

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 485 OF 2014
WITH
WRIT PETITION NO. 7317 OF 2014

Shri Sanjay Ramgonda Patil	...	Petitioner
V/s.		
The State of Maharashtra & ors.	...	Respondents

WITH
WRIT PETITION NO. 6690 OF 2014

Maharashtra Shikshan Mandal, Kolhapur		
& anr.	...	Petitioners
V/s.		
The State of Maharashtra & ors.	...	Respondents

Mr. Prashant Bhavake for the petitioner in wp 485/14 and wp 7317/14 and for respondent no.4 in wp 6690/14.

Mr. P.P. Kakade, AGP for the State.

Mr. N.V. Bandiwadekar for respondents 4 and 5 in wp 485/14 and for petitioner in wp 6690/14.

Mr. N.V. Bandiwadekar i/b Mr. Sagar Mane for respondents 4 and 5 in wp 7317/14.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

18th January, 2016.

P.C.

Heard learned Counsel for the parties.

2. The petitioner in Writ Petition No. 485/2014 prays for following substantive relief:

“(b) By a Suitable writ, order or direction this Hon'ble Court may be pleased to quash and set aside the impugned order of suspension dated 30.12.2013 (Exhibit-C) and impugned statement of allegations dated 30.12.2013 (Exhibit-D)”.

3. The petitioner filed another petition being WP No. 7317/2014 for declaration that he is deemed to have rejoined his duties in the post of Head Master w.e.f. 29th April, 2014 and for payment of salary. Petitioner prayed for subsistence allowance. The management filed WP No. 6690/2014 seeking direction to respondent no.3 to sanction signing authority to Shri Rajendra Shivaji Jadhav as In-charge Head Master and for seeking extension to conduct departmental enquiry against the suspended Head Master. By an order dated 7th March, 2014 the matter was adjourned to 28th March, 2014, in the meantime, it was directed that no further steps be taken pending the enquiry proceedings.

4. Learned Counsel for the petitioner appearing for the Head Master namely Sanjay Ramgonda Patil who was suspended submitted that Head Master was suspended on 30th December, 2013. The suspension order was issued without prior approval of the Education Officer. The enquiry committee constituted by the management was in conformity with the

provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as 'MEPS Rules' for short). After expiry of 120 days the petitioner ought to have been reinstated in service. The petitioner has not been paid subsistence allowance so far. Learned Counsel has placed reliance on the provisions of Rule-36 and Rule- 37 of the MEPS Rules.

5. Learned Counsel appearing for the management submits that as the petitioner was granted interim-relief whereby the enquiry proceedings were suspended, the management was not in a position to complete the enquiry. By a communication dated 30th December, 2013 the management had requested the Education Officer (Secondary) Zilla Parishad, Kolhapur to grant approval to suspend the petitioner pending enquiry. By communication dated 22nd January, 2014 the Education Officer informed the Secretary of the institution that in view of the MEPS Act and the Rules framed therein the management is competent to take appropriate decision at that stage. It is submitted that management interpreted this communication to be deemed permission from the management.

6. The statement of allegations was framed. Committee was constituted and the Secretary of the management Society served the copy of chargesheet/statement of allegations on the petitioner. Thereafter, due to pendency of the petition and the interim order passed by this Court, nothing has moved further. The management claims to have appointed another teacher who is said to be the next senior to the petitioner as In-charge Head Master of the school.

7. In the first place, when the management applied to Education Officer seeking approval, the Education Officer informed the management by communication dated 22nd January, 2014 to take appropriate decision on their own without expressing any opinion on the requisition sent by the management. A vague communication was issued by the Education officer (Secondary) Zilla Parishad, Kolhapur. It was his duty either to accept the proposal or reject approval for suspending the petitioner. The Education officer failed to discharge his duties in accordance with law.

8. In the second case, the management proceeded further, constituted committee and a charge sheet was issued. In view of the stay to the enquiry proceedings neither the petitioner was paid subsistence allowance nor the management would continue with the enquiry proceedings. Such a situation cannot be continued for a further indefinite period as delay in such proceedings would cause hardship to the students, school administration and loss to public exchequer as it is informed that the school is run on grant-in-aid basis.

9. In the facts, we find that the management without waiting for the communication of the Education Officer on the proposal submitted by the management on 30th December, 2013 to the Education Officer, suspended the petitioner by communication of same date i.e. 30th December, 2013 whereas the record shows that the Education Officer's communication to the management was made on 22nd January, 2014. So it is the case where without seeking approval as prescribed under the

provisions of Rule 33(1) read with Rule 35(1) the management suspended the petitioner.

10. During the course of hearing learned Counsel appearing for management concurred with the legal position that in case of absence of prior permission from the Education Officer for suspending the employee, the management shall be responsible to pay the subsistence allowance as per rules.

11. Rule-36 refers to enquiry committee. Rule 36(1)(b) refers to composition of Committee called upon to enquire into the allegations made by the management against the Head of the school. Rule 2(c) defines Chief Executive Officer which reads as under:

“2. Definitions – (1) In these rules, unless the context otherwise requires,

(a)

(b)

(c) “Chief Executive Officer” means the Secretary, Trustee Correspondent or a person by whatever name called who is empowered to execute the decisions taken by the Management;”

12. The learned Counsel appearing for the management referred to provisions of Rule 37(f) which reads as under:

“ **37. Procedure of inquiry** : (1)

(2)(a)

(b)

(c)

(d)

(e)

(f) The enquiry shall ordinarily be completed within

a period of 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.”

13. Reliance was placed on the Full Bench judgment in the case of ***Awdhesh Narayan K. Singh v/s. Adarsh Vidya Mandir Trust & anr. (2004(1) Mh.L.J. 676)*** by the Counsel appearing for management. In view of the provisions of MEPS Act and Rules as referred above, in the facts of the case, we dispose of the petition with following directions:

(a) In view of the provisions of the MEPS Act and Rules and Full Bench judgment, the management shall pay subsistence allowance to the petitioner till the completion of the enquiry.

(b) All contentions of the legality of the suspension order are kept open.

(c) We direct that the enquiry initiated by the management shall be completed within four months from the first meeting of enquiry committee. The petitioner shall co-operate with the enquiry committee.

15. It is clarified that this Court has not expressed any opinion on the merits of the allegations raised in the chargesheet. Copy of this order be forwarded to Education Officer (Secondary) Zilla Parishad, Kolhapur.

(G.S. KULKARNI, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.