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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12256/2015

- 1 Vidyashakti Shikshan Prasarak
Mandal, Kosa, Tq. Sengaon
Dist. Hingoli.
(Through its Secretary)
Bengal Bhaskar Ramrao
Age : 50 yrs, Occu : Secretary
R/o: Vidyashakti Shikshan Prasarak
Mandal
Kosa Tq. Sengaon Dist. Hingoli.
- 2 Vidyaniketan Secondary and Higher
Secondary Vidyalaya, Kosa
Tq. Sengaon Dist. Hingoli,
(Through its Head Master)
...Petitioners...

Versus

- 1 Pramod S/o Daulatrao Shinde
Age 35 years, Occu: Nil,
R/o : At Gogari, Post: Sonala
Tq. Mangrulpir Dist. Washim.
- 2 The Education Officer (Secondary)
Zilla Parishad, Hingoli.
...Respondents...

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Shri R.J. Godbole, Advocate for petitioners.
Shri S.R. Barlinge, Advocate for respondent no.1.
Shri D.R. Korde, AGP for respondent no.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.03.2016

ORAL JUDGMENT :

1] While issuing notice on 22.12.2015, this Court had noted the submissions of the learned Advocate for the petitioners as under:-

"2] Shri Godbole, learned Advocate for the Petitioner, submits that the application Exhibit18 was filed by the Petitioner Management before the School Tribunal informing the School Tribunal that they are withdrawing the written termination order dated 31.07.2014 and would follow the provisions of the MEPS Act, 1977 in conducting a proper enquiry against Respondent No.1/ Employee. He would be treated as being under suspension, would be paid subsistence allowance and hence, the appeal may be disposed of. The said application has been rejected by the impugned order.

3] Shri Godbole tenders across the Bar a copy of the communication dated 21.01.2015 by which the order of termination dated 31.07.2014 was recalled. The same is marked as Exhibit X for identification."

2] Shri Godbole, learned Advocate for the petitioners reiterates that the termination order dated 31.7.2014 has been withdrawn with effect from 21.1.2015. The appeal had, therefore, become *infructuous* and the

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Tribunal should have merely disposed of the appeal as there was no cause of action. The application filed by the petitioners was erroneously rejected by the Tribunal vide the impugned order.

3] Shri Barlinge, learned Advocate appearing on behalf of respondent no.1, submits that unless the petitioners seek appropriate permission from the Education Officer for suspending the services of respondent no.1 pending disciplinary proceedings, no suspension can be presumed or ordered even by this Court. By the withdrawal of the order of termination dated 21.1.2015, respondent no.1 stands reinstated in service from 31.1.2014 and will be entitled to draw full wages till he is placed under suspension after seeking appropriate permission of the Education Officer under Rule 35 of the MEPS Rules, 1981, which prescribes the conditions of suspension.

4] He, therefore, submits that he would be entitled to full wages till the management succeeds in obtaining the permission of the Education Officer to suspend respondent no.1 pending disciplinary proceedings. He further submits that the petitioner – management is a

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grant-in-aid institution and can forward the bills for the payment of monthly salary till respondent no.1 is suspended, to the Education Officer and the same can be granted. He, however, submits that if the Education Officer takes time in deciding the fate of the salary bills, the management ought to pay the salary to respondent no.1 subject to reimbursement / adjustment after the salary bills are sanctioned by the Education Officer.

5] I have considered the submissions of the learned Advocates and have gone through the impugned order.

6] I quite see that a peculiar situation has been raised in this petition. The petitioner – management has withdrawn the order of termination dated 31.7.2014 with effect from 21.1.2015. However, the management does not seem to have made any efforts to direct respondent no.1 either to report for duties or make his monthly salary available. Had the petitioners immediately reinstated respondent no.1 – employee and had directed him to resume duties forthwith, the *bona-fides* of the petitioners could have been appreciated better.

7] There is no dispute that without compliance of

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Rule 35 of the 1981 Rules, the petitioners cannot place an employee under suspension. Learned AGP Shri Korde has rightly indicated from the contents of Rule 35(4) of the 1981 Rules that in the event the management suspends an employee without obtaining permission from the Education Department, the management has to pay the suspension allowance even for the first four months or till such permission is obtained.

8] I quite see that the School Tribunal could have disposed of the appeal by its order dated 19.6.2015 considering the above fact situation. However, it has dismissed the application (Exh.18) filed by the petitioners praying for disposal of the appeal as no cause of action survived.

9] In the light of the above and in order to balance the equities, I am partly allowing this petition by setting aside the impugned order dated 19.6.2015 passed by the School Tribunal below Exhibit 18 on the following conditions:-

[a] Appeal No.51/2014 shall stand disposed of forthwith.

[b] The petitioner - management shall be liable

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to pay full salary of respondent no.1 – employee from 31.7.2014 till 19.6.2015 within a period of one month from today with the liberty to forward the salary bills of respondent no.1, for this period, for grant of salary bills to the competent authority of the Education Department.

[c] The payment of salary within one month for the above period shall not be delayed awaiting the decision of the concerned Officer dealing with the salary bills.

[d] Since the petitioners contemplate disciplinary proceedings under Rules 36 and 37 afresh, respondent no.1 shall be treated to be under suspension with effect from 20.6.2015 for a period of four months and thereafter shall be entitled for 75% suspension allowance till the same is continued.

[e] The suspension allowance from 20.6.2015 till today shall be paid by the management within two months and shall be at liberty to forward an application for seeking approval to the suspension.

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[f] The suspension allowance already paid shall be adjusted against the sanction of the bills granted by the Education Department.

[g] The petitioners shall accordingly commence the disciplinary proceedings in due deference to Rules 36 and 37 of the 1981 Rules.

(RAVINDRA V. GHUGE, J.)