

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3238 OF 2017

Shri Momin Anjum Khawar Mohd. Yaqub ... Petitioner.

V/s.

State of Maharashtra & Ors. ... Respondents.

Mr. Nasir Masih Shaikh, Advocate for the Petitioner.

Mr. Y. S. Kochare, AGP for the Respondent Nos. 1 to 4 – State.

None for Respondent Nos. 5 and 6.

CORAM : R.M. BORDE & N.J. JAMADAR, JJ.

DATE : JULY 10, 2019.

PC :

1 Heard.

2 The Petitioner is praying for issuance of direction to the Respondents to deposit the amount of subsistence allowance from the date of issuance of the order of suspension till the conclusion of the enquiry proceedings. The Petitioner was arrested in connection with the offence punishable under the provisions of Prevention of Corruption Act, alongwith the other accused. The Petitioner remained in the custody of the police for more than 24 hours. The Petitioner was put

under suspension by the School Management since 9th December, 2014. The Petitioner contends that the period of suspension shall come to an end once he is released from police custody. The proposition advanced by the learned counsel appearing for the Petitioner though appears to be correct; however, in view of the order passed by the Presiding Officer of the School Tribunal, Navi Mumbai on 05th October, 2017 in Appeal No. 03 of 2016, which has not been interfered with nor has been challenged, it would not be appropriate to interfere in the order of the School Tribunal. After conclusion of the enquiry proceedings, the Petitioner was terminated by order dated 31st December, 2015. The order of termination issued against the petitioner was challenged before the School Tribunal in Appeal No. 03 of 2016. The Appeal tendered by the Petitioner came to be allowed and the Petitioner was directed to be reinstated on original post, notionally for the purpose of conducting further enquiry. The School Management was directed to conduct the de-novo enquiry against the Petitioner. The Presiding Officer further directed that during the course of enquiry, the Petitioner shall be deemed to be under suspension. It is informed that the enquiry proceedings were conducted by the Management in pursuance of the directions issued by the School Tribunal

on 05.10.2017 and the Petitioner has been terminated from employment at the conclusion of the enquiry.

3 The Petitioner has challenged the order of termination issued by the School Management by preferring an Appeal to the School Tribunal and it is stated to be pending. The Petitioner in the instant petition is praying for issuance of directions to the Management to pay subsistence allowance from the date of the issuance of the suspension order in the year 2014 till the conclusion of the enquiry proceedings and issuance of the order of termination. The School Tribunal in paragraph no. 21 of the order has directed that considering the seriousness of the charges levelled against the Petitioner, it is desirable to conduct the de-novo enquiry by strictly complying with the procedure laid down under the Rules of 1981 and also in observance of the principles of natural justice. While issuing the order, in paragraph no. 5, the Presiding Officer has directed that during the course of enquiry the Petitioner shall be deemed to be under suspension. The continuance of the enquiry has not been specified to mean the enquiry proceedings post the decision of the School Tribunal. The proceedings of enquiry initiated with issuance of the order of suspension to the petitioner in the year 2014, which has been interfered with

notionally and the Petitioner has again been directed to be proceeded with in the fresh enquiry proceedings, shall be deemed to be continued until finality is attached to such proceedings.

4 In the circumstances and in view of the fact that the services of the Petitioner have been terminated and that he has challenged the order by presenting an Appeal to the School Tribunal and that Appeal proceedings are pending, it is not desirable to cause interference at this stage of the proceedings. It would, however, be open for the Petitioner to take steps for redressal of his grievance after the decision of the School Tribunal. It would be open for the Petitioner to make a request to the Presiding Officer of the School Tribunal to expeditiously decide the Appeal and if such a request is made, the School Tribunal shall consider the application for expeditious disposal and decide the Appeal in accordance with law expeditiously, uninfluenced by the instant decision.

5 With the liberty, as aforesaid, the Petition is dismissed.

(N.J. JAMADAR, J.)

(R.M. BORDE,J.)

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