

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7165 OF 2019

Dr.Babasaheb Ambedkar Smarak Samiti through its President and another

vs.

Haribhau Bhilsingh Pawar and another

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. P. A. Kadu, counsel for petitioner.
Shri. V. K. Paliwal, counsel for respondent No.1.
Smt. Mrunal Naik, AGP for respondent No.2.

CORAM : MANISH PITALE J.

DATED : 17/02/2020

By this writ petition, the petitioners i.e. management and the Head Mistress of the School run by the management have challenged judgment and order dated 18/07/2019, passed by the School Tribunal, Amravati, whereby an appeal filed by the respondent No.1 stood partly allowed and the petitioners were permitted to conduct denovo enquiry from the stage at which relevant Rules of enquiry under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, stood violated. Certain directions were given regarding entitlement of the respondent No.1 to subsistence allowance.

2. The operative portion of the impugned order reads as follows :-

- 1) “The order of termination dated 05/05/2015 w.e.f. 05/05/2015 passed by the Management terminating the services of the appellant is quashed and set aside ;
- 2) The appellant shall be treated to have been placed under suspension with effect from 05/05/2015 and shall be entitled for subsistence allowance to be paid to him from that date and the Management shall be at liberty to conduct de-novo inquiry from the stage of rule 33 and 36(1) of the Rules;
- 3) The question of grant of continuity in service and payment of full backwages to the appellant is kept open subject to the outcome of the inquiry to be conducted by the Management against him. The Management shall take decision accordingly;
- 4) The Management shall pay the said amount of subsistence allowance in terms of rule 34 of the Rules ;
- 5) The amount of subsistence allowance so calculated shall be paid to the appellant within three months from today without fail and it is thereafter that the Management shall proceed to conduct an inquiry.
- 6) The Management shall further continue to pay the further subsistence allowance till the completion of inquiry to the appellant.
- 7) If the amount is not paid within three months as directed above, the appellant shall be deemed to have been reinstated in service with all consequential benefits and entitled to entire salary

with effect from date of termination ;

8) Copy of this order be sent to respondent No.3 for information and necessary action.”

3. Having heard the learned counsel for the rival parties, this Court is of the opinion that the findings rendered by the Tribunal in so far as violation of the relevant Rules are concerned, cannot be said to be erroneous. But, the directions pertaining to subsistence allowance in Clauses (4) to (7) in the above quoted operative portion of the impugned order are made subject matter of grievance by the petitioners herein. In fact, while issuing notice for final disposal in this writ petition, this Court had specifically stayed payment of subsistence allowance to the respondent No.1, on the ground that a certificate dated 10/10/2019 was produced by the petitioners before this Court, wherein it was certified by the Headmaster of one Vyankatesh Balaji English High School that the respondent No.1 had been working from 05/05/2015 in the said school teaching the subject of mathematics. It was claimed by the petitioners that since the said aspect was suppressed by respondent No.1 before the Tribunal in the appeal Memo, the directions pertaining to subsistence allowance had been issued in his favour.

4. The respondent No.1 filed an application before this Court seeking vacation of stay by producing a letter from the Head Master of the very same school

stating that no such certificate dated 10/10/2019 as claimed by the petitioners was ever issued by the said office. On this basis it was contended that a forged and fabricated document had been filed before this Court by the petitioners and that on this short ground the interim stay deserved to be vacated.

5. In response, it was submitted on behalf of the petitioners that the certificate in question could be sent for verification by a handwriting expert and that the petitioners continued to claim that the said certificate was a genuine document.

6. It is obvious that such a disputed question of fact cannot be made subject matter of decision and findings by a writ Court. The learned counsel for the petitioners has invited attention of this Court to Rule 33(3) of the aforesaid Rules to contend that the respondent No.1 would not be entitled to subsistence allowance since there was material to show that he had accepted private employment during the pendency of the proceedings before the Tribunal and even before this Court. It is obvious that the entitlement towards subsistence allowance of respondent No.1 is governed by the relevant Rules and that if it is found that under the said Rules the respondent No.1 is not entitled for subsistence allowance, the directions given in Clauses (4) to (7) in the impugned order of the Tribunal would need modification.

7. But, since this Court is of the opinion that a proper finding on the rival claims pertaining to the alleged employment of the respondent No.1 in the other school would require the parties to lead evidence, it would be appropriate that this aspect is gone into by the enquiry committee which is supposed to conduct denovo enquiry in terms of the directions given in the impugned order by the Tribunal. A perusal of clause (2) of the impugned order shows that the enquiry from the stage of Rules 33 and 36 has been directed. Rule 33 (1) of the Rules provides that if the employee is liable to be punished for one or other grounds as specified in Rule 28(5) of the said Rules, he could be suspended and an enquiry through an enquiry committee as contemplated under Rule 36 of the said Rules could be undertaken. Rule 36 of the said Rules specifies that a properly constituted enquiry committee shall afford an opportunity to the employee to give explanation on the allegations levelled against him.

8. Since a denovo enquiry from the stage of Rules 33 and 36 of the said Rules has been directed by the Tribunal in the impugned order, it would be in the fitness of things that liberty is reserved for the petitioners to frame an allegation/charge against the respondent No.1 pertaining to alleged suppression of his employment that the aforesaid school during the pendency of proceedings before the Tribunal and even before this Court. The respondent No.1 would also get

proper opportunity to dispute the same and the parties would get sufficient opportunity to lead oral and documentary evidence in support of their respective stands.

9. But, at the same time, till the petitioners are able to make good their allegation regarding aforesaid suppression of facts and the allegation that the respondent No.1 was indeed working with another school, the respondent No.1 cannot be deprived of subsistence allowance as directed in the impugned order. The payment of such subsistence allowance would be subject to findings of the enquiry committee, pursuant to the *denovo* enquiry to be conducted by the enquiry committee contemplated under Rule 36 of the said Rules. If it is found that the allegation/charge with regard to suppression of facts and employment of the respondent No.1 in another school is proved then the petitioners would be entitled to recover such subsistence allowance that would be paid in terms of clauses (4) to (7) of the impugned order. This would meet the ends of justice.

10. In view of the above, the present writ petition is disposed of in following terms :-

(a) The petitioners are granted liberty to frame an allegation/charge against the respondent No.1 regarding alleged suppression of employment in another school during pendency of the first

enquiry as also the proceedings before the Tribunal and this Court.

(b) The petitioners, as well as respondent No.1 shall have sufficient opportunity before the enquiry committee to be constituted under Rule 36 of the said Rules to lead oral and documentary evidence in respect of such allegation/charge if framed by the petitioners against respondent No.1 along with other allegations/charges. The petitioners shall abide by the directions given in the impugned order including clauses (4) to (7) pertaining to subsistence allowance to respondent No.1.

(c) If the enquiry committee renders an adverse finding against the respondent No.1 on the question of suppression aforesaid facts, the petitioners shall be entitled to recover the subsistence allowance paid to the respondent No.1, but any such direction in the order upon culmination of enquiry shall not operate for a period of **four weeks**, so as to afford an opportunity to respondent No.1 to challenge the same in accordance with law.

(d) The petitioners shall pay the subsistence allowance so calculated within a period of three months from today and they shall continue to pay such subsistence allowance till completion of

enquiry. Needless to say, failure of the petitioners to comply with this direction will lead to clause No.7 of the impugned order coming into operation.

(e) The petitioners shall abide by all the directions given in the impugned order passed by the Tribunal scrupulously and efforts shall be made to complete the enquiry in the time period specified under the Rules.

(f) Writ petition is disposed of in above terms. No order as to costs.

JUDGE