

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5537 OF 2003

Gyanodaya Shikshan Pracharak Samiti .. Petitioner

Vs.

The Education Officer

Secondary, Zilla Parishad, Thane and ors. .. Respondents

Mr.A.G.Kothari, for the Petitioner.

Mrs.K.R.Kulkarni, AGP for Respondents No.1 & 2- State.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.**

04th JULY, 2017

P.C. :

. By this Petition, the petitioner – Management has sought
the following reliefs : -

“(a) That this Hon'ble Court be pleased to issue a Writ of Certiorary, Writ of Mandamus or any other appropriate writ, order or direction or order calling for the case and after examining the legalities and proprieties of the impugned orders dated 02/07/2003 at Exh F and order dated 07/07/2003 at Exhibit H to quash and set aside both the above said orders dated 02/07/2003 and 07/07/2003.

(b) That pending the final hearing and disposal of the Petition the impugned orders dated 02/07/2003 and 07/07/2003 be stayed forthwith.

(c) Ad-interim reliefs in terms of prayer (b) be granted.

(d) Cost of the Petition be provided for.

(e) Such other and further reliefs be granted as the Hon'ble Court may deem fit and proper.”

2. The petitioner – Management had appointed one Shri Rajnarayan Tiwari as a Head Master in the secondary school and his appointment was approved by the Education Officer. On 28/04/2003, an FIR came to be filed by one Shri Misra. It was alleged in FIR that Shri Jain Narayan Tiwari who was the Head Master of the Primary School till 1995 had failed in Xth standard examination and had used the Xth standard certificate of his cousin Shri Rajnarayan Tiwari, the present Head Master of the secondary school and had prepared false documents and deceived the Institution and the Government. The Head Master Rajnarayan Tiwari was arrested and remanded to the police custody. He was in police custody from 02/05/2003 to 05/05/2003 and was released on bail on 06/05/2003. By the impugned order dated 02/07/2003, the Education Officer issued directions to the Petitioner – Management that as the Head Master Shri Rajnarayan Tiwari was arrested and in custody from 02/05/2003 to 05/05/2003 for more than 48 hours, in view of the provisions of sub-rule 5 of rule 3 of the Maharashtra Employees Private Schools (Conditions of Service) Regulation Rules,

1981 (for short 'MEPS Rules), he should be suspended immediately and also directed to submit the report of the action taken by the Petitioner – Management. By further order dated 07/07/2003 which is also impugned in this Petition, it was directed that since the Head Master was not suspended and no action was taken against the Head Master, his rights shall stand cancelled with effect from 08/07/2003.

3. According to the Petitioner – Management, in view of provisions of rule 33(5) of the MEPS Rules, there was no automatic suspension and the same is limited only to the days the person is in judicial custody and the power of suspension vests with the Petitioner – Management and that the Education Officer has no power to direct the Management to suspend the Head Master.

4. By an ad-interim order dated 29/08/2003, the impugned orders dated 02/07/2003 and 07/07/2003 of the Education Officer were stayed. While admitting the Petition, the said ad-interim order was continued till disposal of the Petition.

5. The issue raised in the Petition is squarely covered by the decision of the Division Bench of this Court in **Madhukar Namdeo**

Patil Vs. Chairman, Sudhagad Education Society and ors., 2004(4) Mh.L.J. 206. The Division Bench in that case has held that the suspension of employee after the period of judicial custody coming to an end will be contrary to the provisions of rule 33(5) which restricts the operation of suspension to the period during which the employee was in judicial custody and it does not contemplate automatic suspension pending criminal proceedings.

6. In the circumstances, the Petition is allowed and Rule is made absolute in terms of prayer clause (a). No order as to costs. It is clarified that so far as the period spent in custody by the Petitioner is concerned viz from 02/05/2003 to 05/05/2003, the suspension shall operate.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)