said that the Tribunal has committed an error in passing the impugned order. As regards the threats issued to the Respondent No. 3 is concerned, the said issue can be looked into by the Trial Court in the matter of the pending trial. Reserving such liberty in favour of the petitioner for taking out appropriate proceedings in the pending trial, we see no reasons which warrants interference in the writ jurisdiction.

11. The petition as such fails and stands dismissed.

(SHARMILA U. DESHMUKH, J) (NITIN W. SAMBRE, J.)