

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2860 OF 2016

1. Pradnya Education Society,
Mumbai, through its Chairman
Anant s/o Shankarrao Jagatkar,
Age-63 years, Occu-Business,
'Pradnya', Parali Road,
Ambajogai, Tq.Ambajogai,
Dist. Beed,
 2. Milind Junior College,
Parali-Vajjnath, Taluka
Parali-Vajjnath, Dist.Beed,
through its Principal
Ratnakar S/o Ramrao Dhondge
- PETITIONERS

VERSUS

1. Sangarinath Revanappa Satanure,
Age-45 years, Occu-Service,
as Assistant Teacher,
R/o Parth Complex,
Near Rani Zanshi Chowk,
Taluka and District
Aurangabad
 2. The Deputy Director of Education,
Aurangabad Division,
Aurangabad
- RESPONDENTS

WITH
WRIT PETITION NO.3134 OF 2016

Sangarinath Revanappa Satanure,
Age-46 years, Occu-Jr.Lecturer/Teacher,
R/o : Ekte Niwas, Ambe ves, Prali-Vajjnath,
Tq.Parli-Vajjnath, Dist.Beed,
(Parth Complex Flat No.7
Zanshi Chauk Nageshwarwadi
Aurangabad)

– PETITIONER

VERSUS

1. Pradnya Education Society, Mumbai,
Through its Chairman, A.S.Jagatkar,
'Pradnya' Parli Road, Ambajogai,
Dist.Beed,
2. Milind Junior College,
Parli-Vaijinth,
through its Principal,
3. Dy.Director of Education,
Aurangabad Division, Aurangabad – RESPONDENTS

Mr.S.R.Barlinge, Advocate for the petitioners.
Mr.R.J.Godbole, Advocate for respondent No.1.
Mr.S.P.Sonpawale, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/11/2016

ORAL JUDGMENT :

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

2. I have heard the strenuous submissions of Mr.Godbole, learned Advocate for the employee, the learned AGP on behalf of the Deputy Director of Education and Mr.Barlinge on behalf of the Management. Since both these petitions are filed by the same litigating sides against the same impugned judgment dated 27/10/2015 in Appeal No.30/2006, I have heard both these petitions together.

3. Considering the order that I intend to pass, I am not required to deal with the entire submissions of the learned Advocates.

4. By the impugned judgment, the Appeal filed by the employee has been partly allowed. The impugned order of termination dated 02/04/2006 w.e.f. 04/04/2006 and the enquiry has been quashed and set aside. The Management is directed to conduct the enquiry afresh from the stage of constitution of the Enquiry Committee.

5. The Hon'ble Supreme Court, in the matter of Vidya Vikas Mandal and another Vs. Education Officer, 2007(3) Mh.L.J. 801 has observed in paragraph Nos. 8 and 9 are as under :-

“8. As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said

findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

9. In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the

Management of the School to constitute the Committee in accordance with sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent no.2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution.”

6. However, the fact that the appellant/employee has taken up fresh employment on 12/10/2007 as a “Shikshan Sevak” on consolidated pay of Rs.5,000/- per month and his subsequent confirmation in service on 09/04/2012 in a reputed educational institution cannot be ignored.

7. It is trite law that subsistence allowance would be payable to the employee after the Management is directed to conduct a fresh enquiry in the light of paragraph No.9 of Vidya Vikas (supra). This payment of subsistence allowance is on the condition that the employee does not take up new employment elsewhere. Considering the same, the appellant/employee would be entitled for subsistence/suspension allowance at the rate of 50% of the gross salary for a period of 4 months under Rule 34 of the MEPS Rules from 04/04/2006 till 03/08/2006. He would then be entitled for

75% allowance from 04/08/2006 to 11/10/2007 when the appellant/employee has taken up fresh employment.

8. On 19/09/2016, a statement was made on instructions from the appellant/employee that as he is a permanent employee of a highly reputed educational institution and he is not inclined to quit the said employment. He would not pursue his remedies against the Management herein if he is paid full back wages.

9. Mr.Godbole submits today that as the appellant/employee is not interested in continuing with the employment of the present Management, he would press for his suspension allowance till this date. Mr.Barlinge submits that the Management may consider the grant of suspension allowance till the date the appellant was unemployed. By paying him the said suspension allowance, the entire litigation can be brought to an end. Though Mr.Godbole submits that the litigation can be brought to an end as he would not press for the implementation of the impugned judgment, suspension allowance needs to be paid till this date with continuity of service from 04/04/2006.

10. In the light of the above and considering the submissions of

the litigating sides, I find that this entire litigation can be brought to an end keeping in view that the appellant/employee is now a permanent teacher with a highly reputed educational institution in this part of the state and therefore would be at a disadvantage if the departmental enquiry is reopened by the Management herein.

11. As such, both these petitions are disposed of with a direction that the Management herein shall pay subsistence allowance based on the last drawn salary of the appellant/employee as on 03/04/2006 at the rate of 50% for the period 04/04/2006 till 03/08/2006 and at the rate of 75% from 04/08/2006 till 11/10/2007.

12. Needless to state, he shall be treated as being in continuous employment from 04/04/2006 till 11/10/2007 keeping in view that he is employed from 12/10/2007. This order is passed in the light of the submissions of the learned Advocates and with a view to ensure that the litigation is brought to an end and the ends of justice are met. The request by the appellant/employee for full wages till this date cannot be entertained.

13. The abovesaid amount shall be paid by the Management herein

within a period of 3 months from today to the appellant/employee. With this order, there shall be no stigmatic termination of the appellant/employee and as such there shall be no blot in his service record in so far as this aspect of the litigation is concerned.

14. Since the Management herein is a grant-in-aid institution and the suspension allowance is to be paid to the appellant/employee in the light of Vidya Vikas (supra), the Management shall be at liberty to forward a proposal for reimbursement of the suspension allowance being paid to the appellant/employee and the Education Department shall accordingly sanction the reimbursement. It be noted that the suspension allowance is to be paid for the abovesaid periods, if not already paid.

15. With this, the impugned judgment of the School Tribunal stands modified by the consent of the parties.

(RAVINDRA V. GHUGE, J.)