

the Education Officer (Secondary), Pune on 31 January 2018, salary grant payable towards back wages ordered by the school tribunal was refused to the school management. That order has been challenged in the present petition.

4 It is the case of the Petitioner that Respondent No.1, was working as assistant teacher on a sanctioned post. The appointment was approved by Education Officer, Zilla Parishad, Pune. On 16 December 2013, an offence was registered against Respondent No.1, in pursuance of which he was in custody for more than 48 hours. A permission was, therefore, sought from the Education Department for suspension of Respondent No.1. That permission was granted by Education Officer, Zilla Parishad, Pune vide his letter dated 9 January 2014. A departmental enquiry was, thereafter, held against Respondent No.1, in which, he was found guilty of the misconduct alleged. He was thereupon terminated from service vide order dated 30 April 2014. This termination was challenged by Respondent No.1 in the present appeal (Appeal No.14 of 2014). By its order dated 5 March 2016, the school tribunal allowed the appeal and directed the school management to reinstate the teacher with all consequential benefits and full back wages. This order was challenged by the Petitioner in a writ petition, Writ Petition (St.) No.10335 of 2016. This court, by its order dated 11 July 2016, was pleased to dismiss that writ petition. A review petition from that order is said to be pending. Be that as it may, pursuant to the order of the school tribunal, Respondent No.1 was reinstated in service with effect from 1 December 2016. On 1 February 2017, he was promoted to the post of Head Master. His promotion was approved by Education Officer. In pursuance of his reinstatement, Respondent No.1 has

been receiving regular salary from the grant payable to the school from 1 December 2016. The controversy in the present petition pertains to release of salary grant for payment of his back wages. It is the case of the school management, the Petitioner herein, that they sent revised pay bills for salaries payable to teachers and non-teaching staff of the school vide letter dated 29 March 2017 so as to include the differential back wages. This was followed by several reminder letters. It is the grievance of the school management that by a communication dated 31 January 2018, Respondent No.2 took a position that salary difference payable to Respondent No.1 during the period of his suspension, that is, from December 2013 to December 2016, should be paid by the Petitioner and not by the State. It is the case of the school management that since the teacher's suspension in the present case was after duly seeking permission of Education Officer, as per law stated by the Supreme Court in the case of **Education Society, Tumsar Vs. State of Maharashtra**¹, the salary difference payable for the period of suspension, that is, from December 2013 to December 2016, should be paid by the State as part of its grant in aid. It is submitted that for this period, no salary for the particular sanctioned post was paid to any other teacher; the post was vacant during the entire intervening period.

5 Learned AGP relies on the original order of this court in Writ Petition (St) No.10335 of 2016, on the school management's challenge to the original order on appeal passed by the school tribunal. Learned AGP submits that this court, in its order dated 11 July 2016, has held that the charges leveled against Respondent No.1 were totally vague and unsustainable. Learned AGP relies on the case of **Education Society,**

1 (2016) 3 SCC 512

Tumsar (supra) as also the judgment of a division bench of our court in the case of **Rajapur Shikshan Prasarak Mandal Ratnagiri Vs. State of Maharashtra**², and submits that these judgments acknowledge that normally, whenever a reinstatement is ordered in the case of an employee of an aided school, the State may be asked to bear burden of back wages; in case, however, the school management, on its own, decides to proceed against the employee on an alleged ground of misconduct and fails to prove it, the State ought not to be burdened with the liability towards back wages payable to such employee upon his termination being set aside on appeal. Referring to the Government Resolution (GR) of the State issued on 14 March 1978, on which reliance is placed by the Petitioner, learned AGP submits that this GR was applicable before the MEPS Act was enacted. She submits that after enactment of the MEPS Act and Rules, it is the provisions of that Act and Rules which govern the case, and not this GR. She submits that now under the MEPS Act, specific powers have been given to the school tribunal to order reinstatement with or without back wages. She submits that the State has not been directed to pay back wages in the present case and accordingly, the liability to pay the same ought to be squarely placed on the shoulders of the school management.

6 The Supreme Court in **Education Society, Tumsar** (supra) considered a case where the school tribunal, whilst holding termination of the teacher to be illegal, gave a specific finding to the effect that the person, who initiated the enquiry before such termination, was not legally competent to do so without an appropriate decision being taken by the committee of the school management. It also found that no enquiry

2 WP No.757/16 dated 18 April 2018

committee was constituted in accordance with law and mandatory provisions of law were not followed. The court held that the management had acted wholly without jurisdiction and without adhering to the provisions of the Act and the Rules. The court observed that neither the State Government nor the Education Officer had any role to play in passing of the order of termination; the school authorities had acted beyond jurisdiction by transgressing powers to terminate the teacher. The court held that, in the premises, though Education Officer was impleaded as respondent to the teacher's appeal, the school tribunal deliberately did not give any direction for payment of back wages by the education department. What is important to note is that, at the same time, the Supreme Court noted that had the provisions of the Rules been followed, that is to say, if there would have been participation of the representatives of the Government in the decision-making process right from the decision to initiate the enquiry and till the dismissal of the teacher, it would have led to a situation where the State Government or the Education Officer would have given its imprimatur to the entire proceedings and had the termination order being then set aside, the Government, in the circumstances, could have been held responsible for payment of back wages; any such act of termination, found ultimately to be illegal, would have been with the blessings of the Government or the Education Officer. The division bench of our court in **Rajapur Shikshan Prasarak Mandal Ratnagiri** (supra), relying on the judgment of the Supreme Court in **Education Society, Tumsar**, did not find fault with the order of the tribunal, which had fixed the responsibility for payment of back wages on the management alone and not on the education department.

7 In the present case, however, it is not in dispute that the action of the management, particularly in suspending the teacher, was with the express approval of the education department. We are specifically concerned here with back wages relatable to the period when the teacher was under suspension. If such suspension was with specific approval of the education department, it cannot be gainsaid that the suspension had the imprimatur of the State. Besides, in the present case, neither in the original order of the school tribunal in appeal nor in the order of this court in Writ Petition (St.) No.10335 of 2016 whilst considering the challenge to that order, there is any specific direction to the school management to bear the burden of back wages to the exclusion of the State. In the present case, there is no reason why the ordinary principle applicable to reinstatement of employees of aided schools should not be followed. It is not in dispute that for this relevant period, there was no other occupant in the concerned post; the post was vacant; and the State had not paid any salary grant to the school towards salary payable to anyone for the post.

8 In the premises, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned order of the Education Officer (Secondary), Pune, dated 31 January 2018. Respondent No.2 shall pay the difference in wages attributable for the period between 16 December 2013 to 30 November 2016 to Respondent No.1 as part of salary grant payable to the Petitioner school.

(S.C. GUPTE, J.)