

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

WRIT PETITION NO. 1154 OF 2014

Dayashankar H. Tiwari.

..Petitioner.

Versus

The Chairman / Managing Tustee,
Jawahar Education Society and Others.

..Respondents.

Mr. S. J. Panicker, Ms. Bhavika Pitale for the Petitioner.
Mr. Vikas Pandey for Respondent Nos.1 and 2.
Ms. Geeta Shastri, learned AGP for the State.

Coram : Ranjit More &
Dr. Shalini Phansalkar-Joshi, JJ.

Date : **April 2, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties.

2. The Petitioner has sought following relief :

"this Hon'ble Court may be pleased to issue a writ of mandamus or an appropriate writ or direction directing Respondent No. 1 and 2 to pay the Petitioner the subsistence allowance payable to him from 01/06/2011 till 04/02/2014, forthwith."

3. The brief background of the case is as under :

By the order dated 11th April 2011, the Petitioner

was put under suspension by the Respondent-Management and a departmental enquiry was initiated against him. After holding the departmental enquiry, the services of the Petitioner came to be terminated w.e.f. 1st June 2011. The termination order was challenged by the Petitioner by filing an appeal before the School Tribunal, Mumbai, being Appeal No.36 of 2011. By its judgment and order dated 22nd February 2013, the School Tribunal allowed the said appeal. The order of the School Tribunal reads thus :

"1. The impugned termination order dated 01.06.2011 stands set aside.

2. The Respondent Management is ordered and directed to reinstate the Appellant with continuity of service but without back wages and conduct the de novo and fresh Departmental Enquiry against him for alleged false and bogus degree certificate of Appellant of B.A. Of Gorakhpur University and bogus degree certificate of B.Ed. Of Sampurnanand Sanskrit University, Vanarasi, by following due process of law contemplated under the Act 1977 and the Rules 1981 and again by following principles of natural justice. For this purpose the Appellant shall be deemed to be under suspension. The management shall pass appropriate order after conducting the departmental enquiry and in that case the Appellant shall be at liberty to file fresh appeal if aggrieved.

3. The management is directed to pay cost of Rs.5,000/-."

. The Respondent-Management challenged the order

of the School Tribunal by filing writ petition before this Court, being Writ Petition No.7317 of 2013. The learned Single Judge of this Court, by the order dated 5th February 2014 disposed of the said writ petition. By consent of the parties, the learned Single Judge directed to hold fresh departmental enquiry against the Petitioner and observed that during the pendency of enquiry, the Management is liable to pay suspension allowance as per law.

. By holding the de-novo enquiry, the Petitioner is again terminated on 16th July 2014.

4. Learned Counsel appearing for the Petitioner submitted that the Petitioner was paid subsistence allowance for the period April 2011 to May 2011 and subsequently for the period February 2014 to May 2014. He submitted that the Petitioner is entitled for the subsistence allowance from 1st June 2011 till the date of his termination i.e., 16th July 2014, excluding the period February 2014 to May 2014 for which the subsistence allowance was paid.

5. The learned Counsel appearing for the Respondent –

Management contested the petition. He submitted that the order of the School Tribunal was not disturbed by the High Court and the High Court has only, by consent, fixed the schedule of the de-novo enquiry. He submitted that the Petitioner has been paid subsistence allowance for the period February 2014 to May 2014 when he was under suspension for denovo enquiry.

6. Having considered the rival submissions and having gone through the petition along with the annexures thereto, we find some merit in the petition. The Petitioner's claim for the subsistence allowance for the period 1st June 2011 till the date of the order of the School Tribunal cannot be entertained for the reason that his services were terminated by the management after holding enquiry on 1st June 2011. The termination of the Petitioner was, however, set aside by the School Tribunal by the order dated 22nd February 2013 and he was directed to be reinstated with continuity in service but without backwages. As the backwages were not granted by the School Tribunal, the Petitioner cannot be held to be entitled for subsistence allowance for the period between 1st June 2011 and 22nd February 2013. In that view of the matter, the Petitioner is not entitled for the

subsistence allowance from 1st June 2011 to 22nd February 2013, i.e., date on which the School Tribunal disposed of the Petitioner's appeal. Learned Counsel appearing for the Petitioner during the course of hearing fairly accepted this position.

7. Now, the question remains whether the Petitioner is entitled for the subsistence allowance post February 2013. I.e, subsequent to the date of the order made by the School Tribunal till the date of termination of his services after holding denovo enquiry.

8. The School Tribunal by its said order has also given liberty to the Respondent-Management to conduct the denovo enquiry against the Petitioner and for that purpose the Petitioner was deemed to be under suspension. This order was not disturbed by the learned Single Judge of this Court though the management had challenged the same in Writ Petition No.7317 of 2013. The learned Single Judge has merely fixed the schedule of the enquiry. The learned Single Judge also made it clear that the Petitioner would be entitled for the subsistence allowance during the pendency of the enquiry.

9. The learned Counsel appearing for the respective parties do not dispute that the Petitioner's services were not reinstated after the said order of the School Tribunal. We find that the Petitioner was not reinstated as the School Tribunal gave liberty to the Respondent management to conduct the denovo enquiry and for that purpose the Petitioner was deemed to be under suspension. Since this order is not disturbed by the learned Single Judge in WP No. 7317 of 2013, we are of the view that the Petitioner is entitled for the subsistence allowance from 22nd February 2013 till his termination after holding the denovo enquiry, i.e., 16th July 2014. Both counsel have not disputed that the Petitioner has been paid the subsistence allowance from February 2014 to May 2014. In these circumstances, we dispose of the writ petition in following terms :

- [1] The Respondent-Management is directed to pay subsistence allowance to the Petitioner for the period 22nd February 2013 to January 2014 and June 2014 to 16th July 2014.
- [2] The amount of subsistence allowance shall be paid within eight weeks from today.

10. Needless to state that the Respondent-Management

is at liberty to apply to Respondent No.3 for reimbursement of subsistence allowance paid to the Petitioner. Respondent No.3 shall decide such application for reimbursement independently on its own merits.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]