

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4295 OF 2022
(Chitra Premnath Birhade Vs. The State of Maharashtra, Through its
Additional Chief Secretary and others)

Mr.V.G.Salgare, Advocate for the petitioner.
Mr.V.M.Kagne, AGP for respondent Nos. 1 to 3.
Mr.S.M.Ganachari, Advocate for respondent Nos. 4 and 5.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : JANUARY 20, 2023

PER COURT :

1. The petitioner has put forth prayer clause B to E as under :-

"B) By writ, order or directions the impugned order dated 06.12.2021 of suspension of the petitioner contemplating departmental enquiry issued by the respondent No.3 District Authority may kindly be quashed and set aside as the said. impugned order is without jurisdiction in the interest of justice.

C) By writ, order or directions the impugned suspension order dated 06.12.2021 contemplating / pending departmental enquiry may kindly be revoked and the petitioner may kindly be reinstated on her original post of Medical Officer Group A in the interest of justice.

D) By writ, order or directions the period of suspension of the petitioner from the date of impugned order dated 06.12.2021 till the revocation of suspension of the petitioner may kindly be treated as on

duty and all monitory and service benefits may kindly be granted to the petitioner in the interest of justice.

E) By writ, order or directions the respondent No.3 and 4 may kindly be directed to pay subsistence allowance as per Rules from the date of her suspension i.e. 06.12.2021 till her reinstatement on her original post and till the period of suspension is treated as on duty in the interest of justice."

2. On 06.06.2022, this Court had passed the following order :-

"1. Issue notice to the respondents, returnable on 20-07-2022. The learned AGP waives service of notice for respondent Nos. 1 to 3. Mr. Deshmukh, Advocate waives service of notice for the respondent Nos. 4 to 6. Hamdast is permitted. In addition to the regular mode of service, the petitioner is permitted to serve the respondents.

2. Affidavit-in-reply shall be filed by the respondent Nos. 1 to 3 within two weeks from the date of service of papers and proceedings with a copy to be served upon the petitioner's advocate simultaneously.

3. The learned counsel for the respondent to make a statement before this court on the next date as to whether any departmental enquiry is initiated against the petitioner or not and to also demonstrate that respondent No. 2 has jurisdiction to initiate action against the petitioner under the provision of Disaster Management Act, 2005.

4. Short grievance of the petitioner is that no action could be taken by the respondent No. 3 under the provision of Disaster Management Act, 2005 since the petitioner is governed by the Maharashtra Civil Services Rules.

5. If the subsistence allowances is not paid to the petitioner in accordance with law, same shall be paid in advance before next date."

3. Having considered the submissions of the learned Advocates for the respective sides, it is undisputed that the petitioner is being paid only 50% of the salary as subsistence allowance and that too under the orders of this Court. The charge levelled upon the petitioner is that she was not residing in the official quarters at the Primary Health Centre. After her suspension dated 06.12.2021, neither the charge sheet cum show cause notice is issued, nor has the suspension been revoked. Naturally, there is no question of initiating any departmental enquiry as there is no charge sheet issued.

4. The petitioner is a Medical Officer with the Primary Health Center. After suspension, as she was not granted the subsistence allowance, she had approached this Court. Ever since 06.12.2021, for the past 14 months, she is under suspension with 50% subsistence allowance and without initiation of any departmental proceedings.

5. The learned AGP and the learned Advocate representing the Zilla Parishad, have vehemently opposed this petition. However, both do not have any answer on the fact that the charge sheet is not yet issued.

The Zilla Parishad submits that a proposal for commencing the departmental enquiry alongwith the draft charge sheet was forwarded to the Government on 27.07.2022. This indicates that the Zilla Parishad moved after 9 months. We are of the view that an employee cannot be treated in this way, more so, when the employee is an MBBS Medical Officer, unless the charges are so serious that the employee cannot be permitted to enter the premises of the establishment. A minor charge of not residing in the HQ is levelled upon her.

6. The fact remains that till today, the charge sheet has not been issued. It is only thereafter that an Enquiry Officer would be appointed and thereafter a departmental enquiry would commence, which would take months.

7. Though the petitioner has prayed for restraining the employer from conducting a departmental enquiry, we would not entertain this prayer since the employer is duty bound to conduct a departmental enquiry after levelling a charge of mis-conduct upon an employer. We would entertain this petition only to the extent of the challenge to her continued suspension.

8. In view of the above, this petition is partly allowed. The impugned order dated 06.12.2021 suspending the petitioner in contemplation of departmental enquiry is quashed and set aside, with effect from 30.01.2023. The petitioner shall stand reinstated in service and shall report for duties on 30.01.2023 at the place where she was last working. Needless to state, the respondents are at liberty to complete the departmental enquiry expeditiously, provided it is initiated. The period of suspension would be taken into account after completion of the departmental enquiry, meaning thereby that if the petitioner is exonerated of the charge of mis-conduct, she would be entitled for the full salary for the period of suspension. Per contra, if she is held guilty, the period of suspension would merge into the order of punishment which is to be considered by the employer in accordance with the rules applicable.

9. The pending civil application would not survive and stands disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)