
(1997) 04 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 697 of 1997

Dilip Venkatrao Patil

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 10-04-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1997) 04 BOM CK 0004

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : N.H. Patil, for the Appellant; N.B. Khandare, A.G.P for respondents nos. 1 and 4, D.N. Suryavanshi for respondent no. 2, P.N. Walujkar, for the Respondent

Final Decision : Allowed

Judgement

A.P. Shah, J.—Rule. Respondents waive service. By consent, rule is made returnable forthwith.

2. By this petition under Article 226, the petitioner is challenging the order of suspension dated 26th August, 1996 passed by the Principal of Shivaji Mahavidyalaya (Arts, Science and Commerce), Parbhani.

3. Only few facts are required to be stated. The petitioner is working as a teacher in the junior college of Shivaji Mahavidyalaya (Arts, Science and Commerce), Parbhani. It seems that a criminal case is registered against the petitioner under sections 498A and 306 of Indian Penal Code. He was arrested by the police in connection with the said case and was subsequently released on bail. By the impugned order dated 26th August, 1996, the petitioner was put under suspension by the Principal of the college.

4. Mr. Patil, learned Counsel for the petitioner raises a three-fold submission before us. Firstly, he submits that under the provisions of the Maharashtra

Employees of Private Schools (Conditions of Service) Rules, 1981, an order of suspension is required to be passed by the management. The Principal of the college has no authority to pass the suspension order. Secondly, Mr. Patil submits that before passing a suspension order prior permission of the Education Officer is necessary and since no such permission was taken, the order of suspension is illegal. Thirdly, Mr. Patil submits that even assuming that the order of suspension is valid, the petitioner is entitled to receive subsistence allowance. Mr. Patil makes a grievance that the petitioner has not been paid subsistence allowance since August, 1996.

5. Mr. Suryavanshi, learned advocate appearing for the management, has supported the petitioner. He contends that the Principal has no right to pass the order of suspension without prior permission of the management. Mr. Walujkar, learned advocate for the respondent No. 3, submits that the petitioner is liable to be suspended in view of Rule 33(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Mr. Walujkar further submits that suspension contemplated by Rule 33(5) is automatic and is liable to be continued till the criminal proceedings are finally terminated.

4. After hearing the learned counsel for the parties, we are of the opinion that the order of suspension of the petitioner cannot be sustained in law. Rule 35 provides for suspension. Under Rule 35(1), the management is empowered to suspend an employee, but such suspension can be ordered only with the prior approval of the appropriate authority i.e. the Education Officer. Under sub-rule (2) the period of suspension cannot exceed more than four months except with the prior approval of the Education Officer. Then sub-rule (3) provides that where the employee is suspended with prior approval, he shall be paid subsistence allowance under the scheme of payment through Co-operative Banks for a period of four months only and thereafter, the payment shall be made by the management concerned. Sub-rule (4) says that in case where the employee is suspended by the management without obtaining prior approval of appropriate authority, the payment of subsistence allowance even during the first four months of suspension and for further period thereafter till the completion of inquiry shall be made by the management itself. Thus it is clear that the power of suspension is vested in the management and it is required to be exercised with the prior approval of the appropriate authority. In *Vanmala S. Aney vs. National Education Society*, 1982 Mh.L.J. 403, this Court has held that the provisions of section 35(1) are mandatory and any suspension without the prior approval of the Education Officer is invalid. In the present case, the order of suspension suffers from two major defects. Firstly, it is passed by the Principal and not by the management and secondly approval of the Education Officer has not been obtained. Thus, the order of suspension of the petitioner passed by the Principal is clearly without authority of law. The reliance placed by Mr. Walujkar on Rule 33(5) is misconceived. Rule 33 lays down the procedure for inflicting major penalties. Sub-rule (5) of Rule 33 reads as follows :-

"An employee against whom proceedings have been taken on criminal charge or who is detained under any law for the time being in force providing for preventive detention shall be considered as under suspension for any period during which he is under such detention or he is detained in police or judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment, and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him or until he is relieved from detention and is in a position to rejoin duty and producing documentary proof of his release (otherwise than on bail), or acquittal as the case may be. An adjustment of his pay and allowances for such periods shall be made, according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of charge or detention being held by the Court to be unjustified."

On a plain reading of the aforesaid rule, it is clear that it merely provides that an employee shall be deemed to be under suspension during the period of his detention in police and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him. In view of this rule, the petitioner will not be entitled to draw any salary or allowances during the period of his detention, but the rule does not contemplate automatic suspension pending the criminal proceedings. Under these circumstances, petition is liable to be allowed. Rule is made absolute in terms of prayer clause (B). We, however, clarify that it will be open for the management to suspend the petitioner after following the procedure prescribed by law.