

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9128 OF 2015

Pandurang Satish Jadhav,
Age-34 years, Occu-Service,
R/o Chinchpur (Bk.), Taluka Paranda,
Dist.Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education and Sport Department,
Mantralaya, Mumbai,

2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad,

3. The Head Master,
Vijaysingh Patil Vidyalaya,
Chinchpur (Bk.), Taluka Paranda,
Dist.Osmanabad

RESPONDENTS

Mr.S.S.Jadhavar, Advocate for the petitioner.
Mr.A.G.Magre, AGP for the respondent/State.
Mr.R.J.Godbole h/f Mr.I.S.Thorat, Advocate for respondent No.3.

(CORAM : S.S. SHINDE AND
RAVINDRA V. GHUGE, JJ.)

DATE : 20/01/2016

ORAL JUDGMENT : (Per Ravindra V.Ghuge, J.)

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

2. We have considered the submissions of the learned Advocates

for the respective sides, canvassed for quite some time. Prayer clause (B) and (C) put forth by the petitioner, read as under :-

“B. By issuing writ of mandamus or any other appropriate writ, order or direction, the respondent no.3 may kindly be directed to allow petitioner to sign on the muster roll ;

C. By issuing writ of mandamus or any other appropriate writ, order or direction, the respondent Nos.2 and 3 may kindly be directed to take appropriate steps for sanction and release of salary of petitioner with effect from November, 2014;”

3. The disputed question as to whether the petitioner is precluded from remaining present for duties or as to whether the petitioner is remaining absent, appears to be subject matter of a departmental enquiry which is said to have been commenced by the Management as stated in the affidavit in reply. We do not intend to go into these disputed questions.

4. Learned Advocate for the Management Mr.Godbole submits that petitioner was never precluded from reporting for duties. He is at liberty to report for duties at any time. Learned Advocate Mr.Jadhavar for the petitioner submits that petitioner is willing to report for duties even tomorrow. However, he prays that an Officer

from the Education Department be kept present in order to witness as to whether the petitioner is being permitted to report for duties.

5. In the light of the above, this petition is partly allowed with the following directions :-

- [a] The petitioner shall report for duties on 25/01/2016 at 11.00 a.m.
- [b] The Education Officer shall depute a responsible employee of the Department at the school on 25/01/2016 at 11.00 a.m. and to witness whether the petitioner is being permitted to join or not.
- [c] The petitioner shall submit a joining report on 25/01/2016 without prejudice to his contention that he was never absent.
- [d] The employer shall serve a copy of the statement of allegations and shall follow Rule 36 and 37 of The M.E.P.S. Rules, 1981 in conducting the departmental enquiry.
- [e] If the petitioner was not given an opportunity to appoint his nominee, he shall do so within 15 days from the date of receipt of the statement of charges/charge sheet.
- [f] The statement made by the Management is accepted that they would commence a fresh enquiry concerning the allegations that the petitioner has been unauthorizedly absent.

6. The issue of unpaid wages for the alleged period of absence shall be subject to the result of the departmental enquiry.

7. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

(S.S. SHINDE, J.)