

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 196 OF 2008

Narsing S/o Shankarrao Shivshette,
age 36 years occupation Asst. Secondary Teacher
in Private School R/o Udgir Taluka Udgir District Latur.

...PETITIONER

VERSUS

- 1) The Secretary,
Bharat Liberal Education Society at Udgir
Taluka Udgir District Latur.
- 2) The Head Master,
Sangram Smarak Vidyalaya,
Udgir Taluka Udgir District Latur.
- 3) The Education Officer (Secondary)
Zilla Parishad, Latur District Latur.

...RESPONDENTS

Mr G.N. Chincholikar, Advocate for petitioner
Miss Soniya S. Chillarge, Advocate, holding for Mr S.V. Chillarge,
Advocate for respondents No.1 & 2.
Mr Y.G. Gujarathi, Asstt. Govt. Pleader for respondent No.3.

**CORAM : R. D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Date: 28th August 2017

ORAL ORDER:

By this petition filed under Article 226 of the Constitution of India, the petitioner seeks Writ of Mandamus with a prayer of issuing direction to pay the salary to the petitioner for suspended period from 13th April 2002 to 8th April 2003 with continuity in service and other consequential benefits within one month.

2. Some of the relevant facts for deciding this Writ Petition are as under:

The petitioner was appointed as an Assistant Secondary Teacher in pay scale of Rs. 1400/- to 2600 in respondent No.2 school and joined duties on 6th March 1997. The petitioner was suspended from his services in view of the Crime No. 23/2002 registered against him under sections 306, 498-A read with Section 34 of the Indian Penal Code. He was arrested on 13th April 2002. It is the case of the petitioner that the learned Additional Sessions Judge, Udgir, by the judgment and order dated 31st March 2003 acquitted the petitioner honourably in Sessions Case No. 27 of 2002. The petitioner was thereafter allowed to join duty on 9th April 2003 by

the management. It is case of the petitioner that neither the management nor the Government has paid his salary for his suspension period from 13th April 2002 to 9th April 2003 i.e. for a period of 11 months 25 days.

3. On 12th August 2002 petitioner had applied to respondent No.2 for paying subsistence allowance to the petitioner. The petitioner thereafter made various representations to the management to pay salary during the suspension period. The respondents, however, did not pay either salary or the subsistence allowance for the period during 13th April 2002 to 8th April 2003.

4. The petitioner thereafter made representation on 29th January 2005 to respondent No.2 for granting approval during the suspension period and to pay his salary during the suspension period.

5. Learned Counsel for the petitioner submits that the petitioner was honourably acquitted by the learned Sessions Judge in the criminal proceedings filed against him. The management did not conduct any inquiry against petitioner and continued to place petitioner under suspension. He submits that though in view of the order of acquittal passed by the learned Sessions Judge, petitioner

was reinstated in service, petitioner has been neither paid salary nor subsistence allowance of the said period by the management or by the State Government.

6. Learned Counsel for the petitioner invited our attention to Rule 34(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short "Said Rules"). It is submitted by the learned Counsel that since the petitioner was honourably acquitted by the Criminal Court and since no inquiry was conducted by the Management, the petitioner would be entitled to full salary and also consequential benefits during the suspension period.

7. The learned Counsel for the Management, on the other hand, invited our attention to Rule 34(5) of the said Rules and would submit that the only liability of the management under the said rules would be to bear expenditure or pay and allowance of the substitute, if any, appointed in place of the employee under suspension and not the entire salary. She submits that petitioner has been already reinstated by the management and salary, if any, not paid by the management to the petitioner, the petitioner shall be directed to make a representation before the management by this Court, which representation can be considered by the Management.

8. Mr. Gujarathi, learned Assistant Government Pleader for the respondent No.3 submits that the salary, if any, payable to the petitioner, in view of the management not having conducted any inquiry upon acquittal of the petitioner in criminal proceedings, has to be at the first instance paid by the management, and after making such payment if any, the management can apply for grant in respect of such payment if any made by the management in accordance with law. He submits that at the first instance the Education Officer is not liable to make any such payment to the petitioner directly.

9. It is not in dispute that the petitioner was suspended from his services on 13th April 2002 by an order passed by the management. It is also not in dispute that by a judgment and order dated 31st March 2003 petitioner was honourably acquitted by the learned Additional Sessions Judge, Udgir, in Sessions Case No. 27 of 2002. The management has already reinstated the petitioner in service on 9th April 2003. The petitioner has been paid the salary from the date of reinstatement in service till date. Dispute is in respect of salary and/or subsistence allowance during the period of suspension of the petitioner i.e. between 13th April 2002 to 8th April 2003.

10. Under Rule 33(6) of the said Rules, if an employee is convicted upon charges as a result of criminal prosecution and if an inquiry is also initiated by the management against the employee on the basis of same charges, it shall not be necessary to proceed with the inquiry on the same charges and the management has to take action to terminate the services of the employee. If an order of acquittal is passed in the criminal proceedings against an employee, the management shall consider in the light of the judgment whether it is necessary to institute or proceed with the inquiry. If the management agrees that the acquittal is justified, it may drop the inquiry by certifying that it agrees with the findings of the Court. If the management does not agree with the findings, it may proceed with the inquiry and inflict proper punishment. In this case, Management did not conduct any inquiry against petitioner and appears to have accepted order of acquittal passed by the learned Sessions Judge against petitioner and thereafter reinstated the petitioner in service with effect from 9th April 2003.

11. Under Rule 34(4) when an employee who has been suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the employee for the period of his

absence from duty, and also regarding the said period being treated as a period spent on duty.

12. Under Rule 34(5) of the said Rules, in the event of the authority being of the opinion that the employee has been fully exonerated or, in the case of suspension that it was wholly unjustified, the employee shall be given the full pay, allowances and pension to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be. The said rule, however, further provides that the management shall bear expenditure on pay and allowances of substitute, if any, appointed in place of the employee under suspension and such expenditure shall not be held admissible for the Government grant. A conjoint reading of Rules 33(5), 33(6) and 34(4) & 34(5) makes it clear that if the management has accepted the order of acquittal passed in the criminal proceedings against petitioner and has not proceeded with the inquiry against petitioner, petitioner would be entitled to pay and allowances payable to the employee for the period of his absence from duty in lieu of order of suspension and other benefits contemplated under Rule 34(5) during such suspension period.

13. In our view, such allowances including salary at the first

instance shall be paid by the management. The only exception provided in Rule 34(5) is regarding the extent of pay and allowances of the substitute, if any appointed in place of the employee under suspension, which shall be paid by the management exclusively. Thus, the submission of the learned Counsel of the management that it is not their responsibility or liability to make payment to the petitioner at the first instance, has no merit.

14. In so far as submission of learned Counsel of the management that petitioner shall be directed to make a representation to the management for payment of salary, if any, is concerned, we are not inclined to accede to such request by the learned Counsel of the management. The petition was filed by the petitioner in this Court in the year 2007. The petitioner has claimed the salary and other benefits for the period from 13th April 2002 to 8th April 2003. No affidavit in reply has been filed by the management or by the State Government in this petition in last several years. We are not inclined to direct the petitioner to make any representation for payment of his salary at this stage. Petitioner had already made several representations to the management as well as to the State Government before filing this petition for payment of salary and other benefits after reinstatement of the petitioner, which is of no avail.

15. We, therefore, pass the following order :-
- (I) Writ Petition is made absolute in terms of Prayer Clause “B”. It is, however, made clear that respondents No.1 and 2 shall pay the salary and other consequential benefits, payable to the petitioner under Rule 34(5) for the period from 13th April 2002 to 8th April 2003, at the first instance, within eight weeks from today.
 - (II) The Management would be at liberty to seek grant from respondent No.3 for such payment, if any, made by the Management to the petitioner in accordance with law. If any such application is made by the Management to respondent No.3, the respondent No.3 shall consider such application and shall make such payment to the Management, if any, payable in accordance with law.
 - (III) If respondents No.1 & 2 do not release payment to the petitioner within the time prescribed, respondent No.3 shall deduct such amount from the grant payable to respondents No.1 and 2 and shall release such payment to the petitioner, if any, within two weeks from

the date of such default on the part of the management.

- (IV) It is made clear that if the petitioner has already been paid salary and other allowance for the period from 13th April 2002 to 8th April 2003, during the pendency of this writ petition, neither of the respondent would be liable to pay any amount to the petitioner.
- (V) Rule is made absolute in aforesaid terms.
- (VI) No order as to costs.
- (VII) Parties to act on the authenticated copy of this order.

(SUNIL K. KOTWAL)
JUDGE.

(R.D. DHANUKA)
JUDGE.

pjm