

(1987) 09 BOM CK 0048

In the Bombay High Court

Case No : Civil Application No. 567 of 1987 in Writ Petition No. 3244 of 1986
and Cont. Petition No. 63 of 1987

Tukaram Yeshwant Patil (Dr.)

APPELLANT

Vs

Bhagwantrao Gaikwad and Others

RESPONDENT

Date of Decision : 23-09-1987

Acts Referred:

Constitution of India, 1950 — Article 309, 311

Citation : (1987) 3 BomCR 327

Hon'ble Judges : V.V. Vaze, J;P.B. Sawant, J

Bench : Division Bench

Advocate : N.H. Gursahani and A.A. Irani, for the Appellant; M.B. Mehre, A.G.P. for respondents 2 and 3, for the Respondent

Judgement

P.B. Sawant, J.—This is an unfortunate case where the petitioner who is the head of the department, as Director of Horticulture, has been kept under suspension for months together pending the departmental inquiry which has not yet even started, and he has only six months to go before he reaches the superannuation age.

2. On July 10, 1986, the Hon''ble Minister in-charge of the department declared on the floor of the Assembly that the petitioner was suspended on account of the proposed departmental inquiry, and on the same day the order of his suspensions was issued. On July 30, 1986 the present petition was filed challenging the suspension, and it was admitted by this Court on August 11, 1986. At the time of the admission, the Court was informed by the Government that they would complete the inquiry within six months. Although the period of six months expired on January 10, 1987, not even the chargesheet was served on the petitioner with the result that on January 14, 1987 the Advocate of the petitioner wrote a letter to the Secretary to the Government, to reinstate the petitioner. Since nothing was heard from the Government, the petitioner filed a civil application in this petition on January 29, 1987. On January 31, 1987 the

Government requested for a week's time, and on February 6, 1987 the Civil Application was heard, and this Court by way of an interim order in the Application directed the Government to deposit subsistence allowance of the petitioner. The Government was further directed to give reasons as to why no action was taken to complete the inquiry, till that day. The Government was supposed to deposit the subsistence allowance within a period of two weeks and give the said reasons within three weeks. On February 29, 1987, the Civil Application was heard again after three weeks. None remained present on behalf of the Government nor were any reasons given to the Court. On March 6, 1987, an affidavit of the Deputy Secretary to the Government was filed stating that some information was yet to be collected to frame charges against the petitioner. This was obviously against the tenor of the statement made by the Hon'ble Minister on the floor of the Assembly, since the statement gave an impression that the Government had everything in their possession to charge-sheet and suspend the petitioner. Ultimately on April 24, 1987 a Contempt Petition was filed against the Government which was admitted. Thereafter for the first time on April 25, 1987 a chargesheet dated April 8, 1987 was served on the petitioner. It was replied to on June 15, 1987 and thereafter an Enquiry Officer was appointed in August 14, 1987. The petitioner thereafter moved this Court once again now making a grievance firstly that on pay or subsistence allowance for about eight months is paid to him except an ad hoc amount of Rs. 15,900/- and that no further steps are taken to complete the inquiry.

3. It is not disputed before us that the Government does not propose to examine any witness in the inquiry and they desire to rely only upon the documentary evidence. The enquiry officer is no other than the Divisional Commissioner, Pune and Shri Mehre, the learned Counsel for the Government is unable to tell us as to when he will find time to start the inquiry and complete it in view of his numerous duties. Taking into consideration the fact that the petitioner is to retire from service within another six months and that no witness is going to be examined on behalf of the Government and that the documents which the Government wants to produce before the inquiry officer are all in their possession, we feel that any further suspension of the petitioner is both unwarranted and unjustified. Suspension is not to be resorted to as a matter of rule. As has been often emphasised even by the Government, it has to be taken recourse to as a last resort only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise it is a waste of public money and an avoidable torment to the employee concerned. It appears that this salutary precaution urged both by the Government and the Courts is observed only in breach. In the present case we have pointed out there is no reason why the petitioner should not resume his duties pending inquiry when no witness is to be examined and the documents sought to be relied on are already in the possession of the disciplinary authority.

4. However if the Government does not, for some reason which is not apparent to us, desire the petitioner to resume his post of Director of Horticulture from which he is suspended, the Government can always place him in another post which is equivalent in status and pay scale viz. Rs. 2000-125/2250.

5. Mr. Mehre, learned Government Counsel, stated before us that at present the post of Member Secretary, Maharashtra Council for Agriculture, Education & Research is vacant. However, he contends that the post has been assigned to IAS cadre as per the policy decision of the Government. Mr. Mehre is unable to tell us the date on which this policy decision was taken. The fact remains that the post is vacant for the last two months. There is no reason why even if there is some such policy, the implementation of it is not deferred for another six months and the petitioner is accommodated in that post. Mr. Mehre further pointed out to us that there were also four posts of advisers on the same body and two of them are lying vacant. We are however of the view that these posts are equivalent neither in status nor in any scales and he should not be posted in any one of them. The petitioner, must be posted in a post, as we have stated earlier which is equivalent in status and pay scale. If besides the post of Member-Secretary, there is any other such post Government will be free to appoint him to that post.

6. We therefore direct the Government to post the petitioner, within a week from today, to the post of Director of Horticulture or to a post which is equivalent in status and pay scale to the post of the Director of Horticulture if the Government does not desire to post him as such Director.

7. Since this order grants relief which the petitioner has claimed in the main petition viz. W.P. No. 3244 of 1986, the order should be treated as an order in the said petition. In view of this order. Rule is made absolute in W.P. No. 3244 of 1986 with costs.

In view of the disposal of main petition, as above the Contempt Petition No. 63 of 1987 as well as the Civil Application No. 567 of 1987 do not survive and the Rules granted in both of them are discharged with no order as to costs.