

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15949 OF 2022
WITH
INTERIM APPLICATION NO. 3354 OF 2023

Yuvraj Dhondu Bhadane

.....Petitioner

V/s.

State of Maharashtra and Ors.

.....Respondents

Mr. Arshad Shaikh, Senior Advocate a/w. Mr. Ranjit Agashe, Ms. Namrata Agashe and Mr. Saurabh Mandlik i/by. Ms. Pavitra Manesh, Advocate for the petitioner-applicant.

Mr. B.V. Samant, AGP for State- respondent no.1.

Mr. Vijay Patil, Advocate for respondents no. 2 and 3.

CORAM : S.V. GANGAPURWALA, ACTING CJ &
SANDEEP V. MARNE, J.

DATE : 24th APRIL, 2023.

P.C. :

1. We have heard Mr. Shaikh, learned Senior Counsel for the petitioner and learned Counsel for the respondent.

2. The petitioner challenges (i) the order of suspension; and (ii) the chargesheet in the Departmental Enquiry.

3. It is the contention of Mr. Shaikh, learned Senior Advocate that the Departmental Enquiry has commenced based on the chargesheet. As far as the charge with regard to the correction of the date of birth in the school record is concerned, the same was effectuated more than nine years prior to the petitioner taking up employment with the respondent.

4. The learned Counsel further submits that as far as criminal case filed with regard to the offence punishable under Section 376 of the Indian Penal Code is concerned, no decision can be arrived at in the Departmental Enquiry when the criminal case is pending.

5. It is further submitted that while granting bail, the learned Single Judge of this Court had come to the *prima-facie* conclusion in favour of petitioner and had thereafter granted interim bail to the petitioner.

6. It is further contended by the learned Counsel for the petitioner that the petitioner is victimised time and again ever he was confirmed in service in the year 2007. The respondents started victimising him on one count or other. False and frivolous charges are leveled against him. Earlier also, petitioner came in the zone of consideration for promotion. Though the petitioner was exonerated still the

subsequent Commissioner took up disciplinary proceedings on the same charges. The petitioner had to approach this Court. This Court had to stay the disciplinary proceedings. It is further submitted that immediately upon confirmation of the petitioner in service, a Resolution was passed on 20.06.2007 resolving to terminate the petitioner's services. Against the same, petitioner had to approach this Court and pursuant to interim orders passed by this Court, the petitioner was continued in service. The petitioner was taking action against the illegal and unauthorised construction, hawkers and even he took action against the erstwhile Deputy Mayor. Because of all this, the petitioner was sought to be cornered. The petitioner's car which was parked in the premises of the Corporation, was set on fire. The petitioner was given threats of life and death. The petitioner filed Writ Petition No. 1448/2016 and sought police protection. This Court granted police protection to the petitioner. The ex-Chairman of the Standing Committee Mr. Pappu Kalani, against whom various cases under TADA were filed, personally attacked the petitioner. The petitioner sought to file criminal case and those concerned were arrested. According to the learned Senior Counsel, as the petitioner is victimised the chargesheet deserves to be quashed and set aside.

7. It is further submitted by the learned Senior Advocate that the order of suspension cannot withstand

judicial scrutiny. The chargesheet having not been served within 90 days, the suspension could not have been continued. Reliance is sought to be placed on the judgment of the Apex Court in the case of **Ajay Kumar Choudhary v. Union of India, Through its Secretary and Anr. AIR 2015 SCC 2389**. It is further submitted that the petitioner is discriminated against other persons against whom grave charges of corruption and other provisions are concerned, are pending. They were also reinstated by revoking the suspension. The illustrations are given in the rejoinder Affidavit to that effect.

8. It is further contended that the order of suspension is not confirmed by the Corporation. On the said count, it deserves to be set aside. Reliance is placed on Section 56 of the Mumbai Municipal Corporation Act, 1956. Learned Counsel submits that on/or about 4.04.2022 the General Body of the Corporation was not in existence and the Commissioner is vested with the powers of the General Body.

9. We have considered the submissions. The chargesheet cannot be assailed unless it is demonstrated that the same is issued by a non-competent person. The charge whether the petitioner had given false promise of service in the Corporation or not, is a subject matter of enquiry. It is only upon evidence being adduced and the enquiry report being received, further steps can be undertaken. Petitioner is facing serious charges. The allegations are to be proved. We have been told that the enquiry is at the fag end. The

evidence is concluded in the Departmental Enquiry. The enquiry report is awaited. The enquiry has already concluded. In view of that, now it would not be worthwhile to consider the contentions of the petitioner. Moreover, it is not the case of the petitioner that the chargesheet was issued by an incompetent authority. Though petitioner has leveled allegations against various authorities/persons, none of them are impleaded in their personal capacity. On that count also, no interference is called for with regard to chargesheet.

10. As far as suspension is concerned, reliance on the judgment of the Apex Court in **Ajay Chaudhary** (supra) may not enure to the benefit of the petitioner. The petitioner is suspended on/or about 11.03.2022 during the pendency of disciplinary proceedings. The Departmental Enquiry has continued further. The evidence has concluded. In the case of **Ajay Chaudhary** (supra), the Supreme Court did not quash the suspension as the enquiry had proceeded further.

11. As it is stated from 04.04.2022 onwards, the General Body is not in existence, confirmation of the suspension order issued by the Commissioner, by General Body in view of compliance of Section 56 of the Mumbai Municipal Corporation Act, now is not possible. Be that as it may, the evidence in the Departmental Enquiry has already concluded. The respondents are required to conclude the entire proceedings expeditiously. It is submitted by the learned Counsel for the Corporation that within 15 days the

enquiry report may be received. The copy of the enquiry report be forwarded to the petitioner immediately. The petitioner may file reply upon receipt of the enquiry report, preferably within 15 days and the Disciplinary Authority may take decision, preferably within one month from the date of receipt of the enquiry report.

12. The Writ Petition is disposed of with the aforesaid observations. Depending upon the result of the Disciplinary Authority, further steps shall be undertaken by the parties.

**NEETA
SHAILESH
SAWANT**

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.04.27
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