

(2017) 02 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 11851 of 2016

Nanuram

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 2

Citation : (2017) 3 AIRBomR 30 : (2017) 3 ALLMR 4 : (2017) LIC 2297 : (2017) 3 MhLJ 251

Hon'ble Judges : T.V. Nalawade and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. C.R. Thorat, Advocate, for the Petitioner; Mr. S.B. Joshi, A.G.P, for the Respondent No.1/State; Mr. Vijay Sharma, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Disposed Off

Judgement

T.V. Nalawade, J.(Oral)—Rule, returnable forthwith. With the consent of the learned counsels for the parties, heard finally.

2. By this petition, the petitioner has challenged the order of suspension passed by the Chief Executive Officer, Zilla Parishad, Jalgaon - respondent No. 2 on 2nd November, 2016 against the petitioner.

3. By quoting certain incidents of registration of non-cognisable offences against the petitioner and relying on the report submitted by the Police Officer, who is making investigation of CR No. 17 of 2016, registered for the offences punishable under sections 307, 504, 506 read with section 34 of the Indian Penal Code, which is to the effect that the petitioner is probably harboring an accused who happens to be his brother, the impugned order of suspension is passed against the petitioner.

4. Apparently, the incidents mentioned in the suspension order do not relate to anything done by the petitioner in discharge of his duties as a teacher. The

learned counsel appearing for respondent Nos. 2 and 3 - the employer, produced on record the papers like the charge sheet served on the petitioner while initiating the departmental enquiry against him. The employer intends to hold departmental enquiry on the charge of misconduct and noninforming the registration of crime to the employer.

5. The particulars of the aforesaid charge are that the fact that CR No. 77/2016 was registered for the offences punishable under sections 504 and 506 of the Indian Penal Code against the petitioner, was not informed by the petitioner to the employer. In particular, there is also mention that in the past, four serious noncognizable offences were registered against the petitioner and due to that, his conduct is unbecoming of a teacher.

6. It is surprising that the officer of a rank of the Chief Executive Officer of Zilla Parishad has acted on the basis of a report submitted by the Police Officer in which it was informed that the petitioner is probably harboring one accused from a crime as he (the accused) was his brother. The record does not show that the petitioner's conduct had any relation to the duties which he is expected to discharge as a teacher.

7. The learned counsel for the petitioner placed reliance on the observations made by the Hon''ble the Apex Court in the case of Union of India and another v. Ashok Kumar Aggarwal 2014 ALL SCR 359. The Hon''ble the Apex Court in paragraph Nos. 8 to 11 of the said judgment, observed thus :

8. In State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296, this Court observed as under:-

"..... the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider ?.. and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf.....In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by mala fide, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of

the investigation or inquiry. The Authority also should keep in mind public interest of the impact of the delinquent's continuation in office while facing departmental inquiry or a trial of a criminal charge."

(Emphasis added)

(See also: *R.P. Kapur v. Union of India & Anr.*, AIR 1964 SC 787 ; and *Balvantrai Ratilal Patel v. State of Maharashtra*, AIR 1968 SC 800).

9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.

11. In *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel & Ors.*, (2006) 8 SCC 200, this Court explained:

"18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit selfrecognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given

material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

8. In the case *Union of India and another v. Ashok Kumar Aggarwal* (supra), the Apex Court has also discussed the necessity to intervene in the matter by using the extraordinary powers when the circumstances as mentioned in the abovequoted paragraphs, are found by the Court having extra ordinary jurisdiction.

9. On the other hand, the learned counsel for respondent Nos. 2 and 3 placed reliance on the observations made by the Apex Court in the case *Union of India and others v. P. Gunasekaran* (2015) 2 S.C.C. 610. The facts of the said case were totally different and the Apex Court was considering the proportionality of the penalty. The material mainly included the fact of the employee remaining absent on duty of the employer. Thus, the facts of the reported case, on which the learned counsel for respondent Nos. 2 and 3 has placed reliance, would show that the misconduct had relation to the discharge of duties of the employee. However, such is not the case at hand.

10. In view of the facts and circumstances, discussed herein above, we are of the opinion that the order of suspension passed against the petitioner cannot sustain in law. It would be open for respondent Nos. 2 and 3, if the applicable service rules permit, to go on with the departmental enquiry against the petitioner. In that view of the matter, we hold that the impugned suspension order cannot be upheld.

11. In the result, the Writ Petition is allowed. The order of suspension dated 2nd November, 2016, passed by the Chief Executive Officer, Zilla Parishad, Jalgaon against the petitioner is quashed and set aside. Rule is made absolute in those terms. The Writ Petition stands disposed of. No costs.