



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

CIVIL APPLICATION (CAW) NO. 1094 OF 2024

IN

WRIT PETITION NO. 6193 OF 2022

(Mrs. Ashwini d/o. Shrihari Gawarle...Vs.. State of Maharashtra and others)
with

CIVIL APPLICATION (CAW) NO. 1095 OF 2024

IN

WRIT PETITION NO. 6194 OF 2022

(Mr. Rutesh s/o. Shamrao Lonkar...Vs.. State of Maharashtra and others)
with

CIVIL APPLICATION (CAW) NO. 1091 OF 2024

IN

WRIT PETITION NO. 6195 OF 2022

(Mr. Vivek R. Barwat...Vs.. State of Maharashtra and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vyankatraman, counsel for applicants/petitioners,
Mr. N.S. Rao, AGP for respondent Nos. 1 and 2/State,
Mr. N.S. Deshpande, counsel for respondent No. 3,
Mr. Abhishek Tripathi h/f. Mr. H.D. Dangre, counsel for
respondent Nos. 4 and 5.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 21-06-2024

The challenge in the petition is to the order of suspension dated 23.8.2021 issued by the respondent No. 4 – Management.

2. The petitioner an academician was appointed on the post of Assistant Professor and her services were duly approved by respondent No. 3 – University since 2010.

3. Pursuant to the alleged act of insubordination and indiscipline, a suspension order dated 23.8.2021 came to be issued which was preceded with a show-cause notice.

4. Subsequent thereto, the petitioner was served with a chargesheet on 16.9.2021.

5. We are informed that the disciplinary proceedings against the petitioner has reached at the fag end as the written arguments are already submitted by the respective parties.

6. In the aforesaid background, learned counsel appearing for the petitioner Mr. Vyankatraman would urge that the order of suspension is liable to be stayed for the reason that same was not followed with a reasoned order of extension of suspension after a lapse of three months. Mr. Vyankatram, so as to substantiate the said contention has invited our attention to the observations made by the Hon'ble Apex Court in the matter of *Ajay Kumar Choudhary Vs. Union of India through its Secretary and another* reported in (2015)7 SCC 291 ("*Ajay Kumar Choudhary*"). According to him, the Hon'ble Apex Court has already held that suspension for a long period can be considered as punitive in nature and as such, in case, if the suspension is to be extended beyond the period of three months, there has to be a reasoned order extending the suspension. He would further add that the suspension is continuing for almost a period of three years and the enquiry is yet to be concluded. Drawing support from the observations in paragraph Nos. 11, 12 and 21 of the said judgment which was subsequently followed by the learned Division Bench of this Court in the matter of *Dhananjay Bhagwandas Devi Vs. State of Maharashtra and others*

(Writ Petition No. 4920/2023) decided on 22.12.2023 (*Dhananjay Bhagwandas*), he would urge that the order of suspension needs to be stayed pending hearing of the writ petition.

7. As against above, learned counsel for respondent No. 4 Management would strenuously urge that this Court in extraordinary jurisdiction cannot cause interference at this stage of hearing of the petition. According to him, the issue which is sought to be canvased was never part of the main pleadings. Further according to him, the observations in the case of *Ajay Kumar Choudhary* (supra) will have hardly any applicability to the facts of the present case, as in the case in hand, chargesheet was served on the petitioner almost within a period of one month from the date of suspension and the enquiry proceedings have already reached at the concluding stage. He would further urge that in the factual matrix which were before the Hon'ble Apex Court in the matter of *Ajay Kumar Choudhary*, (supra) the petitioner therein was not served with the chargesheet for inordinate period which had constrained the Hon'ble Apex Court to take the view of passing of reasoned order extending the suspension period in case if the suspension extends by three months. As such, he would urge that the application is liable to be rejected.

8. We have appreciated the rival claims.

9. We are guided on the issue in question in the matter of *Ajay Kumar Choudhary* (supra), Paragraph 11,

12 and 21 of the said judgment reads thus:

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

21. We, therefore, direct that the currency of a

Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 person concerned 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.”

10. The Hon'ble Apex Court while dealing with a similar issue, was of the view that in case, if the suspension is for prolonged period which is in this case i.e. almost three years, same can be termed as punitive in absence of their being a reasoned order thereby extending the suspension. Admittedly, there is no reasoned order passed by the respondent No. 4 Management extending the suspension of the petitioner. As such, the said conduct, in our opinion, goes contrary

to the law laid down by the Hon'ble Apex Court in the matter of *Ajay Kumar Choudhary* (supra). We can draw support from the observations in paragraph Nos. 11, 12 and 21 which are reproduced hereinabove. Same is also followed by learned Division Bench of this Court in the matter of *Dhananjay Bhagwandas Devi* (supra).

11. We are conscious of the fact that both the parties are in agreement that written notes of argument are already submitted before the Enquiry Officer, however, we are unable to get assistance as to the period within which such enquiry proceeding can be concluded. This has prompted us to exercise jurisdiction in favour of the petitioner. That being so, for the reasons recorded hereinabove, we deem it appropriate to allow present application in terms of prayer clause (A).

12. After the dictation of order is completed, the learned counsel for respondents submits that the Court cannot pass an order staying the suspension as the Hon'ble Apex Court has not stayed the order of suspension but has given an opportunity to the Management to pass a fresh order in the matter thereby recording reasons extending suspension.

13. As far as the aforesaid submissions are concerned, we hardly see any basis for the same in the reply submitted by the respondents. As such we are unable to accept the said submissions which were made by the learned counsel that too in absence of any pleadings.

14. By consent, the facts of Writ Petition No. 6193/2022 and Civil Application (CAW) No. 1094/2024 are taken into account as the issue which is involved in all the three petitions is same.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede