

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.3678 OF 2023

Sameer Ahmad Sheikh Murtaza, Age
about 52 years, Occup. Service, R/o
Jama Masjid Ward, Umarkhed, Tal.
Umarkhed, Dist.Yavatmal.

Petitioner

-Vs.-

Municipal Council, Umarkhed,
through its Chief Officer, Umarkhed,
Tal.Umarkhed, Dist.Yavatmal.

Respondent

Shri.S.M. Vaishnav, counsel for the petitioner
Shri.P.P. Deshmukh, counsel for respondent.

**CORAM:A.S.CHANDURKAR AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 18th July, 2023

O R A L J U D G M E N T (Per : Vrushali V.Joshi, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner has challenged the order of suspension dated 08.06.2023, thereby suspending the petitioner from the post

of Headmaster of Municipal Council Secondary and Higher Secondary) Urdu School, Municipal Council Umarkhed. The action was taken by the respondent after six months from the date of alleged incident and suspension is without considering the report submitted by the Head of Mid-day Meal Scheme.

4. The petitioner was initially appointed as 'Shikshak Sevak' on 12.06.2000 and was confirmed as 'Assistant Teacher' on 12.06.2003. He was promoted as Headmaster and working as Headmaster. The Primary School is also run in the same building in the morning shift and the employee namely, Shri. Abdul Saleh Junaid, the supervisor in the School is the in charge of affairs of Headmaster in the morning-shift. On 12.10.2022 when the petitioner was at his residence, he received a call and it was informed that the President of School Committee Namely, Arifujjam Abdul Salam is taking some of the grains and commodities, which are stored in the School for Mid-day Meal and is shifting to some other place with the help of labours. Immediately, the petitioner visited the school and has issued notice to the concerned helpers. The said employees gave their statements and submitted their apologies for assisting the President of the School Committee. In their statement, they have stated that as the food grains were not in a proper condition, they

took it to clean and they have also stated that they will not commit any such conduct thereafter.

5. The President of School Committee had also given his representation and informed that he has taken the food grains only for genuine purpose of cleaning the food grains. He admitted his guilt and beg pardon for it. The petitioner immediately after receiving the reply from concerned employees forwarded a report to the respondent on 19.10.2022 and submitted the details of actual incident and action taken by him. The respondent has issued the notice on 18.10.2022 against the petitioner alleging misconduct on the basis of complaints received by the citizens and the newspaper items. The School was inspected by the Superintendent of Mid-day Meal scheme department Panchayat Samiti Umarkhed on 18.10.2022. The Superintendent has verified the entire record of the School like stock register, inward-outward register and CCTV footage. The foodgrains which were shifted were seized and deposited with the Municipal Council and later on, they were handed back to the School. The Supervisor observed in his report that the President of the School Committee, who without giving any notice to the petitioner has made an attempt to shift certain amount of commodities of the School and he has specifically mentioned that the petitioner was not present on the

spot and there was no any involvement of the petitioner in such incident. The blame was on the President of the School Committee, who has committed the alleged foul-play.

6. Thereafter, on 01.12.2022, the notice was issued to the petitioner and the proposed inspection of the School by Committee on 02.12.2022 was informed. The petitioner received said notice on 06.12.2022 at 5.00 p.m. The Block Education Officer has visited the School on 02.12.2022 without intimating the petitioner and has submitted the report on 06.12.2022 stating that the petitioner is not having proper control over the scheme of Mid-day meal. The petitioner has stated that Block Education Officer has not mentioned about the earlier report submitted by the Superintendent of Mid-day meal. The respondent has passed the order of suspension on 08.06.2023, after the period of six months on the report submitted by the Block Education Officer.

7. The learned counsel for the petitioner has stated that the allegations of violation of Rule 3(1)(2) and (3) of Maharashtra Civil Services Rules, 1979 is concerned, the impugned order is totally silent as to how Rule 3 (1) is violated by the petitioner. So far as Rule 3(2) of the said Rules is concerned, the petitioner has taken all possible steps to ensure devotion to duty. When the entire response was accepted by the President of the School

Committee, then the petitioner cannot be held liable for violation of Rule 3(2) of the said Rules. If Rule (1)(2) and (3) are not at all made out then there is no reason to pass an order of suspension.

8. The Superintendent of Mid-day Meal Scheme is the proper authority to verify whether any misconduct is committed and whether the commodities under the Mid-Day Meal Scheme has been misappropriated or not. The said authority has given the clean chit to the petitioner then there was no need of suspending the services of the petitioner. The report dated 06.12.2022, where one Abdul Saleh Junaid, who is working on the post of supervisor is expected to be the Headmaster in the morning-shift. The alleged incident has took place in the morning shift only then, it is not the liability of the petitioner and he cannot be hold liable for the said incident.

9. He has further urged that the petitioner is not at all responsible. He is suspended from service by making him scapegoat of the entire incident, no action is taken against the other employees. Hence, the entire action is suffering from *mala fide* intention. The order of suspension does not mention that the petitioner is entitled for subsistence allowance, on the contrary, the respondent has directed the petitioner to join Girls Secondary Urdu School Umarkhed and render the services as

‘Assistant Teacher’ which is nothing but reversion from the service, which is permissible only after conducting appropriate departmental enquiry.

10. As per Maharashtra Civil Service Rules every employee, who is suspended from the service is entitled to subsistence allowance, which is nothing but violation of Article 14 as well as 16 of the Constitution of India, as the purpose of payment of subsistence allowance is to provide financial support to the employee to face departmental enquiry and also to support his family during the pendency of enquiry. The very support is denied by the respondent in the present case. Hence, prayed to set aside the order of suspension.

11. The respondent No.1 has filed reply and denied the contents in the petition. The preliminary objection is raised by the respondent as adequate alternate and efficacious remedy is available to the petitioner. The relief claimed by the petitioner can be granted by the Standing Committee by the respondent under Section 79(6) of the said Act. As the appeal is provided against the order passed by the Chief Officer, petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

12. The respondent had received an application on 28.10.2022 from some citizens of Umarkhed mentioning that the petitioner is trying to pressurise the enquiry officers by collecting mob of 50 to 60 youths. The Superintendent of Shaley Poshan Aahar. Panchayat Samiti Umarkhed by it's notice dated 31.10.2022 directed the petitioner to submit his detailed explanation within seven days for the deficiencies found in various food grains items provided under mid day meal scheme otherwise necessary action will be initiated against him. The President of School Committee without giving any notice to the petitioner had moved the foodgrains out of premises of the Urdu School and thereby committed an offence.

13. The Block Education Officer, Panchayat Samiti, Umarkhed had issued a notice on 01.12.2022 informing to the petitioner and concerned persons to remain present for inspection in School on 02.12.2022. The enquiry Committee of four members have visited the School on 02.12.2022 at 2.30 p.m. and recorded the statements of the persons of said incident dated 17.10.2022. The Block Education Officer has submitted his reply on 06.12.2022 to the Education Officer, Zilla Parishad Yavatmal. He has specifically observed in the said enquiry report that the petitioner is not having the overall control over the Shaley Poshan

Aahar Scheme and he is guilty of negligence in duty. After receipt of enquiry report dated 06.12.2022, the respondent by its communication dated 15.12.2022 requested for guidance for further action. By communication dated 18.01.2023, it is informed that as per enquiry report, necessary action should be taken upon the guilty employee and report of the same be submitted to the office of Education Officer, Zilla Parishad Yavatmal. As the petitioner is found guilty as per enquiry report of the Block Education Officer, the respondent by its order dated 08.06.2023 suspended the services of the petitioner as Headmaster of Secondary and Higher Secondary School and directed him to perform the duty of Assistant Teacher.

14. As per rules in respect of Mid-day Meal Scheme Headmaster is having various responsibilities. He is having over all control over the foodgrains distributed to the School. He has to record the details of quantity of food grains received and date of received against the allocation. He has to maintain all the records at the School level. As per the enquiry record, the petitioner is found not having the over all control over the foodgrains, which is negligence in duty and therefore Rule 3(1)(2) and (3) of Maharashtra Civil Services Rules, 1979 is attracted to the petitioner. Therefore, the order passed by the respondent

suspending the petitioner is correct. Hence, prayed to dismiss the Writ Petition.

15. Heard both the parties. The respondent has raised the objection to the maintainability of the petition and the petitioner has remedy to file appeal under Section 79(6) of the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965 (Act of 1965).

The petitioner has filed rejoinder and submitted that the remedy to file appeal U/s.79(6) of the Act of 1965 is available only against an order imposing penalty U/s. 79(1) of the Act. In the present case, the impugned order is an order of suspension dated 08.06.2023 and as on today the respondent Municipal Council has not imposed any penalty U/s.79(1) of the Act of 1965. As such, if there is no order of penalty, the remedy U/s.79(6) of the Act of 1965 could not be available.

16. After going through the record, we find that the petitioner, who is the Headmaster is the in-charge and the over all responsibility of the mid day meal scheme is on the petitioner. As per the manual for district level functionaries of mid day meal scheme, for transportation of food grains, the Headmaster of the School is responsible for recording the details of quantity of food

grains, ensuring that food grains are delivered, confirm the allocation actually made, timely reporting of issues, if any, acknowledge the relevant documents after the delivery of food grains. It appears that petitioner is shifting the responsibility on the Superintendent of the primary School. The learned counsel appearing for the petitioner has relied on the judgment in the case of **Union of India and anr. Vs. Ashok Kumar Aggarawal** reported in (2013) 16 Supreme Court Cases 147 the relevant paragraph is as follows:

“In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by *mala fide*, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee’s continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc. Long period of suspension does not make the order of suspension invalid. However, where for any reason it is not possible to proceed with the domestic inquiry the delinquent may not be kept under suspension”.

17. In same judgment the Hon'ble Court has also observed that it is ordinarily not open to Court to interfere with suspension order as it is within exclusive domain of Competent Authority who can review it's suspension order and revoke it if it is satisfied.

18. The petitioner has argued that as per the Notification dated 30th September 2015 issued by Ministry of Human Rights Resources Development over all control over the Mid-day Meal Scheme is of School Management. On perusal of point 7(2) in said notification, the Role of the Headmaster mentions his responsibilities as follows:-

- Record the details of quantity of food grains received and date of receipt against the allocations.
- Ensure the food grain delivered confirm with allocations actually made by (weighing of goof grains.) Timely reporting of issues if any.
- Acknowledge the relevant documents after the delivery of food grains.

19. It can be seen from the record that in view of various complaints received by the Chief Officer, Municipal Council, Umarkhed, he issued a direction to the Superintendent, Panchayat Samiti Umarkhed to conduct necessary enquiry in the matter of the complaints with regard to the Mid-day Meal Scheme. It was observed that though the responsibility for the said Scheme was with the Headmaster, removal of the food grains elsewhere was a

serious matter. An enquiry was accordingly conducted by the Committee appointed in that regard and its report was submitted to the Chief Officer. The Chief Officer thereafter forwarded the enquiry report to the Education Officer (Primary) on 15.12.2022. The Education Officer (Primary) thereafter instructed the Chief Officer on 18.01.2023 to take necessary steps again in accordance with the enquiry report and thereafter submit the report of said action as taken. It is thereafter, that on 08.06.2023, the order of suspension came to be issued.

20. Perusal of the order of suspension indicates that a departmental enquiry has been proposed against the petitioner, who was the Headmaster at the relevant point of time. It, therefore, cannot be said that without there being any material available with the Chief Officer, the order of suspension has been issued. At this stage, it would not be permissible to evaluate such material and record a finding that the suspension of the petitioner was unwarranted. As and when such enquiry is held against the petitioner it would be open for the petitioner to participate in the same and indicate his defence that he was not negligent in discharge of his duties. The sufficiency of material available that has resulted in issuing the order of suspension cannot be examined at this stage. It will, therefore, have to be held that as

the employer-the Chief Officer has thought it fit to suspend the services of the petitioner pending departmental enquiry. We are, therefore, did not find that the order of suspension deserves interference.

21. It is however, to be noted that the order of suspension requires the petitioner to hand over his charge of the post of Headmaster to another Assistant Teacher. The petitioner has been required to remain present in the school during the period of suspension and discharge duties as Assistant Teacher. It was urged that this direction amounts to reverting the petitioner on the post of Assistant Teacher without holding him guilty. In this regard, it will have to be clarified that the direction to hand over his charge of the post of Headmaster and discharge duties as Assistant Teacher would operate only during the period of suspension. The same would be an ad-hoc arrangement since there is only one post of Headmaster. On the period of suspension coming to an end, the petitioner would be entitled to continue on the post of Headmaster subject to the out come of the departmental proceedings. Similarly, since there is no reference in the order of suspension that the petitioner would be entitled to subsistence allowance it goes without saying that during the period of

suspension the petitioner would be entitled to receive subsistence allowance in accordance with the rules in that regard.

22. For the aforesaid reasons, we are not inclined to interfere with the order of suspension dated 08.06.2023. It is, however, clarified that the direction issued to the petitioner to hand over his charge of the post of Headmaster and discharge duties as Assistant Teacher is only an ad-hoc arrangement in view of the order of suspension. This ad-hoc arrangement would continue only till the time the petitioner's suspension continues. Same shall not be treated as reversion of the petitioner on the post of Assistant Teacher. The petitioner is entitled to receive subsistence allowance during the period of suspension in accordance with the prevailing rules.

23. Rule is disposed of in the aforesaid terms with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(A.S.CHANDURKAR,J)