

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13766 OF 2023

Dr. Aafiya Nargis Mohammad Ayyub Ansari |
R/o. Malegaon, Dist. Nashik | **.. Petitioner**

Versus

1. The Principal, |
Mohammadia Tibbia College and Assayer Hospital, |
Malegaon, Dist. Nashik. |
2. The President, |
Al Jamiatul Mohammadia Al Khairiah Mohammadia |
Tibbia College and Assayer Hospital, Dist. Nashik. |
3. The Inquiry Officer, |
Mohammadia Tibbia College and Assayer Hospital, |
Malegaon, Dist. Nashik |
4. The Maharashtra University of Health and Science, |
Through it's Registrar, Vani Dindori Road, Dist. Nashik. |
5. The Director of Ayush, |
Government of Maharashtra, Mumbai | **.. Respondents**

Mr. Nawaz Haindady, with Ms. Gazala and Mr. Mohammad Taha, i/by
Mr. Momin Musaddique Ahmed, for the Petitioner.

Mr. J.D. Khairnar for Respondent No.1.

Mr. Mufeez Ansari for Respondent No.3.

Mr. Sachindra Shetye for Respondent No.4.

Mr. N.C. Walimbe, Addl. G.P., with Ms. A.A. Purav, AGP, for the Respondent-
State.

CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ

DATE : 12TH DECEMBER, 2023.

P.C. :

1. Heard learned counsel for the parties.
2. The challenge raised in this Writ Petition is to the order of Suspension dated 4th September 2023, by which the petitioner, who is serving on the post of Associate Professor, Department of Gynecology, has been placed under suspension pending enquiry. A further challenge is also raised to the charge-sheet dated 6th October 2023, that has been issued to the petitioner.
3. Mr. Haindady, the learned counsel for the petitioner submits that the order of Suspension has been issued without there being any authority with the Management inasmuch as Direction No.1 of 2017 does not permit suspending the services of an employee. Merely by passing a resolution on 2nd September 2023, the Management resolved to place the services of the petitioner under suspension. Without giving any notice to the petitioner and without complying with the principles of natural justice, the petitioner has been placed under suspension on 4th September 2023. It is submitted that the order of Suspension does not indicate any reason whatsoever for taking recourse to such act. As regards the charge-sheet dated 6th October 2023, it is submitted that the recourse taken to the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, (*for short "Rules of 1979"*) in that regard, is without any legal basis. The field being covered by Direction No.1 of 2017, the enquiry, if at all, was required to be conducted in accordance therewith. Inviting attention to the charge-sheet, as issued, it is submitted that the petitioner was

called upon to submit her reply within a period of ten days, which was contrary to Direction No.1 of 2017 and especially Clause 31(2)(c) thereof, which requires grant of reasonable time of not less than three weeks for doing so. The petitioner had made a request in that regard by the communication dated 16th October 2023. This would indicate that the enquiry was being conducted not in accordance with Direction No.1 of 2017 but by seeking to apply the Rules of 1979, when the same were not applicable. It is urged thus that the order of Suspension as well as the charge-sheet deserve to be interfered with and quashed.

4. Mr. Khairnar, the learned counsel appearing for respondent nos.1 and 2 submitted that since an enquiry was proposed against the petitioner, her services were placed under suspension pending enquiry on 4th September 2023. This was in accordance with Clause 31(2)(a) of Direction No.1 of 2017. As regards issuance of charge-sheet, it was submitted that since Direction No.1 of 2017 was silent in that regard, recourse was taken to the Rules of 1979 while granting time to respond to the charge-sheet. The enquiry was being held in accordance with law and no interference with the same was called for.

5. We have heard learned counsel for the parties and we have also perused the documents on record. Insofar as the order of Suspension dated 4th September 2023 is concerned, it is seen that, by passing a resolution on 2nd September 2023, the Management proposed to hold an enquiry against the petitioner. Under Clause 28 of Direction No.1 of 2017, the Management is

empowered to hold such enquiry against its employee. As per Clause 31(2)(a), the power to suspend an employee pending enquiry has been provided for. It is well settled that the Master is the best person to consider whether the services of it's employee are required to be placed under suspension pending enquiry. We do not find that the order of Suspension suffers from any illegality especially when the same has been issued pending enquiry. There is no question of hearing the petitioner prior to placing her under suspension.

6. Coming to the challenge to the charge-sheet, we do find that the petitioner was granted time of 10 days to respond to the statement of imputation of charges. Perusal of Clause 31(2)(c) of Direction No.1 of 2017 indicates that a reasonable time of not less than three weeks is required to be granted to submit written statement of defence. We, however, find that pursuant to the petitioner's request for grant of further time by the communication dated 16th October 2023, such time has been granted vide communication dated 19th October 2023. The recourse however taken by the Enquiry Officer to the Rules of 1979 is unwarranted especially when Direction No.1 of 2017 and Clause 31 thereof prescribes the procedure in that regard. The enquiry is required to be conducted in accordance with Direction No.1 of 2017.

7. Since the enquiry is underway, we are not inclined to examine the challenge raised to the charge-sheet in the present proceedings. Suffice it to observe that in case any adverse order is passed against the petitioner at the

conclusion of the enquiry, all challenges in that regard can be raised while assailing the final order. We keep that challenge to the charge-sheet open for being raised in appropriate proceedings at an appropriate stage. In the light of the aforesaid, we do not find any reason to interfere in writ jurisdiction at this stage. The Writ Petition is thus disposed of with aforesaid observations with no order as to costs.

[FIRDOSH P. POONIWALLA, J.]

[A.S. CHANDURKAR, J.]