

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9825 OF 2016

Smt. Rukhmin Ashruba Andhale
Age 51 years, Occ. Service
R/o Shikshak Colony,
Beed Parali High Way Road,
Wadwani, District Beed.

..Petitioner

Versus

1. The Deputy Director
Aurangabad Division,
Aurangabad.

2. The Education Officer (S),
Zilla Parishad, Beed.

3. Sanskar Shikshan Mandal,
Wadwani, Tq. Wadwani, Dist. Beed
Through its secretary.

4. Maharani Tarabai Higher
Secondary School, Wadwani,
Tq. Wadwani, District Beed.

5. Siddhivinayak Junior
College, Pimalner, Taluka and
District Beed through its
Principal.

..Respondents

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Advocate for Petitioners : Shri Wakade Ramesh I.
AGP for Respondents 1 & 2 : Shri Joshi S.B.
Advocate for Respondents 3 & 4 : Shri Khade K.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 24, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. I have heard the strenuous submissions of the learned Advocates for the respective sides. However, considering that the issue involved is no longer *res integra*, I am not required to deal with the entire submissions of the learned Advocates.

5. The petitioner had challenged his termination dated 7.10.2014 in Appeal No.30 of 2014, before the School Tribunal at Aurangabad. By the impugned judgment, the Tribunal has partly allowed the appeal. I had considered the submissions of the petitioner on 26.9.2016, which were recorded in my order as under:-

“1 The Petitioner is aggrieved by the judgment and order dated 05.07.2016 delivered by the School Tribunal in Appeal No.30/2014 only to the extent of not issuing the direction to the Management to pay suspension allowance to the Petitioner.

2 It is submitted that the Petitioner was dismissed from service on 07.10.2014 for proved misconduct. She preferred Appeal No.30/2014 which was partly allowed by the impugned

judgment. The termination order dated 07.10.2014 was quashed and set aside along with the departmental enquiry. It was concluded that the enquiry is vitiated from the stage under Rule 36(2) of the MEPS Rules, 1981 and the Management was directed to resume the enquiry afresh from the said stage. Yet, the School Tribunal has not granted suspension allowance to the Petitioner ignoring the law laid down by the Honourable Supreme Court in paragraphs 8 and 9 of its judgment in the matter of Vidya Vikas Mandal and another vs. Education Officer and another, 2007(3) Mh.L.J. 801 (SC).

3 Issue notice to the Respondents returnable on 18.10.2016. Besides the court notice, the Petitioner is at liberty to serve Respondent Nos.3, 4 and 5 by private service and file a service affidavit in this Court.

4 The learned AGP waives service for Respondent Nos.1 and 2.

5 Considering the fact that the enquiry has already commenced and the Petitioner has also forwarded the name of his nominee on the Enquiry Committee, the Enquiry Committee may proceed with the enquiry, but shall not commence the recording of evidence until further orders of this Court.”

6. There is no dispute that the respondent / management has not challenged the setting aside of its enquiry and the direction to conduct a fresh enquiry.

7. I find from the impugned order that though the Tribunal has recorded that the petitioner would be deemed to be under suspension after setting aside his termination order and would be eligible for suspension allowance, it has observed in its concluding paragraph No.31 that besides quashing and setting aside the impugned termination order, the petitioner would not be entitled for any other relief.

8. In my view, paragraph No.9 of the judgment of the Honourable Supreme Court in Vidya Vikas Mandal and another Vs. Education Officer and others [2007 (3) Mah.L.J. 801], is a clear guideline to the respondent / management to pay subsistence allowance from the date of termination. Similarly, as per the judgment of the learned Division Bench of this Court in Writ Petition No.2137 of 2013 (Umakant G. Kalkotwar Versus Mahatma Gandhi Vidhya Mandir Nasik), dated 25.2.2015, the petitioner would be entitled for subsistence allowance at the rate of 50% initially for the period of 4 months under Rule 34(1)(b)(i) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and at the rate of 75% after 4 months of suspension.

9. With the above said directions, the impugned order of the School Tribunal to the extent of its observations in paragraph No.31, stands modified and this petition is partly allowed.

10. All other disputed issues shall be subject to the result of the enquiry.

11. Rule is made partly absolute, accordingly.

(RAVINDRA V. GHUGE, J.)

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akl/d