

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

WRIT PETITION NO.1526/2021

Mahendra Rushi Dhawade,
 Aged 51 years, Occ. Service,
 Acting Headmaster, Hindustan Vidyalaya,
 Wardhaman Nagar, Nagpur.

..... **PETITIONER**

...V E R S U S...

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

..... **RESPONDENTS**

 Shri P.N.Shende, Advocate for petitioners.
 Ms. H.N.Jaipurkar, Assistant Government Pleader for respondent no. 1.

CORAM :- A.S.CHANDURKAR AND ANUJA PRABHUDESSAI, JJ.

DATED :- JANUARY 12, 2022.

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-Management has not chosen to contest 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 03.03.2021 and 29.09.2021 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 orders of suspension are dated 03.03.2021 and 29.09.2021. 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 earlier order of suspension dated 02.01.2020 has been set aside in Writ Petition No.518/2020.

5. For the aforesaid reasons the orders of suspension dated 03.03.2021 and 29.09.2021 are quashed and set aside. The respondent no.2 is at liberty to hold a fresh enquiry after complying with the order passed by the School Tribunal. It is however seen that without complying with the said order, the respondent no.2 has opted to suspend the services of the petitioner

by passing three different orders. The initial order of suspension dated 02.01.2020 was set aside in Writ Petition No.518/2020.

It is made clear that if the respondent no.2 issues any fresh order of suspension without complying with the order passed by the School Tribunal, this Court would consider to take appropriate action against the respondent no.2.

Since the orders of suspension have been set aside, the respondent no.2 shall release the salary of the petitioner from March 2021 and continue to pay his regular salary in accordance with law. The same be done within a period of three months from today. The petitioner to communicate this order to the respondent no.2.

Rule is made absolute in aforesaid terms with no order as to costs.

(ANUJA PRABHUDESSAI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..