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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 WRIT PETITION NO. 12988 OF 2021

**MOIN NAWAZ AHMED NAWAZ
VS
THE SECRETARY, MOIN EDUCATION SOCIETY AND OTHERS**

Mr. Mahesh V. Ghatge, Advocate for the petitioner
Mr. V. J. Dhage, Advocate for the respondent No.2
Mr. S. R. Yadav, AGP for the respondent No.3

**CORAM : RAVINDRA V. GHUGE, J.
DATE : 17-03-2022**

P. C.

1. The petitioner has put forth prayer clauses-B and C as under:

B] The impugned order dated 08-10-2021 passed by the Ld. Presiding Officer School, Tribunal, Latur on Exh.1 and 11 in Appeal No. 15 of 2018 may kindly be quashed and set-aside and Appeal No. 15 of 2018, may kindly be restored back to the file of Ld. Presiding Officer, School Tribunal, Latur with the directions to decide the same on its own merits within stipulated time.

C] Pending hearing and final disposal of this writ

petition the impugned order dated 08-10-2021 passed by the Ld. Presiding Officer School Tribunal, Latur on Exh.1 and 11 in Appeal No. 15 of 2018, may kindly be stayed.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the petition paper book, with their assistance.

3. Considering the judgment delivered by the school tribunal dated 08-10-2021, in Appeal No. 15/2018, I need to confirm this order only to the extent of the law laid down by the Hon'ble Supreme Court in Vidya Vikas Mandal and another Vs Education Officer and another reported in 2007 (11) SCC 352.

4. It is settled law that though an employer would not have an absolute right to suspend an employee, the employer is obliged to pay subsistence allowance which is also termed as suspension allowance, in the event of suspension of the employee. [Read: Kshetriya Shri Gandhi Ashram Vs Deputy Labour Commissioner/Prescribed Authority Under Payment of Wages Act and another reported in

2009(122) FLR 133, Ceat Limited Mumbai Vs Dayaram Kishorelal Yadav reported in 2003 LAB.I.C. 3427 and Ramiah Venkatesan Vs Union of India and Ors reported in 1993 I CLR 41.]

5. In paragraph No. 10 in Vidya Vikas Mandal and another (Supra) it was held as under:-

10. In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent no.2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution.

6. In the instant case, and quite peculiarly, the Management applied to the tribunal, in the appeal preferred by the petitioner for challenging his termination on 13-04-2017, that the Management desires to give up the enquiry which was already conducted as it suffers from severe legal deficiencies and prayed for liberty to conduct a de-novo enquiry as per Rules 36 and 37 of the MEPS Rules, 1980.

7. In Bharat Forge Company Ltd. Vs AB Zodge and another reported in 1996 SCC (4) 374, it has been held that if an enquiry is set aside for legal infirmities, a de-novo enquiry can be ordered since the case is relegated to the position of there being no enquiry.

8. As such, considering the law laid down in *Vidya Vikas Mandal* (Supra) and *Bharat Forge Company Ltd.* (supra), the tribunal rightly permitted the employer to conduct a de-novo enquiry. However, the tribunal lost sight of the directions of the Hon'ble Supreme Court in paragraph No. 10 vide which the

termination has to be set aside, the employee is to be treated as being reinstated in service and he is deemed to be placed under suspension from the date of termination. Such employee would be eligible for suspension allowance from the date of his termination. The school tribunal has erroneously directed that the appellant would be entitled for subsistence allowance from the date of joining till completion of the enquiry.

9. In view of the above, this petition is partly allowed. Clause Nos.3 and 4 of the operative part of the impugned order stand quashed and replaced with the following directions:-

3. The appellant shall be deemed to be under suspension from the date of his termination which is 13-04-2017.

4. The appellant would be entitled for subsistence allowance from the date of his termination till final decision of the Management pursuant to the completion of the enquiry, in accordance with the MEPS Rules, 1981.

10. All the contentions of the parties in relation to the charge-sheet and allegations, are kept open.

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[RAVINDRA V. GHUGE, J.]

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