



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6304 OF 2023

Sonal D/o Prakashrao Gawande,  
Aged about 39 years, Occupation :  
Service  
R/o Sane Guruji Nagar, PVR Layout,  
Yavatmal, Tah and Dist. Yavatmal

...Petitioner

**// VERSUS //**

The Municipal Council,  
Pandharkawada  
Tah. Padharkawada, Dist. Yavatmal  
through its Chief Officer

... Respondent

Shri N.B.Kalwaghe, Advocate for the petitioner.  
Shri A.J.Pathak, Advocate for the respondent.

**CORAM : ANIL S. KILOR, AND  
SMT. M.S.JAWALKAR, JJ.**

**DATED : 21<sup>st</sup> MARCH, 2024.**

**ORAL JUDGMENT : [ PER : ANIL S.KILOR, J.]**

Rule. Rule made returnable forthwith. Heard finally by  
consent of the parties.

2. This writ petition takes exception to the order of suspension  
issued by the Chief Officer, Municipal Council, Pandharkawada, District  
Yavatmal, on 24<sup>th</sup> August, 2023, on the ground that the offence is

registered against the petitioner who is an Assistant Teacher, for the offence punishable under Sections 420, 467, 468, 471 and Section 34 of the Indian Penal Code.

3. The brief facts of the present case as under : The petitioner was appointed on the post of Shikshan Sevak on 19<sup>th</sup> January, 2009 on probation for a period of three years, on a post reserved for physically disabled person.

4. However, on 14<sup>th</sup> February, 2023 on a complaint by one Mayur Meshram, projecting himself as Vice President of Amravati Apang Janta Dal Samjik Sangatna, lodged to the police, alleging that the medical certificates submitted by the petitioner were bogus.

5. Thereupon, the offence was registered vide Crime No. 90 of 2023 for the offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

6. In consequence of the same, a show cause notice was issued to the petitioner on 17<sup>th</sup> February, 2023 and on submission of reply a chargesheet was served upon the petitioner on 24<sup>th</sup> February, 2023. Thereafter, a five men Committee was appointed to inquire into the matter. The said Committee submitted its report on 12<sup>th</sup> June, 2023.

7. In the conclusion recorded by the Committee, no definite conclusion was recorded to the effect that, the certificates submitted by the petitioner were bogus and fabricated. On the contrary, the

Committee asked the Municipal Council to get it verified from the appropriate authority.

8. It is pertinent to note that after issuance of show cause or after submission of the report by the Committee, for two months, there was no order of suspension. However, on 24<sup>th</sup> August, 2023 without recording any reason the petitioner was put under suspension.

9. It is not the case of the respondents that any departmental inquiry is pending against the petitioner and if he is not suspended free and fair inquiry is not possible or even there are no allegations that the petitioner may pressurize the witness.

10. As far as the criminal complaint is concerned, the chargesheet has already been filed after completion of investigation. In the circumstances, in the peculiar facts and circumstances of the case in hand we are of the opinion that the suspension would amount to punishment.

11. It is to be noted that the petitioner is under suspension from last eight months without disclosing any reason for the same in the order of the suspension.

12. Shri Pathak, learned counsel for the respondent Municipal Council has placed reliance upon the Rule 4 of Maharashtra Civil Services (Disciplinary and Appeal), Rules, 1979. However, after going through the said rule and particularly the word, 'may' used in Sub rule 1 of Rule 4

shows that the power to suspend is discretionary which may be exercised considering the contingencies stipulated in the said rule.

13. It is imperative to note that on 9<sup>th</sup> July, 2019 the State Government issued instructions as regards the suspension and thereby it was directed that in a case when the departmental inquiry has been initiated and the chargesheet is served upon the delinquent within three months from the date of suspension, a review shall be made about the continuation of order of suspension and a clear decision shall be taken in this respect. The said Government Resolution further says that where in a case after suspension within three months the departmental inquiry has not been initiated or the chargesheet is not served upon the delinquent, as per the judgment of the Hon'ble Supreme Court of India, the only option left is to cancel the suspension.

14. The said Government Resolution was issued by the State of Maharashtra in view of the judgment of the Hon'ble Supreme Court of India dated 16<sup>th</sup> February, 2015 passed in the case of *Ajay Kumar Choudhary Vs. Union of India through its Secretary and another*<sup>1</sup>, 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

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1 (2015) 7 SCC 291

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. Thus, considering the above referred facts and circumstances, we have no hesitation to hold that the impugned suspension order needs to be quashed and set aside. Accordingly, we pass the following order.

- i. The writ petition is allowed;
- ii. The impugned suspension order dated 24<sup>th</sup> August, 2023 issued by the respondent no.1 Municipal Council, Pandharkawada, Dist. Yavatmal is hereby quashed and set aside.

[ M.S.JAWALKAR, J.]

[ANIL S. KILOR, J.]