

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3675 OF 2017

Bharat Shamrao Tikate

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Shrikishan S. Shinde, Advocate for the Petitioner.

Shri A. V. Deshmukh, A.G.P. for Respondent Nos. 1 to 3.

Shri R. A. Tambe, Advocate for Respondent Nos. 5 and 6.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.**

DATE : 15TH MARCH, 2018.

FINAL ORDER :

. The petitioner at the relevant time was working as a head master of the respondent No. 6/school, run by the respondent No. 5/institution. On or about 08.09.2011 permission was sought by the institution to suspend the petitioner. Upon the permission being received, the petitioner was suspended on 08.11.2011. Thereafter, the enquiry commenced. On or about 15.03.2012, the petitioner was terminated from service. The petitioner assailed said termination initially before the School Tribunal and thereafter approached this Court by filing writ petition. The order of termination was set aside by this Court on 02nd September, 2013 and the institution was permitted to conduct

denovo enquiry and the petitioner was deemed to be under suspension. On or about 02.09.2013 enquiry culminated and the punishment was imposed upon the petitioner of reversion as a assistant teacher. The grievance of the petitioner is that, he has not been paid the subsistence allowance, which he is entitled as per rules. According to the learned counsel for the petitioner, for initial six months the petitioner is entitled for subsistence allowance at an amount equal to the leave salary which the employee would have drawn if he had been on leave on half pay and after lapse of said period of six months the amount of subsistence allowance is required to be increased. Said amount is not paid to the petitioner. The learned counsel submits that, he was attending the school every day and has also signed the muster. Separate muster was kept and the respondents are not bringing before the Court said muster kept for signatures. The learned counsel submits that, even rules did not warrant the petitioner to sign the muster every day. The learned counsel to buttress his submissions relies on the judgment of the Apex Court in a case of Anwarun Nisha Khatoon Vs. State of Bihar and others reported in **AIR 2002 SC 2959**.

2. Mr. Tambe, the learned advocate for the respondent Nos. 5 and 6 submits that, under the suspension order itself the petitioner was intimated that he has to sign the muster and attend the school every day. Initially from 14.11.2011 to

15.03.2012, the petitioner signed the muster and he is paid the subsistence allowance at the rate of 50% in contempt petition. Subsequently, the petitioner did not attend the school, nor signed the muster. Even letters were served upon the petitioner at his native place, which is not situated at the head quarter. According to the learned counsel, as the petitioner failed to mark attendance every day and was also not present in the head quarter, the petitioner is not entitled for subsistence allowance. Even condition in the suspension order to remain present and mark attendance has been breached by the petitioner thereby dis-entitling the petitioner from receiving subsistence allowance. The learned advocate relies on the judgment of the Apex Court in a case of **U.P. State Textile Corporation Ltd. Vs. P. C. Chaturvedi** reported in (2005) 8 SCC 211.

3. It is not disputed that, the petitioner at the relevant time was working as a Head Master and the post on which petitioner was working is a grant in aid post.

4. The gravamen of the contention is about entitlement of the petitioner for subsistence allowance for the period the petitioner was deemed to be under suspension.

5. The fulcrum of the respondents argument is that, as the petitioner failed to mark his attendance and was not present at

the head quarter, the petitioner is not entitled for subsistence allowance. For that purpose reliance is placed on suspension order and Sub Rules 3 and 4 of Rules 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "M.E.P.S. Rules"). Sub Rules 3 and 4 of Rule 33 of the M. E. P. S. Rules read as under :

**The Maharashtra Employees of Private
Schools (Conditions of Service) Rules,
1981**

1.

33. Procedure for Inflicting major penalties.

(1)

(3) An employee under suspension shall not accept any private employment.

(4) The employee under suspension shall not leave the headquarters during the period of suspension without the prior approval of the Chief Executive Officer. If such employee is the Head and also the Chief Executive Officer, he shall obtain the necessary prior approval of the President.

6. Perusal of the said rules, it is manifest that the petitioner during the period of suspension is refrained from accepting any private employment. So also cannot leave the head quarter during the period of suspension without prior approval of the

President, as the petitioner was working as a head master.

7. The Rules as quoted above, do not require a person under suspension to mark attendance every day. The only embargo is that, he shall not take any other employment and shall not leave the head quarter without permission. There is no sufficient material on record to show that the petitioner had left the head quarter, though some correspondence has been placed, same is not sufficient to come to the conclusion that, the petitioner had left the head quarter. In a case of **U.P. State Textile Corporation Ltd. Vs. P. C. Chaturvedi** (supra) Rule 41 of the U. P. State Textile Corporation Conduct, Control and Disciplinary Rules required a person under suspension to present himself every day at the place of work or such other place as mentioned in the relevant order. In the present case, under the M. E. P. S. Rules said requirement is not found.

8. In the case of **Anwarun Nisha Khatoon Vs. State of Bihar and others** (supra) the Apex Court in para No. 9 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, profess 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."

9. The relevant provisions under M. E. P. S. Rules do not require a person under suspension to mark his attendance every day. Moreover as according to the petitioner he has marked his attendance every day and said muster is not coming forward before the Court. Whereas, according to the respondent/institution, the petitioner did not mark his attendance after 15.03.2012.

10. Be that as it may, we would not enter into the disputed facts. The respondents have admitted that, from 14.11.2011 to 15.03.2012 the petitioner has marked his attendance. The petitioner was terminated on 15.03.2012. On 02.09.2013 the termination was set aside. For a period from 16.03.2012 to 02.09.2013 there was no question of signing the muster by the petitioner. It is the contention of the petitioner that, the

petitioner was attending the school and signing the muster separately kept. Said muster is not coming before the Court. By a deeming fiction the petitioner was under suspension and subsequently on 05.12.2014 upon culmination of enquiry petitioner was demoted. The only disputed period would be from 02.09.2013 to 05.12.2014. As per contention of the petitioner, the petitioner was signing the muster and said muster is not coming before the Court.

11. Be that as it may, the rules do not require the said requirement. However, before the petitioner is given benefit of subsistence allowance, he has to give the certificate to the respondents that, he has not left the head quarter and he was not engaged in any other employment.

12. Considering the above, we pass following order.

13. The respondent/institution shall forward fresh proposal with regard to payment of subsistence allowance for the period the petitioner was under suspension from 08.11.2011 till 05.12.2014 after adjusting the payment of subsistence allowance that has already paid to the petitioner. The said proposal shall be in tune with the amount of subsistence allowance, the petitioner is entitled to as per the rules. The said proposal shall be forwarded to the Education Officer within a

period of two months from the date petitioner submits certificate that he was not under any employment, nor had left the head quarter. Upon receipt of the proposal the Education Officer shall process the same and consider the actual amount receivable by the petitioner towards the subsistence allowance after adjusting the amount that has already paid to the petitioner on account of subsistence allowance. Said exercise be done by the Education Officer expeditiously and preferably within a period of three (03) months from the date of receipt of the proposal. The writ petition is disposed of with above said observations and directions. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 18