

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5288 OF 2017

Satish Sukhdeo Upare,
Age 48 years, Occu. Service,
R/o. Near Sharda Vidya Mandir,
Bank Colony, Parli Vaijinath,
Taluka Parli [V], District Beed

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
School Education & Sport Department,
Mantralaya, MUmbai
- 2] Amrut Shikshan Sanstha, Parli Vaijinath,
C/o. Sharda Vidya Mandir, Bank Colony,
Parli Vaijinath, Tq. Parli [V], District Beed
- 3] The Headmaster,
Sharda Vidya Mandir, Bank Colony,
Parli Vaijinath, Tq. Parli [V], District Beed
- 4] The Education Officer [Secondary],
Zilla Parishad, Beed

.. Respondents

...
Mr. S.S. Jadhavar, Advocate for petitioner
Mr. S.N. Kendre, AGP for respondent - State
Mr. A.N. Irpatgire, Advocate for respondents no. 2 and 3
...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 25-06-2019

ORDER :

1. Petitioner is before this court being aggrieved by order dated 27-12-2016 suspending him referring to certain instances contained in the same. Period of almost 2-1/2 year has elapsed since then.

2. Learned counsel for respondents no. 2 and 3 contends that, an enquiry has been instituted against suspended employee and proceedings are subsisting.

3. Learned counsel for petitioner refers to decision dated 21-01-2019 in writ petition no. 8278 of 2018 and contends that by virtue of rule 35(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "**the rules**"), as considered in said decision, the order of suspension passed way back in 2016, is unsustainable and, thus, requests for revocation of said order by allowing the writ petition.

4. Perusal of the scheme of rules shows that ordinarily suspension is to be preceded by permission from the authority referred to under rule 33(1) of the rules and it is not the case of respondent - management that such prior approval to suspension had ever been solicited before the impugned order of suspension had been passed. During submissions, it has transpired that

attempts to seek permission post-facto has not borne any fruits. Rule 35(2) of the rules stipulates that period of suspension shall not exceed four months except with prior permission of appropriate authority. Period of four months has been long over after suspension order had been passed. In the circumstances, continual suspension over a period of four months under the scheme of rules is untenable. This aspect also gets reinforced under order dated 21-01-2019 passed in writ petition no. 8278 of 2018.

5. In view of aforesaid, the impugned suspension order shall stand revoked.

6. Needless to refer that this would not affect the subsisting enquiry.

7. There is some dispute about subsisting allowance and payments made during suspension period. Payments, if not already made in accordance with the rules, same be paid in right earnest. Incidents of suspension which continued hitherto ought to follow.

8. Writ petition is disposed of.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/