

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 4688 OF 2014

Nihal s/o Jafarsahab Saudagar ...Petitioner  
versus  
The State of Maharashtra and others ...Respondents

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Mr. A.V. Patil Indrale, advocate for the petitioner  
Mr. U.S. Mote, AGP for respondent Nos. 1 to 3  
Mr. A.M. Mukhedkar, advocate for respondent NO.4  
Mr. S.M. Vibhute, advocate for respondent No.5  
Mr. M.S. Swami, advocate for respondent No.6

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**CORAM : S. V. GANGAPURWALA AND  
V. K. JADHAV, JJ.**

**Date of Reserving  
the Order : 25.11.2014**

**Date of pronouncing  
the Order : 24.12.2014**

**ORDER (PER V.K. JADHAV, J.) :-**

1. By the present writ petition, the petitioner assails the communication/order dated 13.5.2014 issued by the Education Officer (Secondary), Zilla Parishad, Latur. The petitioner is also challenging the action of respondent No.5, the alleged President of respondent No.4-society, in placing the petitioner under suspension.

2. Brief facts, giving rise to the present writ petition, are as follows:-

a. The petitioner came to be appointed as an Assistant Teacher in Rashtriya Madhyamik Vidyalaya, Takli, which is being run by the respondent No.4 society. Eventually, the petitioner came to be promoted to the post of Head Master as per merit, in the year 2000. The petitioner was granted approval on the post of Head Master by the concerned Education Officer in the year 2000 itself. However, since last 2/3 years, prior to filing of writ petition, there is dispute in the management of respondent No.4-society. The petitioner is also the Secretary of respondent No.4-society whereas the respondent No.5 claims to be the President of the society. There are 2/3 proceedings regarding conduct of elections of the managing committee members of the society pending for adjudication before the Charity authorities. However, as of today, in Schedule I of the society, respondent No.5 is shown as President whereas the petitioner is shown as Secretary and there are other managing committee members also.

b. On the basis of a complaint lodged by one Mr. Kamble, who is working as peon in the school, a crime came to be registered on 8.1.2014 with Deoni police station under the provisions of Prevention

of Corruption Act, 1988, against the petitioner. The allegations have been made against the petitioner for demanding and accepting bribe. Pursuant to the said crime, the petitioner came to be arrested. Respondent No.5, by making misrepresentation to respondent No.3-Education Officer, insisted that the petitioner, since being arrested in criminal case, be suspended/removed from service. In that view of the matter, the Education Officer, by communication dated 24.1.2014, informed the respondent No.4-society to take appropriate action against the petitioner under the provisions of M.E.P.S. Act and the Rules.

c. Accordingly, respondent No.4-society, by communication dated 10.3.2014, informed the respondent No.3-Education Officer that the society has resolved that though the petitioner being arrested in connection with the alleged crime on 9.1.2014, he came to be released on bail on the same day and thus action of suspension of the petitioner cannot be taken in view of the provisions of M.E.P.S. Act and Rules. However, respondent No.5, in his capacity as alleged President of the society, insisted the Education Officer to compel the respondent No.4-society to suspend and remove the petitioner from service. As a result of this, the Education Officer, again by communication dated 5.3.2014, informed the respondent No.4-society for taking appropriate administrative action against the

petitioner. The respondent No.4-society informed that only because criminal case is registered against the employee, he is arrested and in custody for less than 48 hours, such employee cannot be suspended from service. Despite the aforesaid decision of respondent No.4-society about not taking any action against the petitioner, the Pay Unit of Zilla Parishad, Latur, by communication dated 3.4.2014, informed the petitioner that since he is suspended from service by respondent No.5, the salary bills of the school cannot be sanctioned under his signature. The petitioner has accordingly assailed the impugned communication/order dated 13.5.2014 issued by the respondent No.3-Education Officer (Secondary), Zilla Parishad, Latur as well as suspension order of the petitioner issued by respondent No.5 dated 18.3.2014, by filing instant writ petition.

3. Mr. Indrale Patil, the learned counsel for the petitioner submits that the respondent No.5, with a view to capture the affairs of the management as well as the school, in collusion with an employee, has made a false complaint against the petitioner and pursuant to the said false complaint, a crime has been registered against the petitioner under the provisions of Prevention of Corruption Act. The learned counsel further submits that though the managing committee of respondent No.4-society has already taken decision in its meeting held on 8.3.2014, for not taking any action against the petitioner, the

respondent No.5 has illegally suspended the petitioner. The learned counsel further submits that the suspension of the petitioner, merely on the ground that criminal case has been registered against him and he was in custody for less than a period of 24 hours, is absolutely illegal and malafide. The respondent No.5, in collusion with respondent No.3, is trying to remove the petitioner from service. The respondent No.5 has issued suspension order 18.3.2014, thereby suspending the petitioner from service, is against the provisions of M.E.P.S. Act and the Rules. The alleged suspension order is issued by respondent No.5 in his personal capacity. Thus, the impugned suspension order of the petitioner as well as the impugned communication dated 13.5.2014 issued by the Education Officer are illegal, malafide and therefore, deserve to be quashed and set aside. The learned counsel further submits that the issue regarding interpretation of Rule 33(5) of M.E.P.S. Rules, 1981, is no longer res-integra. The learned counsel, in order to substantiate his contention, has placed reliance on the following judgments.

- I) Shaila Shamkant Pimple vs. State of Maharashtra and others reported in 2006 (2) Bom.C.R. 772,
- II) Hamid Khan Nayyar Habib Khan vs. Education Officer, Secondary, Z.P. Amravati and others, reported in 2004 (6) Bom.C.R. 871

III) Shri Madhukar Namdeo Patil vs. Chairman Sudhagad Education Society and others, reported in 2000 (4) Bom.C.R. 698

4. Mr. Mote, the learned A.G.P. submits that on receipt of information about arrest of petitioner under the provisions of Prevention of Corruption Act, the Education Department has issued letter to respondent No.4-society for taking action against the petitioner. The respondent No.3, on receipt of the communication dated 9.1.2014 from the Police Inspector, Anti Corruption Cell, in respect of arrest of petitioner, has issued letter dated 24.1.2014 for taking administrative action against the petitioner. The learned AGP further submits that right to appoint, suspend and terminate the services of employee are vested with the management. The alleged Resolution passed by the management dated 13.5.2014 is defective and therefore, the same was not approved. The said resolution was passed in the meeting, which was not chaired by the President. The said resolution was also not signed by the President. Lastly, the learned AGP submits that there is no prejudice caused due to communication by the managing committee which has decided to suspend the services of the petitioner.

5. Mr. Vibhute, the learned counsel for the respondent No.5

submits that the father of the petitioner is holding the post of Joint Secretary of respondent No.4-society whereas, the petitioner is holding the post of Head master of Rashtriya Vidyalaya. The respondent No.4 is also holding the post of secretary of society. The petitioner as well as father of the petitioner are misusing their position in the society. They have made every attempts to capture the society by initiating false proceedings by way of submitting Change Reports, showing false elections etc. However, the Deputy Charity Commissioner, Latur has rejected the Change Report of the petitioner twice i.e. on 28.2.2013 and 29.5.2014. The learned counsel further submits that the petitioner has demanded bribe of Rs.1000/- from the peon of the school for submitting his pay bills. However, the said peon has lodged a complaint to A.C.B. Latur and accordingly, the A.C.B. on verifying truth of the complaint, held independent panchnama and voice recorder, caught red handed the petitioner for accepting the bribe on 8.1.2014 and in consequence therefore, the A.C.B. has registered offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, vide crime No. 3001 of 2014 dated 8.1.2014 and arrested the petitioner on the same day. Pursuant to the said registration of crime, the Education Officer, Latur, has directed the respondent No.4-society to take administrative action against the petitioner. Thus, the respondent No.5, by taking resolution of the society, has

sought prior permission of the Education Officer for suspension of the petitioner vide application dated 24.2.2014 in consonance with the Rule 35(1) r.w. Rule 33(1) of M.E.P.S. Rules 1981.

6. We have heard the submissions canvassed by the learned counsel for the respective parties.

7. It appears that there are two rival groups staking their right to manage the institution. The Change Reports submitted by the rival groups and the litigation *interse*, are pending consideration before the Assistant Charity Commissioner. We are not inclined to dilate on the rival contentions of respective parties as to who is in the management and entitled to manage the office of the Trust. The present matter is limited to the extent of challenge to the order of suspension of the petitioner in absence of prior permission of the Education Officer.

8. The Full Bench of this Court, in the case of ***Awdhesh Narayan vs. Adarsh Vidya Mandir Trust and another, reported in 2004 (1 Mh.L.J. 676***, while interpreting the provision of sub Rule 33 and 35 of M.E.P.S. Rules, laid down following propositions:-

“(i) Normally, an employee of a recognised school may be placed under suspension by the management after obtaining prior

permission/approval of an authority in accordance with sub-rule (1) of Rules 33 and 35 of the Rules;

- (ii) In extraordinary circumstances and emergent situations, where an employee is alleged to be guilty of grave charges and there is reason to believe that in the event of the guilt being proved against him/her, he/she is likely to be reduced in rank or removed from service and the management decides to hold an inquiry, he/she may be placed under suspension under sub-rule (4) of Rule 35 without obtaining prior approval of education authority;
- (iii) Where an employee of a recognised school is placed under suspension with prior approval as required by sub-rule (1) of Rules 33 and 35, sub-rule (3) of Rule 35 will operate and subsistence allowance will be paid in accordance with the said provision;
- (iv) Where an employee of a recognised school is placed under suspension without approval, sub-rule (4) of Rule 35 will apply and subsistence allowance will be paid by the management as laid down in the said provision;
- (v) *Vanmala* did not lay down correct law on the point and is hereby overruled. All subsequent decisions either following or reiterating *Vanmala* also stand overruled;
- (vi) *Shyamrao Tukaram* is approved as laying down correct law on the point."

9. In the case in hand, the Deputy Charity Commissioner, Latur has rejected the Change Report of the petitioner's group twice.

Undisputedly, the name of respondent No.5 is mentioned on Schedule I of the Trust as the President of the Trust with other members. The petitioner was caught red handed while accepting the bribe on 8.1.2014 in a trap, arranged by Anti Corruption Bureau and in consequence of which, crime No. 3001 of 2014 came to be registered under provisions of Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and on the same day he was arrested. Pursuant to the above trap, the Education Officer, Latur has directed respondent No.4 society to take administrative action against the petitioner. Since there are two rival groups claiming to be in the management of respondent No.4 society, one group has informed the Education Officer about not proposing any action against the petitioner, whereas respondent No.5, in his capacity as a president of the Trust, sought permission of the Education Officer for suspension of the petitioner vide application dated 24.2.2014 in consonance with the provisions of aforesaid Rules. Thereupon, the Education Officer has also directed action under the relevant Rules by his order dated 5.3.2014. In view of the same, respondent No.4 society has passed Resolution on 16.3.2014 and decided to suspend the petitioner.

10. We are of the view that there is sufficient material to indicate that there were extra ordinary circumstances and also emergent

situation which warranted the order of suspension even without taking recourse to the approval of the authority.

11. So far as the provisions of Rule 37(2) (F) of the said Rules, which provides that enquiry has to be ordinarily completed within a period of 120 days from the date of first meeting of the committee or from the date of suspension of an employee, the word "ordinarily" indicates that period of 120 days is not an inflexible Rule. The enquiry does not stand vitiated upon expiry of the said term. In view of the provisions of Rule, after period of 120 days, the consequences has been laid down in regard to the suspension and in view of the same, the suspension ceases to operate. However, in this case the documents placed on record unequivocally present that enquiry, though initiated, could not be completed within the prescribed period for want of co-operation from the petitioner.

12. In view of the above, we do not find any merit in the petition and the same stands dismissed. In the circumstances, there shall be no order as to costs.

( V. K. JADHAV, J.)

( S. V. GANGAPURWALA, J. )

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