

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

12 WRIT PETITION NO.2317 OF 2022

RAJENDRA VILAS GARJE
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioner : Mr. Arvind G. Ambetkar.
AGP for Respondent No.1 : Mr. S. K. Tambe.
Advocate for Respondent Nos.2 & 3 : Mr. Avinash D. Aghav.
...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 09th January, 2023.

Per Court :

1. By this petition, the petitioner has prayed for quashing and setting aside the suspension order dated 29th October, 2021 issued by the Chief Executive Officer, Zilla Parishad, Ahmednagar.

2. We have considered the submissions of the learned advocates for the petitioner, the Zilla Parishad and the learned AGP.

3. The petitioner has been suspended for the reasons set out in the order dated 29th October, 2021. The allegations against him with regard to committing the offence punishable under Sections 376, 504 and 506 of the Indian Penal Code, are set out. An offence has been registered on 3rd October, 2021 with the concerned police station. The

petitioner approached the learned Additional Sessions Judge, Ahmednagar in Criminal (Bail) M.A. No.1663 of 2021, praying for bail. By order dated 23rd October, 2021, the learned Additional Sessions Judge, Ahmednagar, has passed the following order:-

“Order

- 1) The applicant/accused Rajendra Vilasrao Garje shall be released on bail on executing of P.B. and S.B of Rs. 25,000/- with one or two sureties in Crime No.I-746/2021 under section 376, 504, 506 of I.P.C., registered with Pathardi Police Station, Tal. Pathardi, Dist. Ahmednagar.
- 2) The applicant shall not cause any threat to the complainant or family members.
- 3) The applicant shall attend the concerned police station on every Sunday in between 11.00 a.m. to 02.00 p.m. at any time till filing of chargesheet.
- 4) The applicant shall not enter the premises where the complainant and her family members are residing and he shall not remain present or stay where the complainant and her family members are present and the applicant shall not contact the complainant and her family members in any way.
- 5) The applicant shall not tamper the prosecution evidence in any way and shall not cause any pressure or threat to the complainant and the prosecution witnesses.
- 6) The applicant shall file residential proof attested by two Gazateed officer.

7) The applicant shall not leave Pathardi, Tal.Pathardi, Dist.Ahmednagar prior permission of the Court.

8) The applicant shall co-operate the police in investigation.

9) The applicant shall attend Court dates regularly.

10) The 1.0. has liberty to approach this Court for cancellation of bail, if the applicant commits breach of any of the conditions.

11) Bail be furnished in the Lower Court.”

4. It is, thus, obvious that the petitioner has been restrained from leaving Pathardi, Taluka Pathardi, District Ahmednagar. The learned advocate for the Zilla Parishad submits that as the offence was committed in Pathardi and since the petitioner is a teacher in the Zilla Parishad Primary School at Akole, Taluka Pathardi, which has 95 girl students, the Zilla Parishad deemed it appropriate to transfer him to Taluka Akole in the office of the Block Development Officer, Panchayat Samiti, Akole vide the same suspension order dated 29th October, 2021.

5. The petitioner submits that he cannot join at his place of transfer on account of the restrictions imposed upon him by the Court,

which has passed the bail order dated 23rd October, 2021. The learned advocate for the Zilla Parishad submits that the petitioner can leave Pathardi with the prior permission of the Court, as set out in clause (7) of the operative part of the bail order dated 23rd October, 2021.

6. It would not call for any debate that a person, who has been suspended, is entitled for suspension allowance as per the rules. The Zilla Parishad has transferred him to Akole Taluka for administrative convenience, but has continued his suspension. As such, the petitioner is not required to discharge his duties in Akole Taluka as he is under suspension. His grievance is that he is not paid the suspension allowance.

7. The learned advocate for the Zilla Parishad submits that unless the petitioner joins at Akole, he would not be entitled for suspension allowance.

8. We are of the view that as the petitioner continues to be under suspension, he would be entitled for the suspension allowance as is prescribed in the rules / service conditions.

9. The Zilla Parishad contends that as the petitioner was

placed under suspension under Rule 3(2) of the Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 and a disciplinary enquiry has commenced against him, he would remain under suspension until further orders.

10. The learned advocate for the petitioner relies upon *Nanuram s/o Dagdu Beldar Vs. State of Maharashtra and others, 2017(3) Mh.L.J. 251*, to contend that the suspension order cannot be upheld. We do not find the said judgment would be of any assistance to the petitioner for the reason that, in the cited case, Nanuram Beldar was suspending since there was a non-cognizable offence registered against him, which did not reflect on his discharge of duties as a teacher. In the instant case, the petitioner was arrested after an offence punishable under Sections 376, 504 and 506 of the Indian Penal Code, was registered against him. He has been granted bail with a direction that he would not leave Pathardi without the prior permission of the Court. He is now under going trial. The departmental enquiry has also commenced against him.

11. In these circumstances, we are of the view that as there are 95 girl students in the Zilla Parishad Primary School, the parents of such students would not be comfortable, if the petitioner is reinstated in service with the type of the charge levelled upon him. It does not

call for any debate that a person is innocent until proven guilty and until the charge is proved against the petitioner, he cannot be presumed to be guilty. At the same time, the minds of the tender girl students would be disturbed and the confidence of their parents would be undermined with the reinstatement of the petitioner. However, the petitioner is entitled for suspension allowance as per the rules.

12. In view of the above, this petition is disposed off with the following directions:-

- a) The prayer of the petitioner for reinstatement in service in the school, is rejected.
- b) The petitioner is at liberty to seek the leave of the learned Additional Sessions Judge, Ahmednagar, in the light of clause (7) of the operative part of the order dated 23rd October, 2021 passed in Criminal (Bail) M.A. No.1663 of 2021, so as to go to Akole Taluka and record his joining.
- c) Notwithstanding the above, the petitioner would be entitled for suspension allowance for each day of suspension and the Zilla Parishad shall calculate his unpaid suspension allowance and shall pay the same to the petitioner, on or before 28th February, 2023.
- d) Simultaneously, the petitioner would be entitled for the

monthly suspension allowance as per the rules.

- e) The departmental enquiry initiated against the petitioner would be concluded without delay and the petitioner would render co-operation in the said proceedings.

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[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]