

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8572 OF 2016

Vd. Shridhar Jakhuji Darekar,
Age: 62 Years, Occu.: Retired,
C/o.: Prasad Pharmacy, Near Kinetic Chowk,
Station Road, Ahmednagar .. **Petitioner**

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Medical Education Dept. Mantralaya,
Mumbai – 400 032
2. The Director, Director of Ayush,
St. George Compound D' mello road,
Mumbai – 400 001
3. Asstt. Director of Ayurved,
4th Floor, New Administrative Building,
Pune – 411 001
4. Ayurved Shastra Seva Mandal,
Vishram Bag, Ahmednagar – 414 001,
Through it's President and / or Secretary
5. Gangadhar Shastri Gune Ayurved
Mahavidyalay, Ahmednagar,
Through its Principal .. **Respondents**

Shri Shivaji T. Shelke, Advocate for the Petitioner.

Shri S. W. Mundhe, A.G.P. for Respondent Nos. 1 to 3.

Respondent No. 4 served.

Shri Vinayak Sudhakar bedre, Advocate for Respondent No. 5.

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATE : 4th December, 2017

ORAL JUDGMENT (*Per: S. V. Gangapurwala, J.*) :

1. Rule. Rule returnable forthwith. With the consent of learned counsel for respective parties taken up for final hearing.

2. Mr. Shelke, learned advocate for the petitioner submits that petitioner was working as an Associate Professor in respondent No. 5 - College. On or about 22nd January, 2015, petitioner was directed to proceed on leave by respondent Nos. 4 and 5. On 15.4.2015 show cause notice was issued to the petitioner by respondent No. 4 asking the petitioner to submit his explanation within 15 day's. On or about 17.4.2015 the respondent No. 4 suspended the petitioner. The petitioner had filed a writ petition challenging the suspension. However, on 31.5.2015 the petitioner on attaining the age of superannuation had retired. The management had not taken the permission from the authority before suspending the petitioner. The management did not pay the salary of 1½ months to the petitioner which comes to Rs.1,77,661/-. The management is liable to pay the sum. The learned counsel submits that it is the respondents who directed the petitioner to proceed on leave as such the petitioner could not have remained present in the college. On the other hand when the said order was in force the respondent No. 4 suspended the petitioner. The petitioner was

not directed to remain present day to day at the headquarters under the order of suspension. It is erroneous on the part of respondent to deny the benefit to the petitioner. The learned advocate relies on the judgment of the Apex Court in a case of **Anwarun Nisha Khatoon Vs. State of Bihar and others** reported in **2002 AIR SCW 3461** and the judgment of the Division Bench of this court in Writ Petition No. 6387 of 2006 dated 26.6.2008.

3. Mr. Bedre, learned advocate submits that petitioner was required to remain present in the headquarters and ought to have attended the college each day. As per the Rules and the suspension order dated 17.4.2015 the petitioner was not present, as such is not entitled for any salary nor any subsistence allowance.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The following factual matrix is not disputed:

- i] Respondent Nos. 4 and 5 directed the petitioner to proceed on leave on 22nd January, 2015.
- ii] The petitioner is suspended on 17.4.2015.
- iii] The petitioner retired on attaining the age of superannuation on 31.5.2015.
- iv] No enquiry was proceeded against the petitioner.

6. The suspension order states that the petitioner is suspended and that he should remain present in the college and complete the procedure of suspension.

7. No rule is brought to our notice to suggest that during the period of suspension the petitioner was required to report to the headquarters every day. The Hon'ble Apex Court in a case of **Anwarun Nisha Khatoon Vs. State of Bihar and others** (*Supra*), has observed thus:

“.....

9. *In our view, this authority, far from assisting the respondents, is against them. This authority shows that there is no requirement to mark attendance. To us also no rule could be shown which required a suspended employee to mark attendance. The respondents can at the most ask for a certificate that the appellant's husband was not engaged in any other employment, business, profession or vocation. The appellant's husband having died, he could not have furnished such a certificate. At no stage have the respondents asked the appellant to give such a certificate. Thus the grant of subsistence allowance cannot be denied on the ground that such a certificate is not given.*

10. *This view of ours is supported by an authority of this Court in the case of Jagdamba Prasad shukla V. State of U. P. reported in (2007) 7 SCC 90. In this case, on identical facts, it has been held that if the State requires a certificate they should ask for it. It has been held that without asking for such a certificate the State cannot reject a claim for subsistence allowance.*

11. *In the case of M. Paul Anthony V. Bharat Gold Mines Ltd. Reported in (1999) 3 SCC 679, this Court has held that a suspended employee is entitled to subsistence allowance as a relationship of employer-employee subsists.*

12. For the above reasons, we hold that the appellant is entitled to receive subsistence allowance, which should have been paid to her husband. As the only ground for not paying the subsistence allowance is that a certificate required by Rule 96 (2) has not been furnished, we direct the appellant to file an affidavit stating therein that her husband was not engaged in any other employment, business, profession or vocation. The subsistence allowance as per Rule 96 shall be released to the appellant within 4 weeks of receipt of such an affidavit.”

8. In the present case also as no rule has been pointed out mandating the petitioner to remain present at the headquarter and mark his presence at the headquarter the aforesaid judgment would squarely apply.

9. In the result the respondent Nos. 4 and 5 shall pay the subsistence allowance as applicable as per the Direction No. 02/2012, issued by the Health University to the petitioner for the period the petitioner was under suspension expeditiously and preferably within four (4) weeks. In case the petitioner is entitled for any other monetary benefits the petitioner may take up his grievance in accordance with law.

10. Rule is accordingly made absolute in above terms. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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