

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

WRIT PETITION NO. 6362 OF 2018

Pathan Ejaj Ibrahim

.. Petitioner

Versus

Bori Shikshan Prasarak Mandal
through its Secretary and others

.. Respondents

Shri Dr. R. J. Godbole, Advocate for the Petitioner.

Shri V. D. Gunale, Advocate for Respondent Nos. 1 to 3.

Shri S. P. Tiwari, A.G.P. for the Respondent No. 4.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 20TH MARCH, 2019.

FINAL ORDER :

. The petitioner claims payment of 50% of the salary remained to be paid for the period 14.03.2012 to 10.08.2012, so also claims salary for a period from 01.01.2012 to 13.03.2012.

2. We have heard Mr. Godbole, the learned advocate for the petitioner and Mr. Gunale, the learned advocate for respondent Nos. 1 to 3.

3. It is undisputed that the petitioner was suspended under order dated 14.03.2012 and on 11.08.2012 the petitioner was

terminated from service. The petitioner challenged order of termination before the School Tribunal. The School Tribunal allowed the appeal and set aside the order of termination. According to the petitioner he was paid 50% of salary as subsistence allowance. As termination is set aside, he is entitled for remaining amount for the period the petitioner was under suspension. It is further contended that, the petitioner has not been paid salary from 01.01.2012 to 13.03.2012.

4. There are rival contentions. According to the petitioner he was attending the school. Many representations were given, but he was not allowed to sign the muster role.

5. According to the respondents, the petitioner remained absent. He was absconding, as such he was not entitled for the salary for the said period.

6. The Deputy Director of Education in its letter dated 10th February, 2016 has observed that, considering the attendance of the petitioner in the school for the period 01.01.2012 to 13.03.2012, the decision may be taken about salary payable to the petitioner. In fact, the Deputy Director of Education did not conclude about the presence or absence of the petitioner. In fact, he ought to have concluded the issue and not left it to the parties to take decision upon the same.

7. The learned counsel for respondent Nos. 1 to 3 submitted that, the proposal would be submitted for remaining 50% salary for the period the petitioner was under suspension and salary bill to that effect would be submitted to the Education Officer. The same shall be submitted within a period of four (04) weeks from today. Upon receipt of the salary bills for the period for which the petitioner was under suspension, the Education Officer shall process it and take decision within a period of fifteen (15) days thereafter.

8. As far as salary for the period 01.01.2012 to 13.03.2012 is concerned, there are rival contentions. We direct the Education Officer (Secondary) to consider the record, the stand of the petitioner and respondent Nos. 1 to 3 and to conclude as to whether the petitioner remained absent during the period from 01.01.2012 to 13.03.2012 or was prevented by respondent Nos. 1 to 3 from attending the school/classes and shall take decision with regard to the entitlement for the salary for the period from 01.01.2012 to 13.03.2012. Same shall be done within a period of three (03) months from today. The writ petition is disposed of. No costs.

[A. M. DHAVALÉ, J.]

[S. V. GANGAPURWALA, J.]

bsb / March 19