

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

CONTEMPT PETITION NO.86 OF 2020 IN
WRIT PETITION NO.147 OF 2016(D)

Sanjay s/o Vidyasagar Soni

Vs.

Mr. Datta Meghe, Chairman, Nagar Yuwak Shikshan Sanstha, Nagpur and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri S.P. Bhandarkar, Advocate for petitioner.
Shri Sunil Manohar, Sr. Advocate a/b Shri A.S. Manohar,
Advocate for respondents.

CORAM : AMIT BORKAR, J.

DATE : AUGUST 19, 2022.

The petitioner is alleging willful disobedience of the order dated 8th November 2019. The relevant clause (iii) of the said order reads as under:

“(iii) The petitioners are directed to reinstate respondent 1 with effect from 21-1-2015 notionally and to pay subsistence allowance with effect from the date of the termination, the arrears of which shall be paid within thirty days.”

2. The bone of contention between the parties is an interpretation of the words 'subsistence allowance'. According to the petitioner, the expression 'subsistence allowance' has to be interpreted to mean that the petitioner is entitled to 100% wages. However, *per contra*, the Management relied on Service Rule 38 of the Nagar Yuwak Shikshan Sanstha Service Rules, which defines subsistence allowance to mean 50% of the sum total of basic pay, grade

pay and dearness allowance, as per the last pay drawn by the employee.

3. Undisputedly, 50% of the amount contemplated by Rule 38 of the Service Rules has been paid to the petitioner.

4. Petitioner has relied upon this Court's judgment in **Writ Petition No.3131 of 2011** (Dhananjay Ambadas Dhabe Vs. Citizen Education Society and others). According to the petitioner, in the judgment, this Court has held that in the absence of provision, after 6 months, if Management wants to continue the petitioner under suspension, it has to pay full salary as subsistence allowance. Therefore, in my opinion, the question which arose for consideration before the Division Bench of this Court was the amount of subsistence allowance to be paid to the petitioner during the suspension period.

5. In the facts of the present case, this Court, while allowing the petition, had expressly used the words 'subsistence allowance' instead of the usual words 'full back wages. In that view of the matter, the expression subsistence allowance has to be interpreted to mean the rate of wages at which the petitioner was entitled. In my opinion, by using the expression 'subsistence allowance', this Court has a fixed rate of wages to which the petitioner was entitled. Undisputedly, since the petitioner was paid subsistence allowance as per Rule 38, it cannot be said that there is

willful disobedience of the order committed by the respondent.

6. Even otherwise, it is a well-settled principle of law that if the order is capable of two interpretations and the contemnor has complied with which is possible, it cannot be said that there is willful disobedience of the order.

7. In that view of the matter, there is no merit in the contempt petition and the same is therefore disposed of. No costs.

8. It is made clear that the observations made in this order are made only to decide the contempt petition.

JUDGE

Wagh