

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.**

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WRIT PETITION NO. 5229 OF 2015

CHANDRAKANT VENKATRAO PATIL

VERSUS

STATE OF MAHARASHTRA AND OTHERS

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Chandrakant Venkatrao Patil - Party-in-person
AGP for Respondent/State : Mr. A.G. Magre
Advocate for Respondent no.4 : Mr. S.G. Rudrawar

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CORAM : S.S. SHINDE & P.R. BORA, JJ.**Dated: January 05, 2016**

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PER COURT :-

This Writ Petition under Article 226 of the Constitution of India is filed with the following prayer :-

"B. By issuing writ of certiorari or any other appropriate writ, order or directions in the like nature to quash and set aside suspension order dated 21.4.2015 issued by respondent No.4 by violation provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981."

2. Heard the petitioner, who is party-in-person, the learned A.G.P. appearing for the Respondent - State and the learned counsel appearing for Respondent no.4.

3. It is submission of the petitioner that, there was no any valid ground for placing the petitioner under suspension by passing the impugned order dated 21st April, 2015. It is submitted that, no prior permission/approval of the competent authority was taken by the Respondent No.4, before the order dated 21st April, 2015 was issued, placing the petitioner under suspension. It is further submitted that, there is no approval by the Assistant Charity Commissioner to the Respondent No.4 – management since 1993, and therefore, the Management of the Respondent No.4 was not competent to pass the impugned order. It is further submitted that, though the petitioner approached the Education Officer (Secondary), Zilla Parishad, by way of filing as many as 125 applications/representations raising grievance that, the Respondent No.4 – management is not allowing the petitioner to sign the Muster Roll, the said authority has not taken cognizance of the grievance of the petitioner. It is submitted that, though the petitioner went in the school, so as to sign the Muster Roll, the petitioner was prevented from signing the Muster Roll, on the contrary the false criminal case is filed against the petitioner. The Respondent No.4 is not financially capable to pay subsistence allowance, in as much as, the Respondent No.4 does not possess immovable/movable assets, to make such payment towards subsistence allowance. It is submitted that, neither there was enquiry nor the charge-sheet was served, before passing the order of termination, and only blank papers were forwarded to the petitioner so as to show the compliance of issuance of show-cause and conducting

inquiry. The petitioner has also invited our attention to the pleadings in the petition, grounds taken therein and annexures thereto and submits that, the Petition may be allowed.

4. The learned counsel appearing for Respondent No.4, invited our attention to the provisions of Rule 34 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and submits that, even if the contention of the petitioner is accepted that, no permission/approval of competent authority before passing the impugned order is taken, in that case the Respondent No.4 is obliged to pay the subsistence allowance from its own sources. It is further submitted that, the payment of subsistence allowance is subject to provisions of sub-rules (3) and (4) of Rule 33 of the said Rules. It is submitted that, though the number of notices were issued to the petitioner, the petitioner did not attend the school and participated in the enquiry. Since the petitioner did not come to the school, there was no question of signing the Muster Roll. Therefore, the petitioner is not entitled for subsistence allowance. He further submits that, the Respondent No.4 has terminated the services of the petitioner vide order dated 31st August, 2015 bearing outward No.V.V.E.S.L./254/2015, and therefore, in view of said subsequent event, this Petition has become infructuous. The petitioner has remedy of filing an appeal, before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Therefore, he submits that,

the Petition may be rejected.

5. The learned A.G.P. appearing for the Respondent – State invited our attention to the averments made in the affidavit in reply and submits that, this Court may pass appropriate orders.

6. We have heard the petitioner, who is party-in-person, the learned A.G.P. appearing for the Respondent/State and the learned counsel appearing for the Respondent No.4.

7. The provisions of Rule 35 of the Rules of 1981 reads thus :-

“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-rule (3) or (4) of rule 33.”

8. It follows from careful reading of the said rule that, in case suspension is without obtaining prior approval of the appropriate authority, 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. However, the allowance shall not withheld by the management except in cases of breach of provisions of sub-rule (3) or (4) of rule 33. The sub-rules (3) and (4) of Rule 33 reads thus :-

“33. Procedure for inflicting major penalties :-

(1)

(2) -----

(3) An employee under suspension shall not accept any private employment.

(4) The employee under suspension shall not

leave the head-quarters during the period of suspension without the prior approval of the Chief Executive Officer. If such employee is the Head and also the Chief Executive Officer, he shall obtain the necessary prior approval of the President.”

9. According to the petitioner, the petitioner went to the school to sign the Muster Roll, however, the Respondent No.4 did not allow him to sign the Muster Roll. According to the learned counsel appearing for the Respondent No.4, the petitioner did not attend the school and therefore, there was no question of signing the Muster Roll.

10. Upon hearing the learned counsel appearing for the parties and perusal of relevant documents, and rules, we direct the Education Officer (Secondary), Zilla Parishad, Latur to summon the relevant record, hear the parties, conduct the inquiry and to take the appropriate decision about the entitlement of the petitioner for subsistence allowance. If the Education Officer (Secondary), Zilla Parishad, Latur finds that, the petitioner is entitled for the subsistence allowance, he shall ensure that, the management should pay the subsistence allowance to the petitioner, as expeditiously as possible, however, upon conclusion of such enquiry within three weeks. The Education Officer (Secondary), Zilla Parishad, Latur shall complete such enquiry as expeditiously as possible,

however, preferably within six weeks from today by giving the opportunity to the petitioner and also to the Management.

11. Though the petitioner has vehemently argued that, the Respondent No.4 has no authority to pass the impugned order, in view of subsequent event of terminating the services of the petitioner, in our considered view, points raised in this petition so far as order of termination is concerned, can be raised by the petitioner before the School Tribunal and same can be considered by the said Forum. In that view of the matter, and since the management has passed the order dated 31st August, 2014, bearing outward No. V.V.E.S.L./254/2015, terminating the services of the petitioner, it will be open for the petitioner to avail remedy of appeal under Section 9 of the Act of 1977, before School Tribunal. In case the petitioner presents the appeal before the School Tribunal under Section 9 of the Act of 1977 within four weeks from today, the Appellate Authority to consider the said appeal on merits, as if the said appeal is filed within a period of limitation.

12. The Petition is disposed of in above terms.

(**P.R. BORA, J.)**

(**S.S. SHINDE, J.)**

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