

(2025) 04 BOM CK 0303

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No. 14475 Of 2021

Machindra Maruti Gaikwad

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 30-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 04 BOM CK 0303

Hon'ble Judges : Mangesh S. Patil, J;Y. G. Khobragade, J

Bench : Division Bench

Advocate : Rahul A. Tambe, Amar V. Lavte, Sharad V. Natu

Final Decision : Disposed Of

Judgement

Y. G. Khobragade, J

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By the present petition under Article 226 of the Constitution of India, the petitioner put forth prayer clauses (B), (C) and (D) as under:

“(B) The Respondents may kindly be directed to pay the outstanding salary of the petitioner since September, 2019 till the date of order;

(C) The Respondents may kindly be directed to pay interest @ 12% p.a. for causing unnecessary harassment to the petitioner and his family;

(D) The Respondents may kindly be directed to pay the salary of the petitioner regularly hereafter as the order of suspension has been withdrawn.”

3. It is the contention of the petitioner that since June 1997, he was working as Lab Attendant with respondent no. 2, however, vide order dated 16.09.2019, he was suspended by respondent no. 2 w.e.f. 5th September, 2019 on the basis of letter dated 10.09.2019 issued by the Deputy Superintendent of Police, Anti-

Corruption Bureau, Ahmednagar due to registration of Crime No. 870 of 2019 against him under the Prevention of Corruption Act and he was apprehended. The petitioner, had approached this Court by filing writ petition no. 5661 of 2020 and challenged his suspension order. On 27.10.2021, this Court passed an order observing that, respondent no. 2 had withdrawn the suspension order vide communication dated 26.10.2021 and the petitioner had submitted his joining report. It is further contended that, though his suspension order was revoked and he was permitted to join duty w.e.f. 26.10.2021, he has not been paid legal dues w.e.f. 05.09.2019 till the date of revocation of order of suspension. Therefore, he prays for issuance of writ of mandamus directing the respondents to pay legal dues/salary with interest @ 12% p.a.

4. Mr. Vd. Venket Purushottam Dharmadhikar, the Assistant Director of Ayush, Pune has filed affidavit in reply on behalf of Respondent no. 3 and strongly resisted the claim of the petitioner. According to Respondent no. 3, the petitioner was suspended w.e.f. 05.09.2019 by respondent no. 2 Management of the aided Ayurved College under order dated 16.09.2019 in pursuance of letter dated 10.09.2019 issued by the Deputy Superintendent of Police, Anti-Corruption Bureau due to registration crime. Subsequently, Respondent no. 2 withdrew suspension and permitted the petitioner to join duty w.e.f. 26.10.2021. Since, respondent no. 2 never obtained permission from respondent no. 3 as per Circular dated 03.06.1998 prior to suspension of the petitioner and respondent no. 3 is not concerned with performance of duty by the petitioner, who is the employee of respondent no. 2, it is the responsibility of the respondent no. 2 to pay legal dues of the Petitioner. Further, the petitioner is being paid regular salary w.e.f. 26.10.2021, hence, prayed for dismissal of the petition.

5. Respondent no. 2 filed an affidavit in reply and contended that vide communication dated 13.09.2019 it was informed to the respondent no. 3 about letter dated 10.09.2019 issued by the Deputy Superintendent of Police, ACB and guidance was sought regarding suspension of the petitioner there was no response. However, office of the DSP, Ahmednagar insisted for suspension of the petitioner, therefore, vide letter dated 16.09.2019 the petitioner was suspended w.e.f. 05.09.2019 and subsequently sought guidance from respondent No.3 regarding revocation of suspension and requested for payment of subsistence allowance. Since there was no communication from respondent no.3, the order of suspension came to be revoked w.e.f. 26.10.2021. Thereafter, the petitioner submitted a representation on 05.12.2019 and requested for release of salary for the suspension period. The representation of the petitioner was forwarded to Respondent no. 3 for guidance and release of legal dues but no communication was received. On 28.05.2020, respondent no. 3 issued a communication to the Director of Ayush seeking guidance but no reply was received. Therefore, respondent no. 3 is responsible for payment salary of the petitioner.

6. The learned counsel appearing for the Respondent no. 2 canvassed in vehemence that, services of Non-teaching staff of respondent no. 2 are governed

under Standard Code Rules, 1984. Rule 45 (c) of Standard Code Rules provide for suspension of non-teaching staff if criminal case against the non-teaching staff is registered and investigation is under progress. No proper guidance was received from the Registrar of Maharashtra University of Health Science, Nashik in respect of suspension of the petitioner, but the Management was asked to approach to the Directorate of Ayush because respondent no.2 is an aided college. Accordingly, on 24.07.2021, respondent no. 2 submitted bill for release of salary of the petitioner to respondent no. 3, but no communication has been received. Therefore, respondent no. 3 is liable to pay salary of the petitioner, hence, prayed for dismissal of the petition.

7. As per Sub Rule (6) of Rule 2 of the Standard Code Rules, "Competent Authority" means the authority competent to exercise different powers in the Non-agricultural universities Act and in the rules specified therein. Rule 24 provides for payment of subsistence allowance to the employee under suspension at the rates prescribed therein. Sub Rule (5) of Rule 24 provides that when an employee who has been suspended is reinstated, the competent authority which orders the reinstatement shall consider and make specific order – (a) regarding the period being treated as 'duty' or 'leave' and (b) regarding the pay and allowance to be paid to the employee for the period of his absence from duty.

8. Rule 45 of Standard Code Rules provides about suspension as under:

"45. Suspension (1) The appointing Authority or any authority to which the Appointing Authority is subordinate or any other authority empowered in that behalf by the Competent Authority, by general or special order, in Form 8 in Appendix I appended to these rules may place an employee under suspension :-

(a) where disciplinary proceedings against him is contemplated or is pending and is likely to result into imposing any of the major penalties. or

(b) where in the opinion of the Authority he has engaged himself in activities prejudicial to the interest of the University or College,

(c) where case against him in respect of any criminal offence is under investigation, enquiry or trial:

Provided that, where the order of suspension is made by an Authority lower than the Appointing Authority, such Authority shall forthwith report to the Appointing Authority, the circumstances in which the order was made:

Provided further that, suspension of an employee shall not be ordered unless there is a prima-facie case against him for imposing one of the major penalties stated in these rules or there is reason to believe that his continuance in service is likely to cause embarrassment or to hamper the investigation of the case."

9. Needless to say that, vide order dated 16.09.2019, the Petitioner was kept under suspension w.e.f. 05.09.2019 at the instance of the Deputy

Superintendent of Police, Anti-Corruption Bureau, Ahmednagar, on account of registration of Crime No. 870 of 2019 against the petitioner under the Prevention of Corruption Act. The petitioner was never served with the charge sheet and no enquiry was initiated. It is a matter of record that, the Petitioner had approached before this Court by filing writ petition no. 5661 of 2020 and had challenged his suspension. On 27.10.2021, the coordinate bench of this Court passed an order and disposed of the petition, which reads as under:

"1. Shri. Natu, the learned Advocate representing respondent Nos.2 and 3, places on record a copy of the communication dated 26/10/2021, addressed by the Institution to the petitioner, calling upon him to report on duties as his suspension order has been withdrawn and his legal dues would be paid to him after he reports for duties. A copy of the application filed by the petitioner, dated 26/10/2021 which is his joining report, is also placed on record.2. We are, therefore, taking both these documents on record, which are marked as 'X-1' and 'X-2', respectively.

3. In view of the above, the learned Advocate for the petitioner submits on instructions, that the petition stands worked out.

4. As such, this petition is disposed off."

10. It is not in dispute that respondent no. 2 is the appointing authority of the petitioner. On 16.09.2019, respondent no. 2 issued order of suspension and suspended the petitioner w.e.f. 05.09.2019. On 26.10.2021, respondent no. 2 issued a communication and withdrew the suspension and permitted the petitioner to resume the duty. Therefore, it is apparent that, Respondent no. 3 played no role while suspending the petitioner and withdrawing order of suspension. Needless to say that, as per Circular dated 03.06.1998 Respondent no. 2 did not obtain permission from respondent no. 3 prior to issuance of order of suspension. The petitioner is an employee of Respondent no. 2. Respondent no. 3 is not concerned with the performance of duty by the petitioner. Respondent no.2 could have obtained guidance from the university and/or Respondent no.3 prior to issuance of suspension order with reference to the communication received from the Deputy Superintendent of Police. However, no such exercise was undertaken.

11. It further appears that, Respondent no. 2 sought guidance from the Respondent no. 3 about payment of subsistence allowance/salary of the petitioner after lapse of two years from revocation of suspension. It is not in dispute that, the petitioner is being paid salary regularly from the date of resuming duty after revocation of suspension. When an employee's suspension is revoked without any departmental enquiry, the employee is normally entitled to full salary and allowance for the period of suspension and considering the said period as duty.

12. In the case in hand, respondent no.2 itself had issued suspension order without prior permission/due process as per Circular dated 03.06.1998 and itself

has revoked the same without conducting enquiry into the allegations. Therefore, in our view, Respondent no. 2 is liable to pay all the legal dues including salary of petitioner for the period of suspension i.e. w.e.f. 05.09.2019 till his resuming duty on 25.10.2021, with interest.

13. In view of the above, we dispose of the writ petition with direction to respondent no. 2 to pay all legal dues including salary of petitioner w.e.f. 05.09.2019 till 25.10.2021 with interest @ 6% per annum within a period of 3 months from today.

14. Rule is made absolute accordingly. No order as to costs.