

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 518/2020

Mahendra Rushi Dhawade,
Aged – 51 Years, Occu-Service, R/o Plot No.21,
Gedam Layout, Bhamti, Nagpur -22.

PETITIONER

.....VERSUS.....

1. The Education Officer (Sec.),
Zilla Parishad, Nagpur.
2. Hindustan Vidya Mandal,
Juni Mangalwari, Nagpur, through its
President, Vijay Dobarkar.

RESPONDENTS

Shri P.N. Shende, counsel for the petitioner.
Ms S.S. Jachak, Assistant Government Pleader for the respondent no.1.
None for the respondent no.2.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 18TH DECEMBER, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for the respondent no.1. Despite service, the respondent no.2 has not chosen to oppose the prayers made in the writ petition.

2. The petitioner being a trained graduate was appointed as an Assistant Teacher on probation by an order dated 03.07.1991. His services were however terminated on 28.04.2014. The petitioner approached the School Tribunal by filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for short, 'the Act of 1977'). The School Tribunal by its judgment dated 26.07.2017 set aside the order of termination and directed reinstatement of the petitioner with continuity and back wages. Liberty was granted to the Management to hold a fresh enquiry after his reinstatement and on payment of back wages. This order of the School Tribunal was unsuccessfully challenged by the Management initially in Writ Petition No.78 of 2018 before this Court and thereafter by filing a Special Leave Petition before the Hon'ble Supreme Court. With the dismissal of the Special Leave Petition on 26.11.2018 the order of reinstatement attained finality. The services of the petitioner were reinstated on 22.12.2018. Subsequently on 02.01.2020 the petitioner was placed under suspension by the Management. This order is the subject matter of challenge in the present writ petition. Besides said challenge the petitioner also seeks to challenge the statement of allegations issued to him for conducting a fresh enquiry.

3. Shri P.N. Shende, learned counsel for the petitioner submits that the liberty granted to the Management to conduct a fresh enquiry

was subject to the petitioner being reinstated and being paid the back wages as directed by the School Tribunal. Without doing so, it was not permissible for the Management to have placed the petitioner under suspension. He further submits that Rule 35(2) read with Rule 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 indicates that the maximum period of suspension could be only for four months and not more. There was no permission obtained from the Education Officer before suspending the services of the petitioner and hence the continuation of the order of suspension beyond the stipulated period was also not justified. He therefore prays that the petitioner be granted appropriate reliefs.

As stated above, the Management has not chosen to oppose the prayers made in the writ petition.

4. We have perused the documents on record and on hearing the learned counsel for the petitioner we are satisfied that the order of suspension as well as the statement of allegations impugned in this writ petition are liable to be set aside for the following reasons:

(a) While allowing the appeal preferred by the petitioner the School Tribunal had granted liberty to the Management to hold a fresh enquiry subject to fulfillment of conditions. Direction No.4 in the order of the School Tribunal dated 26.07.2017 reads as under:

“4. The respondent management is at liberty to hold enquiry afresh against the appellant after his reinstatement and payment of back wages as per Rules, if desire for.”

Admittedly, the petitioner has not been paid back wages as directed and he was required to file Contempt Petition No.285 of 2017. Till date, these back wages have not been paid to the petitioner. Hence, the condition of payment of back wages imposed on the Management for holding a fresh enquiry has not been complied with.

(b) The order of suspension is dated 02.01.2020. As per Rule 35(1) of the Rules of 1981 since prior permission of the appropriate authority has not been obtained, the period of suspension cannot exceed four months as per Rule 35(2) of the Rules of 1981. On expiry of period of four months it is deemed that the petitioner would be entitled to rejoin his duties. Assuming that the enquiry has commenced, the provisions of Section 37(2)(f) of the Act of 1977 would come into play.

(c) The fact that the Management has proceeded to issue fresh orders of suspension dated 03.03.2021 and 29.09.2021 itself indicates that the initial order of suspension impugned in this writ petition had ceased to operate.

5. For the aforesaid reasons, the order of suspension dated 02.01.2020 is quashed and set aside. Similarly, for the self same reasons the statement of allegations dated 08.12.2019 issued to the petitioner in breach of the order passed by the School Tribunal is also quashed and set aside. It is open for the respondent no.2 to hold a fresh enquiry after complying with the order passed by the School Tribunal.

6. Rule is made absolute in aforesaid terms. No costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE