
(2016) 08 BOM CK 0174
In the Bombay High Court
Case No : Writ Petition No. 10219 of 2015

Bhagwan S/o Damaji Dongre

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 35(5)
Prevention of Corruption Act, 1988 — Section 12, Section 13(2), Section 7

Citation : (2016) 6 ALLMR 748

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : K.J. Suryawanshi, Advocate, for the Respondent No. 3; A.V. Deshmukh, A.G.P, for the Respondent Nos. 1, 2 and 5; M.C. Syed, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

S.S. Shinde, J. - Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. It is the case of the petitioner that he was appointed as Assistant Teacher in Respondent No. 4 ? school on 15th July, 1983 and promoted to the post of Headmaster on 18th September, 2013. Crime No. 3041/2015 came to be registered against him at Police Station, Pathri for the offences under sections 7, 12 r/w 13(2) of the Prevention of Corruption Act, 1988. He was arrested on 30th April, 2015 and was released on bail on 2nd May, 2015 by the Competent Court. Respondent No. 3 by letter dated 2nd May, 2015 sought permission from Respondent No. 2 to place the petitioner under suspension. The said permission was granted on 14th July, 2015 on the condition of conducting departmental enquiry. However, respondent no. 3 placed the petitioner under suspension on 15th May, 2015 i.e. two months prior to granting of such permission by Respondent No.2.

3. It is further the case of the petitioner that he retired on superannuation from the service on 31st May, 2015. He was on leave for the period from 28th April, 2015 to 30th May, 2015. Respondent No.3 has not even constituted enquiry committee till date for conducting departmental enquiry against the petitioner. It is further the case of the petitioner that the concerned Respondents have not sanctioned pension to the petitioner since he is placed under suspension. It is the specific contention of the petitioner that law does not permit conducting of the departmental enquiry of the retired employee and employee cannot be placed under suspension for more than the period for which he was in custody of the Police or the Jail Authority.

4. The learned counsel appearing for the petitioner in support of his contention that the departmental enquiry against the employee, who is retired from services, cannot be continued after retirement, placed reliance on the reported judgment of the learned Single Judge of Bombay High Court bench at Nagpur in the case of Shah Babu Education Society, Patur and another v. Presiding Officer, School Tribunal, Amravati and Aurangabad Divisions, Aurangabad and another, 2006(6)Mh.L.J. 547. Therefore, relying upon the pleadings and grounds taken in the Petition, the learned counsel appearing for the petitioner submits that the Petition deserves to be allowed.

5. On the other hand, the learned counsel appearing for Respondent No. 3, relying upon the averments in the affidavit in reply, made the following submissions.

The petitioner was promoted to the post of Headmaster by passing a resolution on 15th September, 2013 and the proposal for approval of his appointment as Headmaster was forwarded to the Education Officer. The approval was also granted to his appointment by the Education Officer as Headmaster. The petitioner illegally demanded the amount of Rs. 50,000/- from one Shri Parmeshwar Sakhamkar Karpe. Therefore, F.I.R. was lodged against the petitioner at Police Station, Pathri on 30th April, 2015 and crime No. 3041/2015 was registered against him for the offences under Sections 7, 12 r/w 13(2) of the Prevention of Corruption Act, 1988. The said fact was communicated to Respondent No. 3 by the concerned Police Inspector, Anti Corruption Bureau. The Managing Committee upon receiving that information passed a Resolution in the meeting dated 2nd May, 2015 and decided to place the petitioner under suspension and accordingly, the letter was written to Respondent No. 2 seeking permission. The petitioner was placed under suspension on 14th May, 2015. It is submitted that the petitioner filed an application on 4th June, 2015 to respondent no. 3 and warned that he would lodge report against Respondent no. 3 under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioner is involved in serious crime. After decision of the criminal case, pending against the petitioner and his acquittal, Respondent No. 3 ? management would take appropriate steps as per Rules to forward the pension papers of the petitioner. However, till the said case is pending, the

petitioner's request to pay him pension cannot be considered.

6. We have carefully considered the submissions of the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent/ State and that of the learned counsel appearing for Respondent No.3. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto and reply filed by Respondent No. 3.

7. The fact that the petitioner stood retired on superannuation from the services on 31st May, 2015 is not in dispute. The petitioner was arrested on 30th April, 2015 and released on bail on 2nd May, 2015 also is not in dispute. Admittedly, the petitioner's services are governed by the Employees Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules, 1981. In the case of Shah Babu Education Society, Patur and another (supra), the learned Single Judge, while interpreting the provisions of Section 9 of the said Act and also Rules held that the provisions of the said Act and the Rules do not enable employer to continue with departmental enquiry after superannuation of employee. The Supreme Court in the case of Bhagirathi Jena v. Board of Directors, O.S.F.C. and others, (1999) 3 S.C.C.666 also has taken a view that in the absence of any specific provision to continue the departmental enquiry after retirement, the enquiry cannot be continued and would stand lapsed after retirement.

8. The Division Bench of this Court in the case of Antaji S/o Datta Gonare v. The State of Maharashtra, in Writ Petition No. 2486 of 2016, decided on 8th August, 2016, in paras 7 and 8 has held thus :-

"7. The facts of the present case, and that of Vasant Haribhau Ugale (supra), are almost identical. In that case, the petitioner was arrested in connection with the offences punishable under Sections 147, 148, 142, 452, 302 read with Section 34 of Indian Penal Code. He was detained in custody for the period from 29th January, 2002 to 3rd February, 2002 (five days). He came to be released on 3rd February, 2002. The Principal of the school placed him under suspension with effect from 12th February, 2002 on the ground that the petitioner was detained in custody for a period of more than 48 hours. The School Management moved the Education Officer on 24th April, 2002 seeking approval to the suspension of the petitioner. The said proposal was subsequently withdrawn and, therefore, suspension came to be revoked by the Management with effect from 19th June, 2002. The petitioner was allowed to resume his duties on 21st June, 2002. Since then, the petitioner continued to work as a Laboratory Assistant. The salary of the petitioner in respect of the period of suspension as well as regular salary after his resuming duties from 21st June, 2002 was not paid to him on the ground that it was permissible for the Education Officer to direct that the salary payable to the petitioner ought to be kept in the joint account of the School and Head Master, and only after termination of criminal proceedings against the petitioner in acquittal, the said amount ought to be released to the petitioner. The petitioner therein gave-up his claim for arrears of salary in respect of period

of his suspension. It was held that the Education Officer does not have any sanction of law to withhold the salary of the petitioner after his resuming his duties with effect from 21st June, 2002. Therefore, the Education Officer was directed to approve the salary bills of the petitioner therein regularly and was advised that he should not refuse the same for the reason of pendency of the criminal proceedings.

8. In the case of Shri Madhukar Namdeo Patil, (supra), it has been held that the suspension of the employee under Rule 33(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "MEPS Rules"), where the employee has been detained in police custody or judicial custody, cannot exceed the duration of the detention of the employee in such custody."

9. In view of the above stated settled legal position, the petitioner in the present case is entitled for the reliefs claimed in the present Petition. The petitioner was under detention with the above-referred crime from 30th April, 2015 to 2nd May, 2015. He will be deemed to be under suspension during the said period in view of the provisions of the Rule 35(5) of the MEPS Rules. However, Respondent No.3 placed the petitioner under suspension on 15th May, 2015 i.e. after he was released on bail on 2nd May, 2015. So far as, the period of detention of the petitioner from 30th April, 2015 to 2nd May, 2015 is concerned, he will be deemed to be under suspension during the said period, as held herein above. Since the petitioner was placed under suspension on 15th May, 2015 and the permission was granted by Respondent no.3 on 14th July, 2015 in respect of the said period of suspension, Respondent No.3 will be liable to pay the salary to the petitioner.

10. In the light of discussion herein above, the Petition deserves to be allowed in terms of prayer clause `B". So far as the prayer clause `C" is concerned, since criminal case is pending the Respondents are directed to take appropriate steps to pay the provisional pension/pension to the petitioner in accordance with the relevant Rules and in that respect take necessary steps, as expeditiously as possible, and preferably within 12 weeks from today.

11. The Petition is partly allowed and the same stands disposed of. No costs.