

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CONTEMPT PETITION NO.178 OF 2017
IN WP/4813/2016**

**RAJKUMAR BABU RAJBHOJ
VERSUS
RAJKUMAR TRIMBAKRAO SAWANT AND OTHERS**

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Advocate for Petitioner : Shri Ghatge Mahesh V.
Advocate for Respondents 1 to 3 : Shri D.S.Bagul.
AGP for Respondents 4 and 5 : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2017

Per Court:

- 1 I have heard the learned Advocates for the respective sides.
- 2 This Court had observed in paragraphs 9 and 10 of it's order dated 03.05.2016 delivered in Writ Petition No.4813/2016 as under:-
 - "9. Needless to state, the Enquiry Committee shall consider the allegations as may be leveled upon the appellant/ employee by the petitioners, strictly on its merits. The wages for the period 07.07.2015 till 09.05.2016 shall be subject to the outcome of the departmental enquiry.
 10. Needless to state, if the employee is placed under suspension, the Management shall ensure payment of subsistence allowance regularly in accordance with rules and there shall be no delay on that count."

3 The issue would be resolved by directing Respondent Nos.4 and 5 to nominate the State Awardee Teacher on the Enquiry Committee formed by Respondent No.2 (Vasantrao Naik Shikshan Prasarak Mandal) so as to commence the enquiry against the Petitioner. Needless to state, the Petitioner would be entitled to nominate his nominee on the Enquiry Committee.

4 Shri Bagul, learned Advocate for Respondent Nos.1, 2 and 3, submits that the proposal for seeking sanction to the suspension of the Petitioner would be forwarded within one week from today to Respondent Nos.4 and 5. He further submits that Respondent Nos.1, 2 and 3 will also submit the proposal for payment of subsistence allowance as per rules payable to the Petitioner.

5 It is trite law that after an employee is placed under suspension pending the disciplinary enquiry, he is deemed to be in employment of the employer. His suspension pending the enquiry does not tantamount to a break in service. Unless the Rules or Service Conditions specifically mandate the recording of his daily presence during the suspension, the Management cannot insist that he should mark his presence every day by coming to the school.

6 The Petitioner submits that he attends the school every day and the Management does not permit him to sign the muster roll. Converse is the claim by the Management.

7 Considering the above, this Contempt Petition is disposed of, considering the statements recorded above, with the following directions:-

- (a) The Respondent Management shall forward the proposal for the suspension of the Petitioner within TWO WEEKS from today.
- (b) Respondent Nos.4 and 5 will accord sanction to the suspension of the Petitioner forthwith.
- (c) Respondent Nos.1, 2 and 3 shall forward the bills for payment of subsistence allowance as per the Rules within a period of TWO WEEKS from today so as to enable Respondent Nos.4 and 5 to sanction the said bills from the date of his suspension.
- (d) Respondent Nos.4 and 5 shall nominate the State Awardee Teacher on the Enquiry Committee of Respondent No.2 within THREE WEEKS from today.
- (e) The Management shall follow the procedure laid down in Rules 36 and 37 of the MEPS Rules, 1981 while conducting the enquiry.

- (f) After the Petitioner nominates his nominee on the Enquiry Committee, he would participate in the enquiry without seeking adjournments on unreasonable or trivial grounds.
- (g) With the cooperation of all the litigating sides, the enquiry shall be completed within the time frame as prescribed under the MEPS Rules, 1981.

kps

(RAVINDRA V. GHUGE, J.)