

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.515 OF 2004

Chandrakant Narayanrao Jadhav,
Age-43 years, Occu-Service,
R/o Handarguli, Tq.Udgir, Dist.Latur – PETITIONER

VERSUS

1. Kisan Shikshan Prasarak Mandal,
Udgir, Dist.Latur,
through its Secretary,
2. Shivaji Secondary and Higher Secondary School,
Handarguli, Tq.Udgir, Dist.Latur,
through its Head Master,
3. Education Officer (Secondary),
Zilla Parishad, Latur – RESPONDENTS

Mr.S.V.Warad, Advocate for the petitioner.
Mr.V.D.Gunale, Advocate for respondent Nos. 1 and 2.
Mr.Y.G.Gujrathi, AGP for respondent No.3.

(CORAM : RAVINDRA V. GHUGE AND
SUNIL K. KOTWAL, JJ.)

DATE : 30/10/2017

ORAL JUDGMENT : (PER RAVINDRA V. GHUGE, J.)

1. The petitioner is aggrieved by the refusal of the Management / Respondent Nos. 1 and 2 to pay his salary during the period 04/10/1995 till the filing of the petition in this Court. A substantive prayer put forth by the petitioner in paragraph No.18-B reads as under :-

“By writ of mandamus or any other appropriate writ or directions or order, the respondents be directed to release the salary of the petitioner w.e.f. 4.10.1995 forthwith together with 18% p.a. till its realization and also to pay the yearly increments.”

2. This Court, after hearing the learned Advocates for the respective sides at length, had passed an order on 02/11/2004 thereby admitting the petition and granting interim relief to the petitioner by directing the Management to submit the salary bills of the petitioner from 07/07/2001 and with a further direction to the Education Officer to continue to pay/release the regular salary of the petitioner until disposal of this petition.

3. We find it apposite to reproduce the order dated 02/11/2004 as under :-

“1. Heard the learned Advocates for the parties.

2. The petitioner was appointed as Junior Clerk in a recognized school administered and managed by the respondent No.1. The said school is an aided school. The petitioner assumed confirmation in the year 1987 and since then, he is in the employment. In the year 1995, a crime came to be registered against the petitioner, bearing no.55/95 for commission of offence punishable under Sections 302, 498A read with Section 34 of IPC. The petitioner was in custody for a

period of five months.

3. *It is the case of the petitioner that thereafter though he was allowed to work, he was not permitted to sign the muster roll and he was informed that after the termination of the criminal case, appropriate decision would be taken by the management. The petitioner came to be acquitted by the Additional Sessions Judge vide judgment and order dated 6th July 2001 and it is undisputed that from 7th July 2001, the petitioner is working as Junior Clerk in the said school.*

4. *The petitioner's salary bills have been forwarded by the School to the State authorities for release of the salary grants. It may not be out of place to state that the management has passed an order dated 17-2-2003 trying to make out a case of abandonment of service by the petitioner under Rule 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.*

Perusal of the said order further reveals that the management has waived the action under Rule 16 and has decided to disentitle the petitioner from claiming salary for the period commencing from 24-5-1995 to 6-7-2001. In so far as the said period is concerned, appropriate orders could be passed at the time of final hearing of the matter. For the present, as it is an admitted position that the petitioner has resumed the duties and is actually working from 7-7-2001 in the same post which he held since the year 1985, there should be no impediment in the way of the Education Officer (Secondary) to sanction the salary bills of the petitioner from 7-7-2001 till date. We are informed at the Bar, that the pay bills for the said period are

already forwarded.

5. *Hence, Rule.*

6. *By an interim order, we direct the respondent No.3 to honour the salary bills submitted by the respondent nos. 1 and 2 drawing petitioner's salary for the period commencing from 7-7-2001 till date and the Education Officer shall continue to pay the regular salary of the petitioner, as per law.*

7. *Mr.V.D.Gunale, learned Advocate, waives service for respondent Nos. 1 and 2 and Mr.S.K.Kadam, learned Assistant Government Pleader, waives service for respondent No.3."*

4. From paragraph No.4 of the order reproduced above, it is apparent that this Court had recorded the fact that the Management had waived action under Rule 16 of the MEPS Rules, 1981 and by permitting the petitioner to be reinstated in service, had decided to restrain the petitioner from claiming salary for the period 24/05/1995 till 06/07/2001. This Court, therefore, observed in paragraph No.4 as above that, in so far as the said period was concerned, appropriate orders would be passed by this Court while dealing with the petition finally.

5. It is undisputed that pursuant to the orders of this Court, the petitioner has been receiving his salary on regular basis and is in continuous employment. He is said to be due for retirement in a

short period.

6. We have heard the learned Advocates for the respective sides and the learned AGP on behalf of the Education Department, at length.

7. It is trite law that concerning disputed questions and factors in which word is pitted against word *inter-se* the parties, this Court would be extremely slow in exercising its jurisdiction.

8. Considering our order dated 02/11/2004 and the rival pleadings, we are required to consider as to whether the petitioner could be entitled for wages for the period 29/05/1995 till July 2001.

9. It is undisputed from the record that the petitioner had submitted a letter dated 04/10/1995 addressed to the Head Master of the concerned School for seeking permission to report for duties. The petitioner was granted bail on 01/10/1995, after he was lodged in jail from 29/05/1995 till 30/09/1995. Since 02/10/1995 and 03/10/1995 were holidays, he had moved an application on 04/10/1995. It is equally undisputed that the Management allowed the petitioner to join duties by posting a remark on the said letter

dated 04/10/1995 that he can report for duties, but would not be entitled to salary till he was acquitted.

10. The Management does not dispute that it had issued a letter dated 04/10/1995 under the signature of the Head Master of the concerned school addressed to the petitioner that he was being permitted to join duties w.e.f. 04/10/1995, though, he would not be permitted to sign the muster roll and he would not be entitled for wages / salary alongwith allowances though he may work with the Management. He was also directed not to sign the attendance / muster roll till his criminal case was decided.

11. The Secretary of the Educational Institution issued a letter dated 05/10/1995 to the Head Master to permit the petitioner to continue to work, but disentitle the petitioner from claiming salary and allowances till the judgment in his criminal case was delivered. The Secretary issued directions to the Head Master not to allow the petitioner to sign the muster roll till the Court of criminal jurisdiction delivers a judgment in his Sessions Case No.9/2001. (Old number 132/1995)

12. By judgment dated 06/07/2001, the petitioner has been

acquitted of the charge of having committed an offence u/s 302 r/w Section 498(A) of the IPC. Having been acquitted, it appears that the petitioner made a claim for his unpaid wages.

13. Learned Advocate for the Management has strenuously canvassed that though the petitioner was allowed to report for duties w.e.f. 04/10/1995, he stopped reporting for duties within a period of about 2 to 3 months. He disappeared and never reported for duties. Learned Advocate strenuously submits that the petitioner can be said to have abandoned employment.

14. The petitioner has filed an affidavit in re-joinder on 01/09/2004 contending that an undertaking was forcibly extracted from the petitioner on a 20/- rupee court fee stamp paper wherein he was pressurized to mention that he would never claim the salary and allowances for the period 24/05/1995 till 06/06/2001. He has further averred that he was forced to submit a letter for advances and loan stating that he has not reported for duties till 06/07/2001.

15. It appears to us from the fact situation emerging from the record that the Head Master as well as the Secretary of the Institution specifically directed the petitioner not to sign the muster

roll and that he would not be entitled for salary even if he works continuously. By the said order, the petitioner was prevented from signing the muster roll and being a clerk, he now does not possess any evidence as to whether he had actually worked or not. The letters issued by the Head Master dated 04/10/1995 and by the Secretary dated 05/10/1995, restraining the petitioner from signing the muster roll and claiming salary and allowances till the judgment in Sessions Case No.9/1995 was delivered, apparently, leave no evidence for the petitioner, in so far as the muster roll is concerned, as regards his attendance from 04/10/1995 till 06/07/2001 when he was acquitted.

16. It cannot be ignored that, notwithstanding Rule 16 of the M.E.P.S. Rules, 1981, if the Management was aggrieved by the purported absence of the petitioner within 2 months after joining duties on 04/10/1995, a show cause notice could have been issued by the Management intimating the petitioner that his purported absence was being considered as being an act of unauthorized absenteeism. There is no dispute that the petitioner is a permanent employee of the said school having joined as a Jr.Clerk on 04/04/1985.

17. Rule 16 of the M.E.P.S. Rules reads as under :-

“16. Leave : (1) Leave shall not be claimed as a matter of right. Discretion to grant, refuse or cancel leave (other than casual leave) is reserved - (I) in the case of the teaching and non-teaching staff (other than the Head), with the School Committee and (ii) in the case of the Head, with the Management.

(2) An application for leave other than casual leave or extension of leave or to proceed on leave after vacation shall ordinarily be made in good time before the date from which the leave or its extension is sought. Even in exceptional cases where it is not possible to apply beforehand because of circumstances beyond the control of the employee, the application shall be made within 7 days from the date of absence. A non-permanent employee shall be deemed to have abandoned his service if he fails to apply for leave within seven days from the date of absence.

(3) In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty [without leave continuously for a period exceeding three years] or more, shall be deemed to have voluntarily abandoned his services.

(4) Casual leave may be granted to the teaching and non-teaching staff other than the Head, by the Head, and to the Head by the Chief Executive Officer or by the Management if the Head himself is the Chief Executive Officer, or by the management if the Head himself is the Chief Executive Officer, for a period, as

the Government may, by order specify, from time to time.

(5) Not more than two holidays can be enjoyed in conjunction with any spell of casual leave whether by prefixing or by suffixing or by both and the total period of casual leave and holidays enjoyed continuously at one time shall not exceed 7 days save only in exceptional circumstances when it may be extended upto 10 days.

(6) The number of holidays in excess of two holidays prefixed or suffixed by both, to the casual leave shall be treated as casual leave. Sundays, and holidays interposed between two periods of casual leave, shall be treated as part of casual leave.

(7) Casual leave cannot ordinarily be prefixed or suffixed to vacation except with the previous permission of the Head.

(8) It is permissible to enjoy half day's casual leave if the period of absence is half or less than half of a working day.

(9) Absence on a Saturday, if it is half working day or on any other day which is observed by the school as a half working day, shall be treated as casual leave for a full day and not as a half day's casual leave.

(10) The following kinds of special casual leave which shall not be debited to the casual leave admissible to an employee shall be granted namely :

(a) Special Casual Leave under the Family Planning Scheme :

<i>Occasion</i>	<i>Special Casual Leave Admissible</i>
<i>(i) Vasectomy or as the case may be tubectomy operation</i>	<i>Not exceeding six working days.</i>

(ii) Female Employees undergoing non-puerperal sterilisation	Not exceeding 14 days
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[Emphasis supplied]

18. It is, therefore, obvious that as the petitioner was a confirmed employee, it could not be assumed that he has abandoned employment unless he was absent continuously for a period exceeding 3 years. If the petitioner was in fact absent, the Management could have exercised its right of issuing notices to the petitioner indicating his unauthorized absence and could also have initiated an enquiry against him for his unauthorized absenteeism. Till the petitioner preferred this writ petition on 16/12/2003, the Management has not issued any show cause notice and has not initiated disciplinary proceedings with regard to the purported unauthorized absence of the petitioner.

19. The learned Division Bench of this Court in the matter of Madhukar Namdeo Patil Vs. Chairman Sudhagad Education Society and others [2000(4) Bom.C.R. 698] has concluded that an employee can be deemed to be under suspension till he is in police or judicial custody. He cannot be kept suspended beyond the period of his custody and after he is granted bail. He would be entitled to report

for duties after he has been granted bail. We do not find that the petitioner can be said to be disinterested in employment when he had promptly reported for duties on 04/10/1995 after he was granted bail on 01/10/1995.

20. The learned Single Judge of this Court in the matter of Sudhakar Chindu Bhadane Vs. Niphad Taluka Education Society and others [2008(1) Mh.L.J.448] has concluded that it was necessary for the Management to issue a show cause notice under Rule 16(3) if an employee was remaining unauthorizedly absent. Only after issuance of notices and despite such notices if the employee continuously remained absent for a period exceeding 3 years, then alone could the Management conclude that he had voluntarily abandoned employment.

21. Considering the fact situation as recorded above and the Law laid down by the learned Division Bench and the learned Single Judge of this Court, the contention of the Management would have been fortified if show cause notices would have been issued to the petitioner regarding his purported unauthorized absence calling upon him to report for duties. The doctrine of acquiescence therefore would support the contention of the petitioner that he was in

employment, was reporting for duties and the Management had precluded him from signing the muster roll.

22. Learned Advocate for the Management has strenuously canvassed that one Mr.B.K.Patil was temporarily engaged as a Clerk in between 22/07/1996 till 31/01/1997 and one Mr. D.N.Vasare was temporarily engaged as a Clerk from 01/02/1997 till 30/04/1997, Learned Advocate for the petitioner points out from the record that the Education Officer had directed the Management to deposit the salary of Mr.B.K.Patil and Mr.Vasare since the petitioner was neither suspended nor terminated from employment and he had the legitimate right to report for duties. Notwithstanding the same, learned Advocate for the petitioner submits that he would stake a claim for his unpaid wages from 01/05/1997 till the date from which the payment of his salary was resumed under the orders of this Court. He further submits that due to the interim orders of this Court, he has received his salary regularly from 07/07/2001 till today.

23. Considering the above, we find that as the Management had directed the petitioner not to sign the muster roll and not to claim salary till his criminal case was decided, the petitioner is left with no

evidence to indicate that he was regularly working. It therefore indicates that the Management is taking advantage of the situation by alleging that the petitioner was never in employment.

24. As such, this petition is partly allowed. The petitioner shall be entitled for his regular salary with allowances w.e.f. 01/05/1997 till 06/07/2001. As the petitioner / Management is a grant-in-aid institution, undisputedly, the Management shall forward the salary bills of the petitioner for this period to the Education Officer within a period of 4 weeks from today. Any delay caused by the Management in forwarding the bills would attract interest @ 6% p.a. from 07/07/2001 and the said component of interest shall be paid by the Management from its own funds and the said amount will not be paid from the State exchequer. After respondent No.3 / Education Officer receives the bills from the Management within the period mentioned, he shall proceed to approve the said bills within a period of 6 weeks thereafter.

25. Rule is made partly absolute in the above terms.

(SUNIL K. KOTWAL, J.)

(RAVINDRA V.GHUGE, J.)