

(2025) 03 BOM CK 0290

In the Bombay High Court

Case No : Writ Petition No. 14687 Of 2024 With Interim Application (St.)
No.10432 Of 2025

Yogesh Kashinath Patil

APPELLANT

Vs

SGV And SSPS Arts Commerce And Science College Throu.
Its Principal And Ors

RESPONDENT

Date of Decision : 25-03-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 380, 420, 465, 467, 468

Citation : (2025) 03 BOM CK 0290

Hon'ble Judges : Ravindra V. Ghuge, J; Ashwin D. Bhole, J

Bench : Division Bench

Advocate : Sandesh D. Patil, Prithviraj Gole, Ashok Kotangle, Tanoj Joshi,
Shivani Gautam, Sumit Pal, Shashikant Deshmukh, Pavan Patil, Nitin Jagtap,
Ashwini Purav

Final Decision : Allowed

Judgement

Ravindra V Ghuge, J

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

2. The Petitioner has put forth prayer clauses a, b, c, and d, as under:-

"a. By an appropriate Writ direction or the order of the Hon'ble Court, the letter dated 16/08/2024 and 12/09/2024 (annexed to the present Writ petition at Exh 'E' and Exh. 'F' respectively) issued by the Chairman of the Respondent no. 2 Trust be declared to be illegal, null and void, and be quashed and set aside and the Petitioner be reinstated on the post which she was removed.

b. By an appropriate writ direction order Hon'ble Court, the Respondent no. 3 and 5 be directed to take appropriate action against the Respondent no. 6 for issuing the said communications/letter dated 16/08/2024 and 12/09/2024 upon the Petitioner and illegally suspending the Petitioner from the post on which she

was appointed with Respondent no.1 Institution.

c. Pending the hearing and final disposal of the present petition, the effect execution and implementation of the said letters/communication dated 16/08/2024 so also the latest of communication dated 12/09/2024 (annexed to the present Writ petition at Exh. 'E' and Exh. 'F' respectively) be stayed/suspended and the Petitioner, be reinstated and the remuneration along with the arrears, be released forthwith;

d. Pending the hearing and final disposal of the present petition, Respondent no.3 to 5 be directed to take appropriate action against the Respondent No.6 for issuing the said communications/letter dated 16/08/2024 and 12/09/2024 upon the Petitioner and illegally suspending the Petitioner from the post on which she was appointed with Respondent no.1 Institution;"

3. A short issue for consideration before us is, as to whether the Impugned suspension of the Petitioner vide order dated 16th August, 2024 can be said to be legally continued without initiation of any departmental enquiry.

4. It is settled law that though an Employer does not have an inherent right to suspend an Employee, he can suspend an Employee in certain circumstances and is obliged to pay subsistence allowance. In the present case, the suspension allowance is also not paid to the Petitioner, ever since his suspension.

5. It is also settled law that there are two types of suspensions. Suspension pending disciplinary enquiry is one type and suspension by way of punishment after disciplinary enquiry, is the second type.

6. It is undisputed that the Petitioner has been suspended vide order dated 16th August, 2024. We have perused the Impugned order which indicates that there is an allegation against the Petitioner that he has been unauthorizedly absent from 24th June, 2024. Considering the said absence, the Petitioner has been placed under suspension. He was informed that he should not mark his presence in the college during the period of suspension and he would be independently informed about the commencement of a departmental enquiry. On 12th September, 2024 the Petitioner was once again issued with a communication wherein it is alleged that though he was suspended, he visited the college on 6th September, 2024 and he marked his presence on the muster book. It is alleged against him that he has committed a grave misconduct.

7. The Petitioner is said to be the son-in-law of the erstwhile Chairperson of the Institution/Trust namely, Mr. Vasant Patil. Presently, Respondent No.6 namely, Mr. Milind Vasant Patil, son of Mr. Vasant Patil, claims to be the Chairman of the Institution/Trust. The biological sister of Respondent No.6 and daughter of the erstwhile Chairperson, is the wife of the present Petitioner. The father of Respondent No.6 (erstwhile Chairman) is before this Court through the Intervention Application, contending that Respondent No.6 is not the Chairperson of the Trust and the change report is contested before the learned Assistant

Charity Commissioner. However, it is conceded that as on date, the name of Respondent No.6 is entered in Schedule-I.

8. Respondent No.6 registered an FIR No.0152 on 22nd June 2024 with the Vikramgad Police Station, District Palghar, alleging offenses against the Petitioner, his wife and another sister of Respondent No.6, namely Nutan Mokashi, punishable under Sections 380, 420, 465, 467, 468 read with Section 34 of the IPC. These three accused moved an Anticipatory Bail Application No.2312 of 2024 which came up before the learned Single Judge bench on 4th September, 2024. The bitter dispute between these close family members has been considered by the learned Single Judge. The Petitioner and his wife are Ph.D holders and are professors, was also recorded in the order dated 4th September, 2024. In paragraph Nos. 9, 10 and 11, the learned Single Judge observed while granting Anticipatory Bail, as under:-

"9. The material on record does give an impression that certain disputes and bitterness have arisen between the informant on the one hand and his father and the applicants on the other hand. It appears that in the backdrop of such disputes and bitterness, the informant has chosen to level allegations about certain wrongdoings of the accused persons, including the applicants, concerning the affairs of the said Trust.

10. The material on record also shows that the informant himself has been consistently associated with the Trust from the year 2010 onwards as its Treasurer. In the capacity of being Treasurer of the said Trust, obviously, the informant would have been knowing all the activities being undertaken in the office of the Trust, and therefore, prima facie, ignorance shown by him till February 2023 about such wrongdoings appears to be unnatural. Apart from this, the informant has not alleged that his signatures were forged on any of the Change Reports filed from the year 2010 onwards. It is also not alleged that his signatures were forged on an application moved for withdrawing all the three Change Reports from the year 2010 onwards. It is also not alleged that his signatures were forged on an application moved for withdrawing all the three Change Reports from the year 2010 onwards. The allegations pertaining to forgery are of a different nature and this further indicates a strong prima facie case in favour of the applicants when they allege that they have been wrongly roped in by the informant in the backdrop of the family dispute and bitterness that has arisen primarily between the informant and his father.

11. The elaborate statement of the informant leading to registration of the FIR contains allegations, which appear to be in some aspects 'stale' and this also raises some doubt about the genuineness of the grievances sought to be raised by the informant."

9. The learned Advocate for the Petitioner submits that until the Petitioner was granted Anticipatory Bail on 4th September, 2024, he obviously was not reporting for duties since the Trial Court rejected the application for Anticipatory

Bail. He was in search of relief from the Court, hence he could not attend the duties. This absence was taken advantage of by Respondent No.6, who placed the Petitioner under suspension by issuing an order under his own signature.

10. Be that as it may, the fact remains that the Petitioner was moving from Court to Court for seeking protection from arrest and finally succeeded before the High Court vide order dated 4th September, 2024. This period of absence is treated as an act of unauthorized absence on his part. However, the issue to be considered is, as to whether the Management has initiated any disciplinary proceedings against the Petitioner, in order to justify the continued suspension.

11. The Affidavit-in-Reply has been filed on 22nd November, 2024 by Respondent No.6, in which it is contended that because of the unauthorized absence of the Petitioner, he was suspended from duties. However, it is nowhere pleaded in the Affidavit-in-Reply that the Charge-sheet has been issued to the Petitioner, or that an Enquiry Officer has been appointed or that a departmental Enquiry has commenced.

12. The learned Advocate has boldly canvassed before the Court that because this Petition was pending, neither a charge-sheet was issued nor any progress has been made on the disciplinary proceedings filed. We find such an excuse to be lame and a fallacious reason, which does not deserve any consideration. It is for the Management to justify the suspension order. Pendency of the Petition does not mean that the Management should continue the suspension in perpetuity, without initiating any disciplinary proceedings.

13. The fact remains and it is undisputed that the Petitioner has been suspended for over seven months without issuance of a Charge-sheet and has not even been paid the suspension allowance until today. The high-handed conduct of the Management is apparent.

14. In view of the above, the Writ Petition is allowed. The Impugned order of suspension dated 16th August, 2024 is quashed and set aside.

15. Needless to state that, if the Management desires to commence the disciplinary proceedings against the Petitioner, it is at liberty to exercise its rights as may be permissible in law, without prejudice to the rights of the Petitioner to challenge the same. We make it clear that, for the period of suspension, until the order passed today and until reinstated, the Petitioner would be entitled for the suspension allowance which the Management shall pay within 30 days from today. Let the Petitioner report for duties on 1st April, 2025.

16. Rule is made absolute in the above said terms.

17. Pending Interim Application is also disposed off.