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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.367 OF 2020

Ghazi Mohd. Irfan Abdul Mannan	...Petitioner
V/s.	
Azmi Amina Abdul Mannan & Ors.	...Respondents

CORAM : R.D. DHANUKA &
A.K. MENON, JJ.
DATE : 7TH OCTOBER, 2021.
(IN CHAMBER)

P.C. :-

1. The matter is placed in Chamber by the office for speaking to the minutes of the order dated 23rd August, 2021.
2. In the cause title of the said order, it is clarified that this writ petition pertains to the "Ordinary Original Civil Jurisdiction" and not to the "Civil Appellate Jurisdiction".
3. The order dated 23rd August, 2021 stands clarified accordingly.
4. After carrying out corrections, the order reads thus :

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Mr.Y.E. Mooman for the Petitioner.

Mr.Abdul Jabbar S. Momin – Respondent No.1 present.

Mrs.Prachi Khandge i/b M/s.M. Vashi & Associates for the Respondent Nos. 2 to 4.

Mr.Kedar Dighe, AGP for the State - Respondent Nos.5 to 8.

CORAM : R.D. DHANUKA &
A.K. MENON, JJ.
DATE : 23RD AUGUST, 2021.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks revocation and cancellation of the order of suspension passed on 28th April, 2017 and prays for permission to rejoin his duties as per Rule 37(2)(f) of the MEPS Rules, 1981.

2. We have heard the learned counsel for the parties. Learned counsel invited our attention to the order dated 11th August, 2021 passed by the learned Single Judge of this Court in Writ Petition (Lodging) No.1463 of 2019 filed by Anjuman-UI-Islam Trust, one of the party in this writ petition impugning the order dated 25th April, 2019 passed by the Presiding Officer, School Tribunal, Mumbai rejecting the Miscellaneous Application filed by the Trust seeking extension of time to complete the enquiry initiated against petitioner.

This Court by an order dated 11th August, 2021, disposed of the said writ petition holding that from the impugned order, it is clear that there is no restraint from proceeding with the enquiry. It is open for the Enquiry Officer to proceed with and to take it to its logic conclusion. It is open for the petitioner herein to raise all legal challenges to procedure adopted during the course of enquiry, after enquiry is completed including that the Director's approval having been not obtained after 120 days.

3. Learned counsel for the management states that though the management had made a statement before the learned single Judge that the entire enquiry would be completed within two months from the date of the said order, the said statement has not been recorded in the order. She reiterates the said statement before this Court in these proceedings that enquiry would be completed within 2 months from 11th August, 2021. Statement is accepted.

4. We accordingly direct the petitioner to co-operate in the enquiry proceedings so as to enable the enquiry officer to complete the enquiry proceedings within eight weeks from 11th August, 2021. It is made clear that the petitioner would be at liberty to appear before the enquiry officer without prejudice to the rights and contentions of the petitioners in this writ petition including the right to challenge initiation and proceedings with the enquiry.

5. The grievance of the petitioner is that though the petitioner has been placed under suspension by an order dated 28th April, 2017, the petitioner is neither allowed to rejoin nor paid any subsistence allowance. Statement made by the learned counsel for the petitioner is accepted.

6. The management is accordingly directed to pay the arrears of subsistence allowance if any, not paid since the date of order of suspension till date within two weeks from today without fail. The petitioner to accept the said amount without prejudice to his rights and contentions of the petitioner.

7. If the management proposes to pass any order after completing an enquiry, if any adverse order is passed against the petitioner, the same shall not be enforced for a period of two weeks from the date of the communication of the said order. All the contentions of the petitioner as well of the respondents on the issues raised in this writ petition and in the said enquiry are expressly kept open.

8. If there is any dispute about the quantum of payment that would be payable by the management to the petitioner further orders would be passed by this Court. The petitioner would be at liberty to file an application in this writ petition for appropriate order in that regard.

9. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

(A.K. MENON, J.)

(R.D. DHANUKA, J.)