

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

WRIT PETITION NO. 14692 OF 2017

Ashok s/o Devrao Shendge
Age: 39 years, Occu : Service,
R/o. Tippiatwadi, Tq. & Dist. Beed

..... PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Education Department (Secondary),
Mantralaya, Mumbai-400 032.
2. The Director of Education
(Secondary), Aurangabad
3. The Director of Education
(Secondary), Zilla Parishad, Beed
4. The Secretary,
Adarsha Shikshan Sanstha,
Beed, Tq. And Dist. Beed
5. The Head Master,
Krushi Pandit Bhagujirao,
Dhekale, High School,
Padalsingi, Tq. Georai, Dist. Beed

... RESPONDENTS

Mr. Ashok R. Tapse, Advocate for the petitioner
Mr. S.S. Dande, AGP for the respondents/State
Mr. N.L. Jadhav, Advocate for respondents No. 4 and 5

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE, JJ.**

DATED : 27-08-2019

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2. Petitioner is before this court questioning legality of order dated 31-07-2017 under which he has been put under suspension prays to quash the same and seeks mandamus directing respondents to pay him subsistence allowance for the period of suspension.

3. Shorn of unnecessary details, petitioner who had been permanently approved teacher had been accused in a crime bearing No.0176 of 2017 with Beed Rural Police Station for offences punishable under sections 307, 147, 148, 149, 323, 324, 504 and 506 of the Indian Penal Code and under section 4, 25 of the Arms Act. Thereafter, respondent No. 4-the employer had issued order dated 31-07-2017 suspending him. Learned counsel for the petitioner Mr. Tapse contends that order of suspension had been passed suddenly without hearing the petitioner or without calling any explanation. Petitioner is not an absconding accused. The offence has been registered in respect of a dispute and rivalry between his father-in-law and other groups. Petitioner had seldom anything to do with same. He had been unnecessarily implicated in the crime with vindictive motive. It is being submitted that it is not a case wherein it can be said that petitioner is absent from duty without intimating the school. Even allegations in first information report would not relate petitioner to the alleged incident. Learned counsel purports to advert to that his request for extension of leave period have not been responded to. He, urges to set aside the impugned order with direction to pay to petitioner subsistence allowance for the period of suspension.

4. Mr. N.L. Jadhav, learned counsel appearing for respondents No.4

and 5 adverts to impugned order dated 31-07-2017 and submits that on registration of crime the petitioner had been on the run avoiding arrest. Whereas, before the school authority, plea was being taken about ailment of mother. Such a claim being unbecoming of a teacher's profession and while the criminal case is pending against petitioner, having regard to rule 33(5) of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 appropriately suspension order came to be passed. It is being referred to that, petitioner's absence from duty had caused inconvenience in administration of school and in order to avoid loss to the students petitioner had been summoned by respondent/management, yet petitioner continued to avoid joining school on one pretext or the other. As it has emerged that criminal case had been lodged against the petitioner, it had decided to keep petitioner under suspension.

5. Having regard to that the suspension order is stated to be with reference to rule 33(5) and having regard to the circumstances it is not a case wherein discretion would be exercised to quash and set aside suspension order. Rule 33(5) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 reads as under:-

"33. Procedure for inflicting major penalties.

(1)....

(2)....

(3)....

(4)....

(5) An employee against whom proceeding have been taken on criminal charge or who is detained under any law for the time being in force providing for preventive detention shall be considered as under suspension for any period during which he is under such detention or he is detained in police or judicial custody for a period exceeding forty-eight hours or is undergoing

imprisonment, and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him or until he is relieved from detention and is in a position to rejoin duty after producing documentary proof of his release (otherwise than on bail) or acquittal, as the case may be. An adjustment of his pay and allowances for such periods shall be made according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of charge or detention being held by the Court to be unjustified."

Learned counsel for the petitioner at this stage submits that in the alternative if the court is not inclined to interfere with the order of suspension petitioner at least be paid suspension allowance as per rules. Rule 34 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 reads as under:-

"34. Payment of subsistence allowance.

(1) (a) A 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 in addition, Dearness allowance based on such leave salary shall be payable to the employee under suspension.

(b) Where the period of suspension exceeds 4 months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first 4 months as follows, namely:-

(i) The amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of first 4 months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the employee.

(ii) The amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 percent of the subsistence allowance admissible during the period of the first 4

months, if in the opinion of the said authority the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the employee.

- (iii) The rate of Dearness allowance shall be based on the increased or on the Decreased amount of subsistence allowance, as the case may be, admissible under sub-clauses (I) and (ii).

6. Petitioner, however, would be paid suspension allowance according provisions under Rule 34 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981. It is further made clear that this order would not prejudice and undermine authority of the school-management if it reconsiders the order of suspension, having regard to the facts and circumstances. Writ petition accordingly stands partly allowed as aforesaid and is disposed of. Rule is made partly absolute accordingly.

This order would also not be an impediment for the petitioner for making proper representations to be decided own merits.

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]