

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12607 OF 2019

Raju Dhondiram AkrupePetitioner
V/S
The State of Maharashtra & Ors.Respondents

...
WITH
INTERIM APPLICATION NO.2915 OF 2021
IN
WRIT PETITION NO.12607 OF 2019

Manik Abaso JadhavApplicant
IN THE MATTER BETWEEN
Raju Dhondiram AkrupePetitioner
V/S
The State of Maharashtra & Ors.Respondents

...
WITH
INTERIM APPLICATION NO.2724 OF 2022
IN
WRIT PETITION NO.12607 OF 2019

The State of MaharashtraApplicant
IN THE MATTER BETWEEN
Raju Dhondiram AkrupePetitioner
V/S
The State of Maharashtra & Ors.Respondents

...
WITH
INTERIM APPLICATION NO.1225 OF 2021
IN
WRIT PETITION NO.12607 OF 2019

Raju Dhondiram AkrupeApplicant
IN THE MATTER BETWEEN
Raju Dhondiram AkrupePetitioner
V/S
The State of Maharashtra & Ors.Respondents

...
 WITH
 INTERIM APPLICATION NO.2918 OF 2021
 IN
 WRIT PETITION NO.12607 OF 2019

Sandeep Tatyrao Patange	Applicant
IN THE MATTER BETWEEN	
Raju Dhondiram Akrupe	Petitioner
V/S	
The State of Maharashtra & Ors.	Respondents

...

Mr. A.Y. Sakhare, Senior Advocate i/b Mr. R.S. Mirpury for the
 Petitioner/Applicant in IA 1225 of 2021.
 Mr. P.P. Kakade, GP a/w Mr. Akshay Shinde 'B' Panel a/w Mr. M.M. Pabale,
 AGP for the Respondent No.1-State.

...

**CORAM: S.V. GANGAPURWALA, ACJ &
 SANDEEP V. MARNE, J.**
 DATE : 16 JANUARY 2023.

P.C.:

1 The Petitioner has filed the Original Application bearing No.336 of 2018 before the Maharashtra Administrative Tribunal, Mumbai, (hereinafter referred to as 'Tribunal' for short) challenging his suspension. The said Original Application was dismissed, therefore, the present Petition.

2 During the pendency of the Original Application the suspension of the Petitioner was withdrawn/revoked on 15 April 2019. However, the matter was proceeded further.

3 It is not disputed that subsequently the charges were framed against the Petitioner and the enquiry continued further. It is submitted that the enquiry is concluded. However, the statement was made in the present Petition that the final decision is not taken in the Departmental Enquiry.

4 Mr. Sakhare, the learned Senior Counsel for the Petitioner submits that once the suspension is withdrawn it relates back to the original date of suspension and it would be deemed that the Petitioner was never under suspension. On the day the Petitioner was suspended, no cause existed for the Respondent to suspend the Petitioner. It is only because the Hon'ble Minister made a statement on the floor of the House to suspend the Petitioner, the action has been undertaken. The learned Senior Counsel submits that it is erroneous on the part of the Tribunal to observe that the Disciplinary Authority found it appropriate to suspend the Petitioner in view of the alleged misconduct and that the suspension is not based on irrelevant consideration. According to the learned Senior Counsel when the Petitioner was suspended, no charge-sheet was issued against the Petitioner nor the enquiry also commenced. All these aspects ought to have been considered.

5 We have heard learned AGP for the Respondents/State.

6 The Petitioner was suspended on 19 March 2018 under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Under the said Rule a Government servant can be suspended in contemplation of Departmental Enquiry.

7 Suspension in contemplation of Departmental Enquiry is not by way of punishment but is only to facilitate the free and fair enquiry.

8 As the suspension of the Petitioner was in contemplation of the Departmental Enquiry but the same was not by way of punishment, it would not be relevant to enter into the rigmarole as to whether the order of suspension was actuated with malice or whether there was alleged misconduct.

9 Upon conclusion of the enquiry and in case the Petitioner is exonerated in the enquiry, then the employer can take a further decision whether the period spent under suspension shall be treated as period spent on duty or not.

10 Today it will be premature to conclude about the period of suspension whether to be construed as duty period or otherwise nor the dictum as to whether the order of suspension was actuated with malice or the alleged misconduct existed would not be germane to be decided. The suspension simplicitor is in contemplation of the enquiry and not by way of the

punishment. It would be observed that within two months upon the suspension of the Petitioner, the enquiry had commenced. The suspension is also revoked on 15 April 2019 after about one year and prior to the decision in the Original Application.

11 Infact in Original Application it was not necessary for the Tribunal to decide the issue of validity of suspension as the same was already revoked/ withdrawn.

12 In light of the above, we pass the following order:

ORDER

i) The enquiry as such is not a subject matter of the present Petition, may be proceeded and completed in accordance with law. Upon conclusion of the enquiry, the Employer/Disciplinary Authority shall take decision with regard to the period under suspension as a period spent on duty or not, without being influenced by the observations made in the impugned order in the Original Application or in the present order.

ii) The Writ Petition is accordingly disposed of. No costs.

iii) In view of disposal of Writ Petition, above Interim Applications also stand disposed of.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)