

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

908 WRIT PETITION NO.1305 OF 2018

SURESH BHAGWAN PATOLE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. B. R. Kawre and Mr. N. L. Dhobale, Advocates
for the Petitioner.

Mrs. G. L. Deshpande, AGP for Respondents-State.

Mr. Kamlakar J. Suryawanshi, Advocate for
Respondent Nos.2 and 3.

...

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 10th JANUARY, 2019.

PER COURT:-

1. The dispute in the present writ petition is with regard to the payment of subsistence allowance from 26.08.2016 till 23.06.2018.

2. According to Mr. Kawre, learned counsel for the petitioner, the petitioner was under suspension for the aforesaid period, but he has not been paid subsistence allowance.

3. The suspension order does not require the petitioner to remain present at the Headquarter. However, Rule 33 (4) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981

mandates that an employee under suspension shall not leave the headquarter during the period of suspension without prior approval of the Chief Executive Officer. All these disputed questions of fact will be gone into by the Education Officer.

4. The stand of Mr. Suryawanshi, learned counsel for the Institution is that the petitioner had taken up another employment as an agent of L.I.C., so also never attended the Headquarter. As such, in view of Rule 33 (3) and 33 (4) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the petitioner is not entitled for subsistence allowance.

5. As far as the petitioner taking up employment with L.I.C. is concerned, the petitioner is denying the same. Whereas, the respondent is affirming it and relies on certain documents. It is for the petitioner to controvert the said documents. The another dispute about the petitioner not remaining present on the Headquarter has also been raised by the Institution. If the petitioner was working as an L.I.C. agent at the relevant time, then the presumption would of the petitioner not remaining present on the Headquarter and the said presumption will have to be rebutted by the petitioner. The same will involve the disputed question of fact.

6. We direct the Education Officer to consider the relevant documents produced by the parties and take decision accordingly.

7. Parties shall appear before the Education Officer on 29.01.2019 and put forth whatever material is with them. After hearing the petitioner and the respondent-Institution, the Education Officer take decision within a period of three (03) months from the date of their appearance.

8. If the Education Officer comes to a conclusion that the petitioner is entitled for subsistence allowance, then same shall be paid to the petitioner with a period of three (03) thereafter.

9. Writ Petition is disposed of. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE