

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2486 OF 2016

Antaji S/o Datta Gonare,
Age : 42 years, Occu.: Service,
R/o.: C/o. Kai. Prakash Kamble
Primary Ashram School,
Dongarshelki Tanda,
Tq. Udgir, Dist. Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 32
2. The Deputy Commissioner,
Social Welfare, Latur Division,
Latur, Tq. Dist. Latur
3. The Assistant Commissioner,
Social Welfare Office,
Latur, Tq. Dist. Latur
4. Ramdhan Naik Shikshan Sanstha
Bortal Tanda (Nagalgaon),
Tq. Udgir, Dist. Latur,
Through its President
5. Kai. Prakash Kamble Primary
Ashram School, Dongarshelki Tanda,
Tq. Udgir, Dist. Latur,
Through its Headmaster

RESPONDENTS

Mr. Anand V. Patil (Indrale), Advocate for the
Petitioner

Mr. V. S. Badakh A.G.P. for respondent nos. 1 to 3
Mr. D. B. Rode, Advocate for respondent nos. 4 and 5

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

**JUDGMENT RESERVED ON : 18th JULY, 2016
JUDGMENT PRONOUNCED ON : 8th AUGUST, 2016**

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

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

2. The petitioner is working as an Assistant Teacher in respondent no.5 – Primary Ashram School, since the year 1999. The said school is run by respondent no.4 – Education Society. The wife of the petitioner committed suicide and therefore, an F.I.R. came to be registered against him for the offences punishable under sections 302 and 498-A of the Indian Penal Code, on 30th November, 2011. The petitioner came to be arrested in connection with that crime on 17th December, 2011. He came to be released on bail vide order dated 12th June, 2012. In the meanwhile, respondent no.4 – Education Society suspended the petitioner vide its order dated 1st May, 2012, but revoked the said suspension vide Resolution dated 27th June, 2012. The

petitioner was allowed to resume his duty with effect from 1st July, 2012. Thus, he is performing his duties as an Assistant Teacher from 1st July, 2012 onwards after revocation of his suspension.

3. It is the grievance of the petitioner that his salary has not been paid by respondent nos. 4 and 5 in respect of the period during which he was under suspension and even in respect of period after he resumed his duties on 1st July, 2012. It is stated that the petitioner has made several representations to respondent nos. 4 and 5 for releasing the arrears of salary and for payment of his regular salary. However, he was informed that his salary bills have not been accepted by respondent no.3 – the Assistant Commissioner, Social Welfare Office, Latur.

4. The learned counsel for the petitioner, relying on the decisions in the cases of **Vasant Haribhau Ugale Vs. State of Maharashtra & others, 2004(4) Bom.C.R.375** and **Shri Madhukar Namdeo Patil Vs. Chairman Sudhagad Education Society & others, 2000(4) Bom.C.R.698**, submits that respondent nos.4 and 5 were not at all justified in placing the petitioner under suspension after his detention was over. No departmental enquiry was

initiated against the petitioner on any count. He further submits that the arrears of salary as well as the regular salary of the petitioner cannot be legally withheld by the respondents. He, therefore, prays that the respondents may be directed to pay arrears of salary as well as regular salary of the petitioner with effect from 1st July, 2012.

5. The learned A.G.P. appearing for respondent nos.1 to 3, relying on the contents of the affidavit-in-reply filed on their behalf submits that respondent no.4 had not obtained prior approval of respondent nos.1 to 3 for placing the petitioner under suspension or even for revoking the said suspension. Therefore, respondent nos.1 to 3 are not liable to pay salary of the petitioner in respect of the period of his suspension. According to them, respondent no.4 is liable to pay arrears of salary to the petitioner in respect of his period of suspension. So far as payment of regular salary of the petitioner with effect from 1st July, 2012 is concerned, nothing has been mentioned in their reply to show as to how the same can be withheld. Further it is stated that the petitioner is connected with serious offences and was in detention for a period of about six months.

Therefore, respondent no.4 should have initiated departmental enquiry against the petitioner. It is stated that respondent no.4 has not complied with the mandatory provisions and therefore, respondent nos.1 to 3 are not liable to pay salary to the petitioner. On these grounds, it is prayed that the Writ Petition may be dismissed.

6. No formal reply has been filed on behalf of respondent nos.4 and 5 to challenge the claims made in the petition. However, the learned counsel for respondent nos.4 and 5 submits that the bills for payment of salary to the petitioner have been submitted to respondent no.3 but the same have not been processed by respondent no.3. He further submits that respondent nos.1 to 3 are liable to pay arrears of salary as well as regular salary to the petitioner.

7. The facts of the present case, and that of **Vasant Haribhau Ugale** (supra), are almost identical. In that case, the petitioner was arrested in connection with the offences punishable under Sections 147, 148, 142, 452, 302 and read with Section 34 of Indian Penal Code. He was detained in custody for the period from 29th

January, 2002 to 3rd February, 2002 (five days). He came to be released on 3rd February, 2002. The Principal of the school placed him under suspension with effect from 12th February, 2002 on the ground that the petitioner was detained in custody for a period of more than 48 hours. The School Management moved the Education Officer on 24th April, 2002 seeking approval to the suspension of the petitioner. The said proposal was subsequently withdrawn and, therefore, suspension came to be revoked by the Management with effect from 19th June, 2002. The petitioner was allowed to resume his duties on 21st June, 2002. Since then, the petitioner continued to work as a Laboratory Assistant. The salary of the petitioner in respect of the period of suspension as well as regular salary after his resuming duties from 21st June, 2002 was not paid to him on the ground that it was permissible for the Education Officer to direct that the salary payable to the petitioner ought to be kept in the joint account of the School and Head Master, and only after termination of criminal proceedings against the petitioner in acquittal, the said amount ought to be released to the petitioner. The petitioner therein gave-up his claim for arrears of salary in respect of period

of his suspension. It was held that the Education Officer does not have any sanction of law to withhold the salary of the petitioner after his resuming his duties with effect from 21st June, 2002. Therefore, the Education Officer was directed to approve the salary bills of the petitioner therein regularly and was advised that he should not refuse the same for the reason of pendency of the criminal proceedings.

8. In the case of **Shri Madhukar Namdeo Patil**, (supra), it has been held that the suspension of the employee under Rule 33(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "MEPS Rules"), where the employee has been detained in police custody or judicial custody, cannot exceed the duration of the detention of the employee in such custody.

9. In view of the above stated settled legal position, the petitioner in the present case is entitled to get regular salary after resuming his duties with effect from 1st July, 2012. Respondent nos.1 to 3 would not at all be justified in withholding the payment of salary of the petitioner with effect from 1st July, 2012.

10. The petitioner was under detention in connection with the above referred crime from 17th December, 2011 till 12th June, 2012. He will be deemed to be under suspension during the said period in view of the provisions of Rule 35(5) of the MEPS Rules. However, before the petitioner was released on bail, respondent no.4 suspended him from services by the order dated 1st May, 2012 without obtaining approval from respondent no.3 and further revoked that suspension vide Resolution dated 27th June, 2012.

11. The learned A.G.P. submits that the suspension of the petitioner from 1st May, 2012 to 27th June, 2012 was effected by respondent no.4 without approval of respondent no.3 and, therefore, respondent no.4 would be liable to pay salary to the petitioner in respect of the said period. We are not inclined to accept this contention fully. However, there is some substance in the said submission. So far as the period of detention of the petitioner from 17th December, 2011 to 12th June, 2012 is concerned, he will be deemed to be under suspension vide Rule 33(5) of the MEPS Rules, as held herein-above. The order passed by respondent no.4 on

1st May, 2012, suspending the petitioner actually would have the effect during the period from 13th June, 2012 (i.e. the date on which the petitioner was released on bail) to 27th June, 2012, when it was revoked by respondent no.4. Since the suspension of the petitioner in respect of the period from 13th June, 2012 to 27th June, 2012 was not having prior approval of respondent no.3, respondent no.4 would be liable to pay the salary in respect of the said period to the petitioner. However, so far as the period of suspension from 17th December, 2011 to 12th June, 2012 and 28th June, 2012 till 1st July, 2012 is concerned, respondent nos.1 to 3 cannot deny their liability to pay the salary to the petitioner. Respondent nos.1 to 3 further are liable to pay regular salary of the petitioner from 1st July, 2012 onwards. In view of the above facts and circumstances of the case, we allow the Writ Petition with the following order.

- (i) The Writ Petition is allowed.
- (ii) Respondent nos.4 and 5 shall submit the salary bills of the petitioner in respect of the period from 17th December, 2011 to 12th June,

2012 and 28th June, 2012 till July, 2016 to respondent no.3, and respondent no.3 shall approve the said bills and release the salary of the petitioner without refusing the same for the reason of pendency of the criminal proceedings against him.

- (iii) Respondent no.4 shall pay salary of the petitioner in respect of the period from 13th June, 2012 to 27th June, 2012 at its own.
- (iv) Respondent nos.1 to 3 shall pay salary to the petitioner regularly from 1st August, 2016 onwards.
- (v) Rule made absolute in the above terms.
- (vi) The Writ Petition is accordingly disposed of.
- (vii) No costs.

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

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