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

913 WRIT PETITION NO.3219 OF 2022

ANITA ROHIDAS UKADE
VERSUS
THE SECRETARY AMBIKA BAHUUDDESHIYA MAHILA
MANDAL AND OTHERS

...

Smt. P. G. Sontakke, Advocate for petitioner;
Mr S. G. Rudrawar, Advocate for respondent Nos.1 & 2

CORAM : RAVINDRA V. GHUGE, J

DATE : 10th March, 2022

PER COURT:

1. This matter was heard on 07/03/2022, and I passed the following order :-

“1. I have briefly heard the learned Advocate for the petitioner and the learned Advocate on behalf of respondent Nos. 1 and 2 Management .

2. The School Tribunal dealt with Appeal No.13 of 2016 preferred by the appellant/petitioner, who challenged her punitive termination order dated 13.06.2016 with effect from 14.06.2016 on allegations, without conducting an enquiry. By judgment dated 22.11.2021, the appeal was partly allowed and the termination order was quashed and set aside. The Tribunal directed the Management to conduct a departmental enquiry (de novo enquiry) as per the

(2)

M.E.P.S. Rules, 1981.

3. Grievance of the petitioner is that though the petitioner's nominee is appointed in the three members enquiry committee, she is not given an opportunity to cross examine the Management witnesses.

4. It is well settled that if an enquiry is conducted de hors the principles of natural justice, the enquiry would ultimately be vitiated and the employee would be entitled for all service benefits.

5. Nevertheless, since the learned Advocate for the Management submits that he would take instructions and make submissions, the petition be listed on 10.03.2022 in the Urgent Admission Category.”

2. Today, I have considered the submissions of the learned Advocates for the respective sides. With their assistance, I have gone through the petition paper book and the impugned order.

3. The learned Advocate for the Management has placed heavy reliance upon the affidavit-in-reply and submits that an enquiry is being conducted strictly as per Rules 33 to 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Rules 1981 (MEPS Rules 1981). A grievance is made that on the last date in the enquiry, on 07/03/2022, the petitioner was absent.

(3)

4. The learned Advocate for the petitioner has made a grievance as regards Clause 4, 5 and 6 of the operative part of the impugned order dated 22/11/2021, by which, Appeal No.13/2016, filed by her, was partly allowed. For the sake of clarity, the operative part of the order is reproduced as under :-

ORDER

1. *The appeal is partly Allowed.*
2. *The termination order dated 13.06.2016 w.e.f. 14.06.2016 is quashed and set aside.*
3. *The respondents are directed to conduct fresh enquiry of appellant as per M.E.P.S. Rules-1981.*
4. *The respondent No.1 & 2 are directed to reinstate the appellant without backwages for the purpose of enquiry. The enquiry shall be conducted as per Rule-33 to 37 of M.E.P.S. Rules-1981.*
5. *The appellant to remain suspended during the period of enquiry.*
6. *The respondents to pay subsistence allowance to the appellant from the date of joining till the completion of enquiry subject to conditions as per the M.E.P.S. Rules-1981 in that respect.*
7. *Parties to bear their own costs.”*

5. The issue raised by the learned Advocate for the petitioner, as regards treating the petitioner as suspended from the date of her termination, in the backdrop of her appeal being partly allowed and her termination being quashed and set aside, is no longer res integra. The Hon'ble Apex Court, in

(4)

Vidya Vikas Mandal and another Vs. the Education Officer and another, 2007 (11) SCC 352, while setting aside the orders of the Tribunal, the learned Single Judge and the learned Division Bench of this Court, recorded in paragraph 9 that “*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 service. The enquiry shall be completed by the Committee within a period of six months from the date of their nomination /constitution.*”

6. This reported judgment was not cited before the School Tribunal, at Latur, by any of the litigating parties and, therefore, the Tribunal was not properly assisted. On this count, this petition can be partly allowed as the Tribunal has granted reinstatement to the petitioner.

7. The learned Advocate for the Management has placed on record the typed copy of the enquiry proceedings from page No.183 to 203. A copy of the same is also supplied to the learned Advocate for the petitioner, who submits that the Management has appointed a Presenting Officer on it's behalf. The petitioner is a lady employee, who has no experience in participating in a departmental enquiry. She could, therefore, take the assistance of a co-worker working in any of the schools operated by the Management, to assist her.

8. I am of the view that when the Management has engaged a Presenting Officer, there could be no prejudice caused to the

(5)

Management, if the delinquent employee is permitted to engage a co-employee of her choice, of course not an Advocate, to present her case in the enquiry.

9. In view of the above, this petition is partly allowed.

Clause Nos.4, 5 and 6 of the operative part of the impugned order, stand replaced with the following directions :

(a) Respondent Nos.1 and 2 - Management shall treat the petitioner as being under suspension from the date of her termination, which is 14/06/2016, and she shall be entitled for suspension allowance. The enquiry shall be conducted as per Rules 33 to 37 of the MEPS Rules,1981.

(b) The appellant shall be deemed to be suspended from 14/06/2016, till final orders are passed by the Management, pursuant to the conclusion of the enquiry and the submission of the Enquiry Committee's report, subject to an opportunity of hearing thereafter. The permission of the Education Officer, in these circumstances, would not be necessary and he shall not reject any bills of the Management for payment of subsistence allowance from the salary grants, as the Management is a grant-in-aid Institution, as per the statement of the learned Advocate Shri. Rudrawar.

(c) Respondent Nos.1 and 2, in compliance of the above directions, shall forward the bills for payment of subsistence allowance @ 50% for the initial four months of suspension

(6)

and @ 75% of the gross wages after four months, till final orders are passed by the Management, after completion of the enquiry, to the Education Officer and he shall sanction the said bills from the salary grants.

(d) The Management shall forward the bills for the arrears of suspension allowance as per the calculations directed above, to the Education Officer, respondent No.3, on or before 31/03/2022. If the bills are found to be defective, the Management would be liable for interest on the said amounts, for having tendered defective bills. These bills shall be cleared by the Education Officer, on or before 11/04/2022 and the amount shall be deposited in the Salary Bank Account of the petitioner, within one week thereafter.

(e) The petitioner shall ensure that, a co-employee working in the organization of the Management would be nominated by her as her representative, on 21/03/2022, before the Enquiry Committee. It is informed that the Enquiry Committee has posted the enquiry today, and the employee is before the Court, at Aurangabad. The Management would convey to the Enquiry Committee to adjourn the proceedings today, without passing any adverse orders against the employee and post the next date of the proceedings on 21/03/2022 at 3.00 pm.

(RAVINDRA V. GHUGE, J.)