



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 637 OF 2024

Shridhar Gangadhar Landge  
Age: 56 years, Occu. Service AS Headmaster  
Shri Tuljabhavani Vidyalaya, Khadki,  
Tq. and District Ahmednagar,  
R/o. Khadki, Tq. And District Ahmednagar ... **Petitioner**

**Versus**

1. The Secretary  
Rayat Shikshan Sanstha, Satara  
Through Mr. Vikas S/o Vinayakrao Deshmukh,  
Age: Major, R/o Rayat Shikshan Sanstha  
Satara, Khadki, Tq. And District Ahmednagar
2. Ashok Nanasaheb Khadus  
The State of Maharashtra  
Through Education Officer (Secondary),  
Zilla Parishad, Ahmednagar
3. Bodkhe Navnath Sahadu  
The Inspector  
Rayat Shikshan Sanstha Satara, Khadki,  
Taluka and District Ahmednagar ... **Respondents**

....

Mr. K. P. Rodge, Advocate for Petitioner  
Mr. M. M. Nerlikar, AGP for Respondent No.2  
Mr. P. S. Paranjape, Advocate for Respondent Nos.1 and 3 (Absent)

....

**CORAM : RAVINDRA V. GHUGE AND  
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 11.07.2024  
PRONOUNCED ON : 24. 07.2024**

**JUDGMENT (Per – Y. G. Khobragade, J.) :-**

1. Rule. Rule made returnable forthwith and heard finally by consent of both the sides, at admission stage.
2. Heard Mr. K. P. Rodge, the learned Counsel appearing on behalf of Petitioner and Mr. M. M. Nerlikar, the learned AGP for Respondent No. 2. None present for Respondent Nos. 1 and 3.
3. By the present Petition under Article 226 of the Constitution of India, the Petitioner challenges the impugned communication dated 30.12.2023 issued by Respondent No. 1, whereby the Petitioner, Headmaster of Shree Tuljabhavani Vidyalaya, Khadki, Taluka and District Ahmednagar, came to be suspended with effect from 01.01.2024.
4. Mr. Rodge, the learned Counsel appearing for the Petitioner canvassed that after due selection process, the Petitioner was appointed as an Assistant Teacher by the Respondent No. 1 on 04.11.1995. The Respondent No. 1 is a private educational institution, receiving grant-in-aid from the State Government and it is

governed by the provisions of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (in short, 'MEPS Act'). On 30.03.2022, the Petitioner was promoted to the post of Supervisor. Thereafter, vide order dated 17.06.2022, the Petitioner was promoted as Headmaster and was posted at Mahatma Gandhi Viyalaya, Sakharpa, Taluka Sangameshwar, District Ratnagiri. The Education Officer granted approval to the appointment of the Petitioner vide order dated 12.10.2022 w.e.f. 17.06.2022. On 20.12.2023, the Petitioner submitted a representation with the President of Rayat Shikshan Sanstha, complaining against Shri. Navnath Sahadu Bodkhe, who has been transferred at New English School, Chandgaon, Taluka Shrigonda, on account of his extra marital relations with one lady peon and his involvement in malpractices in distribution of fruits and other articles to the students of the school. Therefore, the Petitioner prayed for cancellation of appointment of Shri Navnath Bodkhe. The Petitioner had started agitation for removal from service of said Navnath Bodkhe, but subsequently, the Petitioner stopped agitation. Thereafter, discrete inquiry was ordered against the petitioner. Accordingly, the Inspector of Respondent No. 1 school submitted the inquiry report on 28.12.2023. The Petitioner

submitted an application for voluntary retirement with effect from 27.12.2023, however, on 30.12.2024, the Petitioner was served with the impugned suspension order.

5. The learned Counsel for the Petitioner canvassed that vide communication dated 30.12.2023, the Petitioner was suspended without issuing any show-cause notice and without providing him an opportunity of being heard. Therefore, the impugned suspension order is illegal and contrary to the provisions of the MEPS Act. It further canvassed that the Petitioner has been suspended under order dated 30.12.2023, however, the disciplinary authority failed to complete the enquiry within period of 90 days and kept the petitioner under suspension even after lapse of 90 days. Therefore, the impugned suspension order is illegal and bad in law, hence prayed for quashing and setting aside of the same.

6. In support of his submissions, the learned Counsel appearing for the Petitioner has placed reliance on the following judgments.

(i) ***Sonal Prakashrao Gawande Vs. Municipal Council, Pandharkawada - Writ Petition No. 6304 of 2023 (Nagpur Bench), decided on 21.03.2024;***

(ii) *Chatrapal Vs. The State of Uttar Pradesh and others – MANU/SC/0113/2024.*

7. Adv. P. S. Paranjape though appeared by filing vakalatnama on behalf of the Respondent no. 1 & 3, but he did not appear in the matter. Shri Babasaheb Sambhaji Naikwade, the Asstt. Inspector of Respondent No. 1 has filed affidavit-in-reply and resisted the Petition. According to the Respondents, the education Sanstha was require to promote certain Headmasters to the post of Divisional Officer and Assistant Divisional Officer. Therefore, the Committee was formed and criteria was fixed that the meritorious teachers would be considered for the promotion, whose remaining service period must be more than two years. The present Petitioner was not considered for the promotional post of Divisional Officer and Assistant Divisional Officer because he was set to retire within a period of two years. Therefore, out of a grudge, the Petitioner directly submitted communication dated 20.12.2023 to the President of Education Society and made serious allegations against Mr. Navnath Bodkhe, who was considered for the promotion to the said post. According to Respondent No. 3, the Petitioner published defamatory items in the news papers making serious allegation about the act of said Navnath

Bodkhe which is harmful to the image of the Institution. Since the Petitioner started defaming the educational society, therefore, the management considered to initiate inquiry against him. Therefore, during pendency of enquiry, the Petitioner was kept under suspension and Committee of Two Members was formed to inquire into the charges. Accordingly, the Petitioner was served with notice thereby requesting him to appear before the committee on 18.01.2024, however, on 17.01.2024, the Petitioner moved an application and sought an adjournment on medical ground. Therefore, by another notice, the Petitioner was called upon to appear before the Enquiry Committee on 20.01.2024, but the Petitioner again remained absent and sent a request letter for adjournment. The Respondents further contended that, the Petitioner is not keen to face the inquiry in compliance of principle of natural justice. On the contrary, the petitioner prayed for quashing of suspension order dated 30-12-2023, therefore, prayed for dismissal of the petition.

8. The Respondent No. 3 further contended that by the impugned suspension order dated 30.12.2023, the Petitioner was kept under suspension for the pending inquiry into the charges. Since, the Respondent Management having right to inquire into misconduct

committed by the petitioner and charges levelled against him and during pendency of the enquiry, the Petitioner has been suspended. Therefore, merely the Petitioner is kept under suspension beyond the period of 90 days, does not automatically leads to revocation of his suspension.

9. Having regard to the submissions, We have gone through the petition paper book. It is not in dispute that on 04.11.1995, the Petitioner was appointed as an Assistant Teacher and considering his length of service, he was promoted to the post of Supervisor on 30.03.2022. Further, the Petitioner was again promoted to the post of Headmaster on 17.06.2022. The Education Officer granted approval to the promotion of the Petitioner vide order dated 12.10.2022. Since the posts of Divisional Officer and Assistant Divisional Officer were to be filled up from the post of Headmasters, the Respondent No. 1 Educational Sanstha constituted Selection committee and fixed criteria that, those Headmasters whose service period left is more than two years, would be considered for the promotional post. The present Petitioner was not considered for the promotional post of Divisional Officer as well as Assistant Divisional officer as he was set to retire within next two years.

10. The record speaks that, on 20.12.2023, the Petitioner submitted a communication with the President of Education Sanstha alleging that Shri Navnath Bodkhe, who has been transferred from New English School, Chandgaon, Taluka Shrigonda, on account of charges of adulteration and his involment in malpractices with regard to distribution of fruits/food articles to the students. Therefore, prestige of Sanstha has been at stake due to the said act of Navnath Bodkhe and prayed for cancellation of his promotion to the post of Divisional Officer.

11. It further appears that, the Petitioner had started agitating against the Respondent Sanstha and made several correspondences against promotee Shri Navnath Bodkhe. However, on 27.12.2023, the Petitioner himself submitted an application for grant of voluntary retirement with effect from 01.01.2024, but on 30.12.2023, the Respondent No. 3 issued the impugned order and suspended the petitioner during pendency of inquiry as per Rule 33 of the MEPS, Rules, 1981 on the conditions viz., I) the petitioner/delinquent would be entitled for suspension allownaces under Rule 34 and 35(4), ii) the Delinquent would not leave Head

Quarter without prior permission, iii) the Delinquent would not engage in another employment and he would furnish such undertaking , iv) the Delinquent would not submit his resignation and v) no any kind of leave would granted.

12. It is not in dispute that the Respondent No. 3 formed two member committee to inquire into the charges. Accordingly, on 16.01.2024, the inquiry committee issued a notice to the Petitioner and directed him to appear before the inquiry committee on 18.01.2024, but the Petitioner submitted an application on 17.01.2024, and sought adjournment on ground of his health problem. Therefore, by another notice the petitioner was directed to appear before the committee on 20.01.2024, however, the Petitioner again remained absent and sought further adjournment. Therefore, inquiry not completed.

13. Section 4A of the 'MEPS Act provides that, about holding of enquiry in case of alleged misconduct or misbehavior of a serious nature or moral turpitude on part of an employee and such enquiry is to be conducted by the Inquiry Committee into such allegations. Rule 34 contemplates about payment of subsistence allowances during

suspension period at an amount equal to the leave salary which the employee would have drawn if he had been on leave on half pay and in addition, Dearness allowance based on such leave salary. Rule 34 (1) (b) provides that, where the period of suspension exceeds 4 months, the authority which made or is deemed to have made the order or suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first 4 months as follows, namely:

*“(i) The amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of first 4 months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the employee.*

*(ii) The amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of first 4 months, if the opinion of the said authority the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the employee.*

*(iii) The rate of Dearness allowance shall be based on the increased or on the decreased amount of subsistence allowance, as the case may be, admissible under sub-clauses (i) and (ii).”*

14. In the case of ***Sonal D/o Prakashrao Gawande Vs. The Municipal Council, Pandharkawada, Dist. Yavatmal***, (cited supra), the

co-ordinate Bench of this Court considered the case of *Ajay Kumar Choudhary Vs. Union of India, through its Secretary and another – (2015) 7 SCC 291*, wherein it is held thus:-

*“We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”*

15. In the case of ***Chatrapal*** (cited supra), the Hon'ble Supreme court has observed in paras 12 and 13, as under:-

*“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

*13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case*

*the same has been conducted in accordance with law;*  
*(iii) go into the adequacy of the evidence;*  
*(iv) go into the reliability of the evidence;*  
*(v) interfere, if there be some legal evidence on which findings can be based.*  
*(vi) correct the error of fact however grave it may appear to be;*  
*(vii) go into the proportionality of punishment unless it shocks its conscience.”*

16. In the case of **State of Andhra Pradesh Vs. N. Radhakishan – (1998) 4 SCC 154**, wherein it is held thus:-

*“It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic*

*principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration.*

17. In the case in hand, the Petitioner came to be suspended and Inquiry Committee already constituted to inquire into misconduct committed by the petitioner. Though, the Petitioner served with the notices for his appearance before the Inquiry Committee, but the petitioner sought adjournments on two occasions on account of his health problem, due to which enquiry was not completed and the petitioner remained under suspension beyond 90 days. Therefore, it cannot be held that, the disciplinary authority has not completed the enquiry within period of 90 days intentionally and deliberately. The Petitioner has not disputed about payment of subsistence allowances. Therefore, keeping in view the ratio laid down in case of N. Radhakishan, *cited supra*, the delay caused in disciplinary proceeding cannot said to be on account of the disciplinary authority, but it is apparent on account of non-cooperation on part of the petitioner.

18. Since, the Respondent No. 3 employer having statutory right to enquire into misconduct of its employee and suspend employee for his misconduct committed during course of employment by issuing suspension order, it cannot be said to be illegal and bad in law. In the case in hand, the Petitioner has challenged the suspension order dated 30.12.2023, only on the ground that the inquiry has not been completed within a period of 90 days and his suspension continued beyond 90 days, but considering the fact that two notices were served upon the petitioner, and the petitioner himself did not appear before the Enquiry Committee and sought adjournments thereby delaying the enquiry. The petitioner has been regularly receiving admissible suspension allowances. Therefore, enquiry has not been concluded, on account of non-cooperation from the Petitioner. Hence, the impugned suspension order cannot be said to be illegal and bad in law.

19. In view of above discussion, the present **Petition is hereby dismissed**. Accordingly, Rule is discharged.

[ Y. G. KHOBRADE, J. ]

[ RAVINDRA V. GHUGE, J. ]