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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9359 OF 2014

Gaikwad Sunil Marutrao	...Petitioner
V/s.	
Shreenath Shikshan Prasarak Mandal & Ors.	...Respondents

Ms.Kumud A. Bhatia for the Petitioner.

Mr.Nitin Dhumal for the Respondent Nos.1 to 3.

Ms.K.N. Solunke, AGP for the State – Respondent Nos.4 to 6.

CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.
DATE : 13TH SEPTEMBER, 2021.

P.C. :-

1. Rule. Learned counsel for the respondent nos.1 to 3 waives service. Ms.Solunke, learned AGP waives service for the respondent nos.4 to 6. By consent of parties, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashing and setting aside the order of suspension dated 27th May, 2013 and for restitution on the post of Naik forthwith. The petitioner also seeks an order and direction against the respondents to pay full salary from the date of suspension dated 26th March, 2013 till the date of

reinstatement.

3. The petitioner was appointed as Peon on 13th June, 1992 and was promoted to the post of Naik on 1st December, 2014. The petitioner was granted benefit of senior scale. The petitioner was arrested by Sikrapur Police Station as one of the accused on 26th March, 2013 and was in police custody during the period between 26th March, 2013 and 30th March, 2013. The petitioner was ultimately acquitted of all charges on 18th February, 2016. The petitioner was under suspension during the period between 26th March, 2013 and 26th May, 2013. No enquiry has been initiated against the petitioner by the management. The petitioner demanded payment for salary during the suspension period. Since the salary has not been paid during the suspension period, the petition filed this writ petition.

4. Ms.Bhatia, learned counsel for the petitioner invited our attention to various documents annexed to the petition. She submits that no enquiry was initiated against the petitioner. The petitioner has been acquitted of all the charges. She relied upon a judgment of the Division Bench of this Court in case of **Madhukar Namdeo Patil vs. Chairman, Sudhagad Education Society & Ors. 2000(4) Bom.C.R. 698** and the judgment of the Division Bench of this Court in case of **Narsing Shankarrao Shivshette vs. Secretary, Bharat Liberal Education Society, Udgir and Ors.2018(2) Mh.L.J.662.**

5. Learned counsel for the management does not dispute that no enquiry was initiated against the petitioner. He also does not dispute that the petitioner has been subsequently acquitted from all such charges. The petitioner was only paid subsistence allowance and not full salary during the period of suspension.

6. The management has not sent any pay bill or proposal to the Education Officer for payment of salary during the suspension period.

7. A Division Bench of this Court in case of **Madhukar Namdeo Patil** (supra) has held that under Rule 33 (5) and 35 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the petitioner having been acquitted and there being no enquiry initiated against the petitioner by the management, the petitioner is entitled to salary for the period of suspension. Similar view is taken by the Division Bench of this Court in case of **Narsing Shankarrao Shivshette** (supra). In our view, both these judgments would apply to the facts of this case. We are respectfully bound by the said judgments.

8. We accordingly pass the following order :-

a). The respondent nos.1 to 3 shall send pay bills / proposal for payment of salary and other benefits during the period of suspension to the Education Officer within three weeks from today,

without fail. A copy of the pay bill / proposal shall be also furnished to the petitioner's advocate simultaneously.

b). Upon receipt of the said proposal along with pay bill, the Education Officer shall release the payment due to the petitioner within four weeks thereafter, without fail.

c). The writ petition is accordingly disposed of. Rule is made absolute accordingly. Parties to act on the authenticated copy of this order. There shall be no order as to costs.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)