

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6527 OF 2018
(Tazoddin Rehman Maniyar Vs. Shivshakti Samajseva Mandal and
others)
WITH
WRIT PETITION NO.6528 OF 2018
(Pandurang Ganpati Bachapalle Vs. Shivshakti Samajseva Mandal
and others)

Mr.A.V.Patil-Indrale, Advocate for the petitioners.
Mr.S.R.Yadav, AGP for the respondent/State.
Mr.V.D.Salunke, Advocate for respondent Nos.1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/11/2018

PER COURT :

1. I have heard the learned Advocates for the litigating sides. On 25/10/2018, this Court had passed the following order :-

“1. Mr.Salunke, learned Advocate for the Management seeks a short accommodation to file an affidavit in reply. It is stated that he would positively file it on or before 01/11/2018 and this matter can be posted on 02/11/2018 in the “Passing Orders Category”.

2. Learned Advocate for the petitioners submits that on the one hand, the departmental enquiry is progressing and on the other hand, the petitioners are not being paid their suspension allowance or any allowance though the law is laid down by the Hon'ble Apex Court in Vidya Vikas Mandal and another Vs.

Education Officer [2007(3) Mh.L.J. 801]. He submits that his defence is weakened on account of the deprivation of any allowance. He submits that this petition would be infructuous if the enquiry is completed by the Management without paying any subsistence allowance. He, therefore, submits that the enquiry be adjourned.

3. *In view of the above, stand over to 02/11/2018 in the "Passing orders Category". Until further orders, the Enquiry Committee would adjourn the enquiry since these matters are being heard by this Court."*

2. Considering the order that I am required to pass, keeping in view the law laid down by the Hon'ble Apex Court in the matters of State of Punjab and others Vs. Dr.Harbhajan Singh Greasy [(1996) 9 SCC 322], Vidya Vikas Mandal and another Vs. Education Officer [2007(3) Mh.L.J. 801 = 2007(11) SCC 352] and in view of the order passed by this Court in the matter of Adarsha Vidya Mandir Trust and another Vs.Awadesh Narayan Komal Singh and others [2004(4) Mh.L.J. 173] and the order of this Court dated 01/10/2018 in the matter of Adardsh Vidyalaya Shikshan Samiti and another Vs. Hanmant s/o Digambarrao Hambarde and others in WP No.10910/2018, I am not required to advert to the entire submissions of the learned Advocates for the litigating sides. It also

cannot be ignored that a *denovo* enquiry has been directed by the competent authority which has dealt with the appeals filed by these employees and the enquiry is underway. The competent authority is the Appellate Authority cum Regional Deputy Commissioner, Social Welfare Department, Aurangabad.

3. The petitioner in the first petition was not placed under suspension. An enquiry was conducted on account of the charge of absenteeism and he was terminated on 01/07/2014. In case of the petitioner in the second petition, his suspension pending enquiry was sanctioned by the Social Welfare Officer, Zilla Parishad, Beed by order dated 02/12/2013. After conducting an enquiry, he was terminated for proved misconducts on 11/04/2014. Both these employees had approached the competent authority by filing their appeals and the Authority concluded that the enquiries were vitiated. By setting aside the enquiry, the authority directed the Management to conduct a *denovo* enquiry. In so far as the order of termination was concerned, the competent authority has not expressed any view, in as much as, it did not grant any suspension allowance to these employees who are working in an educational institution. It is not disputed that the respondent / Educational Institution receives salary grants from the Government and both these employees were

being paid their salaries through such grants.

4. Mr.Salunke, learned Advocate for the Management has strenuously opposed both these petitions. In so far as the second case is concerned, he has drawn my attention to the various proceedings initiated by the said petitioner and he contends that in none of these proceedings, he had sought payment of suspension allowance. There is a slight distinction between these two cases. In the first petition concerned, Tazoddin Rehman the petitioner was not placed under suspension. In the second case, the petitioner Pandurang Ganpati was placed under suspension after the District Social Welfare Officer granted permission to suspend him.

5. Learned Advocate for Management has made a grievance that both these petitioners have approached the competent authority by filing their appeals in 2016, though they were terminated in 2014. He, therefore, submits that they cannot claim any benefit for the said period. Learned Advocate for the petitioners submits that though it is correct that they approached the appropriate forum after 2 years, they had initially approached the School Tribunal under the M.E.P.S.Act, 1977. Their proceedings were disposed of concluding that the Tribunal has no jurisdiction. They then approached this

Court by filing writ petitions and this Court directed them to approach the competent forum. On account of legal advise, these petitioners lost valuable 2 years while facing starvation and hence they should not be blamed for approaching the competent authority belatedly.

6. I find that in State of Punjab (supra), the Hon'ble Apex Court concluded that the delinquent, who is subjected to an enquiry, would be entitled to the suspension allowance as he would be deemed to be suspended during the enquiry. Consequential benefits would depend upon the fate of the enquiry when the same is subjected to adjudication by any Court or Tribunal. However, since Dr. Harbhajan Singh had already attained the age of retirement, the Hon'ble Apex Court noted that the dis-allowance of the back wages would not stand in the way of computation of his pensionary benefits.

7. In Adarsh (supra), this court has considered the judgment in State of Punjab (supra) and concluded that if an enquiry is found to be faulty, it would not be appropriate to direct reinstatement with consequential benefits and such reliefs would depend upon the fate of the enquiry. Once the matter is remitted to the employer for a *denovo* enquiry, the employee would be deemed to be under

suspension. Naturally, such an employee would then be entitled to suspension allowance.

8. In Adarsh Vidyalaya (supra) decided by this Court on 01/10/2018, the law laid down by this Court in Bhartiya Seva Acharya Education Society, Nagpur and another Vs. School Tribunal, Nagpur and others [2014(2) Mh.L.J.879] , the decision of the learned Full Bench of this Court in Saindranath Jagannath Jawanjal Vs. Pratibha Shikshan Sanstha and another [2007(3) Mh.L.J. (F.B.) 753] and the directions issued by the Hon'ble Apex Court in Vidya Vikas Mandal (supra), were considered and this Court therefore observed in paragraph Nos. 11 to 15 as under :-

“11. In my view, whether the enquiry is set aside by the Tribunal for being vitiated or that the employer withdraws the enquiry on finding that it was likely to be vitiated, with the liberty to conduct a denovo enquiry, the Law laid down by the Hon'ble Apex Court in Vidya Vikas (supra) would be squarely applicable.

12. Considering the above, I do not find that the School Tribunal has committed any error in passing the impugned order dated 26/07/2018 to the extent of treating the appellant as being under suspension from 09/01/2016 and he being entitled to suspension allowance since then till the completion of the

enquiry and the decision of the Management.

13. Learned Advocate for the petitioner submits that as the concerned Educational Institution is grant-in-aid and salary grants are received, it would forthwith submit the bills towards payment of suspension allowance as per rules for the period 09/01/2016 till July 2018 and even thereafter, expeditiously. The Education Department would sanction the bills.

14. Considering the above, the Management shall submit a flawless proposal to the Education department / respondent Nos. 5 and 6 with regard to the payment of suspension allowance of the appellant for the above stated period and from August 2018 as well within a period of 15 days. The concerned Department shall clear the said proposal within 15 days thereafter and shall initiate payment of subsistence allowance as per rules, which is 50% for the first 4 months from 09/01/2016 till 08/05/2016 and then @ 75% of the pay scale inclusive of allowances as are payable to a candidate on duty for the period thereafter. In the event the Management has engaged any other person in place of the appellant and his salary has been paid through the salary grants, then the suspension allowance of this appellant shall be paid from the coffers of the petitioners/Management within 4 (four) weeks from today and it shall continue to pay even thereafter.

15. In the event, the proposal of the Management for payment of suspension allowance is found to be defective by the

concerned Education Department, either the Management shall pay the entire subsistence / suspension allowance as a precondition for initiating the enquiry afresh as is agreed upon or shall not commence the enquiry till the entire suspension/subsistence allowance is paid to the appellant.”

9. It would be apposite to reproduce the law laid down by the Hon'ble Apex Court in Vidya Vikas (supra) in paragraph Nos. 8 and 9 as under :-

“8. As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined

report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

9. *In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent no.2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by*

the Committee within a period of six months from the date of their nomination/constitution.” (Emphasis supplied)

10. The above stated crystallized position of law, when it comes to Educational Institutions, would stand on a different platform in comparison to the law applicable to the Labour and Industrial Sector. The law laid down in Workmen of Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Limited, AIR 1965 SC 1803, The Workmen of M/s Fire Stone Tyre and Rubber of India Private Ltd., Vs. The Management and others, AIR 1973 SC 1227 = 1973(1) SCC 813, Bharat Forge Company Ltd., Vs. A.B.Zodge and another, AIR 1996 SC 1556 and Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, 1972 (1) SCC 595, would indicate that if an enquiry is vitiated for any reason whatsoever, the Labour Court or the Tribunal, as the case may be, would assume the jurisdiction to hold a *denovo* enquiry by permitting the Management to lead evidence before the Court/Tribunal, subject to the law laid down by the 5 Judges Bench of the Hon'ble Apex Court in the matter of KSRTC Vs. Laxmidevamma and another, 2001(2) CLR 640. This Court has, therefore, delivered a judgment in Mumbai Cricket Association Vs. Pramod G. Shinde, 2011 (1) CLR 745 that even if the enquiry is set aside and the Labour Court/Tribunal would hold a

denovo enquiry, there shall be no subsistence allowance or part payment or reinstatement to such a workman. As such, the distinction created by the Hon'ble Apex Court in between Educational Institutions and the Labour and Industrial Sector is evident from the judgments delivered in the State of Punjab (supra) and Vidya Vikas Mandal (supra).

11. I find that the competent authority in these 2 cases was not apprised of the position of Law as in State of Punjab and in Vidya Vikas (supra). Had these judgments been cited, the said authority would have noticed that in such circumstances, the employee is deemed to be under suspension and the suspension allowance is to be paid to such an employee from the date of his termination as it stands merged in the deemed suspension of the employee pending enquiry.

12. It is informed that both these petitioners were drawing their monthly salary from the salary grants. As such, the direction to pay the subsistence allowance shall be from the salary grants.

13. In view of the above, both these petitions are partly allowed. In addition to the directions of the competent authority set out in the

impugned orders, it is further directed as under :-

[a] The Management shall prepare a proposal of both these employees for payment of subsistence/suspension allowance as they are deemed to be under suspension from the date of their termination, within 4 weeks from today.

[b] The said proposal shall be served upon respondent No.3 within the said period of 4 weeks.

[c] Respondent No.3 shall consider the said proposal and if the salary grants through which the salaries were paid to these 2 petitioners, has not been allocated to any other employee in place of these 2 petitioners, the said proposals for payment of suspension shall be sanctioned within 3 weeks and the payments of the suspension allowance shall be made to these petitioners either directly or by depositing the said amounts in their salary bank accounts.

[d] Since the Apex Court has laid down the law that non payment of suspension allowance would weaken the defence of the employee and would vitiate the disciplinary proceeding, it would be appropriate to direct that once the arrears of suspension allowance are paid to these petitioners, only then the Enquiry Committee / Enquiry Officer would proceed with the enquiry.

[e] In the event of the respondent/Management having utilized the

salary grants from which these petitioners were earlier paid their salaries, by appointing a new person in the place of any of these petitioners, then the suspension allowance shall be paid to these petitioners from the account of the respondent/Management.

[f] Once the arrears of suspension allowance are disbursed, the enquiry would proceed at the stage at which it was stayed by this Court by the order dated 25/10/2018 and these petitioners would be restrained from seeking unnecessary adjournments. In short, they would refrain from delaying the enquiry and would fully co-operate with the Enquiry Committee.

(Ravindra V.Ghuge, J.)