

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 963 OF 2016

Fakroddin s/o Gaibisab Jamadar,
Age : 46 years, Occu. Service
as Headmaster, R/o Wadhona (Bk.),
Tq. Udgir, District Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Primary)
(Satishkumar B. Rathod),
Zilla Parishad, Latur,
District Latur
3. Dr. Zakir Husain Shikshan
Prasarak Mandal, Udgir,
Tq. Udgir, District Latur
through its Secretary

RESPONDENTS

Mr. S.C. Swami, Advocate holding for Mr. V.D. Gunale,
Advocate for the Petitioner
Mr. V.S. Badakh, A.G.P. for respondent No. 1/State
Mr. D.S. Mali, Advocate for respondent No. 2
None appears for respondent No. 3 though served

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

JUDGMENT RESERVED ON : 12th AUGUST, 2016
JUDGMENT PRONOUNCED ON : 29th AUGUST, 2016

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. The petitioner was working as an Assistant Teacher with respondent No. 3 since 1988. He came to be promoted to the post of Headmaster in the year 1997. According to the learned counsel for the petitioner, because of some dispute with the Secretary of respondent No. 3, one Mohammad Jubair Momin complained against the Secretary with the Anti Corruption Bureau for the offence of demanding and accepting bribe. The said complainant falsely implicated the petitioner also in that case. The petitioner came to be arrested on the allegations of committing the offences under the Prevention of Corruption Act on 9th January, 2015 and on the same day, he came to be released on bail by the Special Judge, Udgir.

3. Respondent No. 2 – the Education Officer, vide his communication dated 7th March, 2015, directed

respondent No. 3 to suspend the petitioner on the ground that he was arrested in connection with the crime registered against him for the offence under the Prevention of Corruption Act. Accordingly, respondent No. 3 Institution suspended the petitioner vide order dated 23rd March, 2015 with effect from 9th January, 2015. Respondent No. 2 granted ex post facto sanction for suspension of the petitioner vide communication dated 27th March, 2015.

4. No disciplinary enquiry has been initiated against the petitioner.

5. Respondent No. 3 passed a resolution on 16th July, 2015 and decided to reinstate the petitioner. Accordingly, an order dated 24th July, 2015 came to be issued, reinstating the petitioner as the Headmaster of the school run by respondent No. 3. Accordingly, the petitioner resumed his duty on 24th July, 2015. The said fact was communicated by respondent No. 3 to respondent No. 2 vide letter dated 10th August, 2015.

6. The learned counsel for the petitioner submits

that the petitioner has not been paid either subsistence allowance in respect of the period of his suspension from 9th January, 2015 to 23rd July, 2015 or his regular salary from 24th July, 2015 though the petitioner is discharging his duty as the Headmaster. The learned counsel for the petitioner, therefore, submits that the directions may be given to respondent No.2 to pay the subsistence allowance to the petitioner as per the Rules in respect of the period from 9th January, 2015 to 23rd July, 2015 and further pay his regular salary from 24th July, 2015 onwards.

7. Respondent No. 3 – Institution supports the claim of the petitioner.

8. Respondent No. 2 opposed the petition by filing reply. On the basis of the contents of the said reply, the learned A.G.P. submits that as per Rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, after suspending the petitioner, it was binding on respondent No. 3 to initiate disciplinary enquiry against the petitioner and complete it within 120 days by appointing the Enquiry Committee. However, respondent No. 3 neither appointed the Enquiry

Committee nor initiated disciplinary enquiry against the petitioner. Therefore, respondent No. 3 would be liable to pay subsistence allowance and regular salary of the petitioner. He submits that respondent No. 2 got enquired the allegations made against the petitioner through an Enquiry Committee comprising of Block Education Officer, Panchayat Samiti, Renapur and Education Extension Officers, Panchayat Samiti, Udgir and Ahmedpur. The enquiry report submitted by the said Committee shows that there are a number of irregularities committed by the petitioner. He submits that since respondent No. 3 did not initiate any disciplinary enquiry against the petitioner, irrespective of the fact that the petitioner committed a number of irregularities, respondent No. 3 would be liable to pay the subsistence allowance and regular payment of salary to the petitioner. He, therefore, submits that the directions as sought against respondent No. 2 may not be issued.

9. Admittedly, the petitioner was under suspension from 9th January, 2015 to 23rd July, 2015 with the approval of respondent No.2. No disciplinary enquiry has

been initiated against the petitioner. Here, it would be worthwhile to reproduce Rule 35, which runs as under:-

35. Conditions of suspension

(1) In cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in rule 33.

(2) The period of suspension shall not exceed four months except with the prior permission of such appropriate authority.

(3) In case 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.

(4) In case where the employee is suspended by the Management without obtaining prior approval of the appropriate authority as aforesaid, 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.

(5) The subsistence allowance shall not be withheld except in cases of breach of provisions of sub-rules (3) or (4) of rule 33.

10. As seen from the documents produced on record and the specific contention of respondent No. 2 that

after the period of suspension for 120 days, no approval for continuation of suspension of the petitioner was obtained by respondent No. 3. In view of the provisions of sub-rule (3) of Rule 35, mentioned above, since the petitioner was placed under suspension with the approval of respondent No. 2, the subsistence allowance of the petitioner for the initial period of four months, which was permissible under sub-rule (2) of Rule 35 above, is liable to be paid by respondent No. 2. After expiry of the period of four months till 23rd July, 2015, respondent No. 3 would be liable to pay the same, since no approval of respondent No. 2 was obtained for extension of the period of suspension of the petitioner.

11. The petitioner has been reinstated to work as the Headmaster of respondent No. 3 with effect from 24th July, 2015. Accordingly, he has resumed his duty. He is discharging the said duty continuously from 24th July, 2015 onwards. The said fact has been informed by respondent No. 3 to respondent No. 2 vide letters dated 24th July, 2015 and 10th August, 2015. The petitioner has not been held guilty for any misconduct. He has not been penalised. Only because a criminal case is pending

against him, that cannot be a ground for withholding regular salary of the petitioner, when he is discharging his duty as the Headmaster. Consequently, respondent No. 2 would be liable to pay regular salary of the petitioner from 24th July, 2015 onwards. In the circumstances, we pass the following order:-

O R D E R

- (1) The Writ Petition is allowed.
- (2) Respondent No. 2 shall pay to the petitioner the subsistence allowance as per the M.E.P.S. Rules, 1981 in respect of the period of four months i.e. from 9th January, 2015 to 8th May, 2015 and further pay him regular salary from 24th July, 2015 onwards.
- (3) Respondent No. 3 shall pay to the petitioner the subsistence allowance as per the M.E.P.S. Rules from 9th May, 2015 to 23rd July, 2015.
- (4) Rule is made absolute on the above terms.

(5) The Writ Petition is accordingly allowed and disposed of.

(6) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.S. SHINDE**]
JUDGE

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