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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.652 OF 2016

Ravindra U. Rai	...Petitioner
V/s.	
Rajasthan Relief Society & Ors.	...Respondents

Mr.C.R. Sadasivan i/b Mr.N.M. Ganguli for the Petitioner.

Mr.G.J. Sabnis with Mr.R.J. Dhond for the Respondent Nos.1 and 2.

WITH
CIVIL WRIT PETITION (STAMP) NO.10131 OF 2016

Rajasthan Relief Society & Ors.	...Petitioners
V/s.	
Ravindra U. Rai & Ors.	...Respondents

Mr.G.J. Sabnis with Mr.R.J. Dhond for the Petitioners.

Mr.C.R. Sadasivan i/b Mr.N.M. Ganguli for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 27TH JUNE, 2016.

P.C. :-

1. By consent of parties, both the writ petitions were heard together at the stage of admission and are being disposed of by a common order.
2. Writ Petition No.652 of 2016 is filed by the assistant

teacher impugning part of the order passed by the school tribunal, Mumbai dated 3rd February, 2016. Insofar as the petitioner is placed under suspension by the said order during the pendency of the enquiry. Writ Petition (Stamp) No.10131 of 2016 is filed by the management *inter-alia* challenging part of the said order passed by the school tribunal insofar as the tribunal has set aside the impugned termination dated 30th April, 2014 and also remission of the matter to the enquiry committee for fresh enquiry.

3. Mr.Sadasivan, learned counsel for the petitioner in Writ Petition No.652 of 2016 submits that since the petitioner was not under suspension during the pendency of enquiry, the school tribunal could not have placed the petitioner under suspension. He submits that the school tribunal having set aside the impugned termination dated 30th April, 2014 and having remitted the matter to the enquiry committee for afresh enquiry, the school tribunal could not have placed the petitioner under suspension. He submits that in any case even if the petitioner was to be suspended, the petitioner could have placed under suspension only after prior permission of the Deputy Director of Education under MEPS Act and Rules.

4. Learned counsel for the management on the other hand submits that the school tribunal could not have set aside the impugned order of termination dated 30th April, 2014 since the enquiry

was properly conducted by the enquiry committee. He submits that in any event the school tribunal has rightly placed the assistant teacher under suspension with a view that during the pendency of the enquiry before the enquiry committee, the assistant teacher shall not tamper with the witnesses. He submits that there is only one school under the management of the petitioner no.1 and thus the said part of the order passed by the school tribunal is justified.

5. A perusal of the impugned order passed by the school tribunal indicates that the school tribunal has rendered various findings of fact insofar as the decision of the school tribunal to set aside the impugned termination dated 30th April, 2014 made by the management is concerned and after considering various facts and documents, the school tribunal has set aside the impugned termination. The school tribunal was of the view that the enquiry conducted by the enquiry committee was required to be remitted back to the enquiry committee from the stage of cross-examination of the management witness by the assistant teacher except the management witness Mr.Manmohan Sharma, whose cross-examination was already completed by the assistant teacher. The school tribunal has already directed the management to carry out the enquiry on day to day basis.

6. I am thus not inclined to set aside that part of the order of

the school tribunal thereby setting aside the impugned order of termination dated 30th April, 2014 for various reasons recorded in the order passed by the school tribunal.

7. In my view, the school tribunal was justified in remitting the matter to the enquiry committee for a fresh enquiry by giving an opportunity to the assistant teacher to cross-examine the management's witnesses except the management's witness whose cross-examination was already completed by the assistant teacher.

8. Insofar as the submission of the learned counsel for the assistant teacher that the school tribunal could not have placed his client under suspension during the pendency of the enquiry since he was not placed under suspension when the enquiry was going on is concerned, it is not in dispute that the petitioner management had terminated his services. In my view, since the school tribunal had remitted the matter to the enquiry committee for a fresh enquiry from the stage it was left, the school tribunal was justified in placing the assistant teacher under suspension.

9. Insofar as the submission of Mr.Sadasivan, learned counsel for the assistant teacher that without the permission of the Deputy Director of Education his client could not be suspended is concerned, in my view, since the order of suspension is passed by the school tribunal, no such permission of the Deputy Director of

Education was required. Even if the school tribunal would not have passed the order of suspension, the management could have suspended the assistant teacher against whom an enquiry was being conducted in accordance with law. A perusal of the directions issued by the school tribunal in paragraphs 7 and 8 if read with earlier directions issued in the impugned order is considered, in my view the learned school tribunal has placed the petitioner under suspension after setting aside the order of termination during the pendency of the enquiry before the enquiry committee. I do not find any infirmity with the order passed by the school tribunal insofar as placement of the petitioner under suspension during the limited period of enquiry before the enquiry committee is concerned. It is however, made clear that during the period of suspension, the petitioner in Writ Petition No.652 of 2016 will be entitled to subsistence allowance which shall be paid by the petitioner in accordance with the provisions of MEPS Act and Rules.

10. Both the parties are directed to co-operate with each other and with the enquiry committee in expeditious disposal of the enquiry. The assistant teacher can cross-examine the management witnesses before the enquiry committee, if he so desires. The assistant teacher is also permitted to examine the witnesses if he desires before the enquiry committee. He shall however, furnish the list of such

witnesses to the management in advance. Both the parties will be at liberty to examine the witnesses and also to produce documents before the enquiry committee. The enquiry committee shall make an endeavor to submit a report upon concluding such enquiry within four months from the date of commencement of the cross-examination of the management witnesses.

11. Writ Petition No.652 of 2016 and Writ Petition (Stamp) No.10131 of 2016 are disposed of in aforesaid terms. The enquiry committee is directed to re-commence recording of evidence within two weeks from today.

(R.D. DHANUKA, J.)