

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6089 OF 2022

VIJAYKUMAR JANARDHAN GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS

...
Advocate for the Petitioner : Shri K.P. Rodge i/by Shri Rodge
Pratap G.

AGP for Respondents 1 to 3/State : Shri P.S. Patil

...

CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 21st September, 2023

Per Court :-

1. Prior to amendment, the Petitioner has put forth
prayer clauses B and C as under:-

- “B) *By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent nos. 1 to 4 may kindly be directed to revoke the suspension of the petitioner, to treat the suspension period of the petitioner as on duty period and further they may kindly be directed to absorb the petitioner in any other recognized aided school and release arrears of salary of the petitioner from November, 2015 till today and further to release monthly salary of the petitioner regularly;*
- C) *Pending hearing and final disposal of this writ*

petition, the respondent nos. 1 to 4 may kindly be directed to absorb the petition in any other recognized aided school and to release his monthly salary regularly;”

2. Post amendment, he has put forth prayer clause C-1 as under:-

“C-1) By a writ of Mandamus or any other appropriate writ or direction in the like nature, the respondent Nos.3 and 4 may kindly be directed to forward pension proposal of the petitioner to the Accountant General (A & E)-II, Nagpur by treating the suspension period of the petitioner as spent on duty and release arrears of salary of the petitioner from November, 2015 till 31.05.2023 i.e the date of retirement;”

3. The Petitioner was a Special Teacher in Maher Orthopedically Handicapped Girls Residential School, Latur, operated by the Marathwada Apang Sanghatana, w.e.f. 12.01.2000. An offence was registered against the Petitioner on 11.11.2015 with the MIDC Police Station, Latur, punishable under Sections 376, 354, 323 and 506 of the Indian Penal Code and Sections 3, 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. He was arrested on 12.11.2015. He was suspended by the order dated 17.11.2015. He was granted bail on 03.12.2015.

4. On 01.04.2017, the registration certificate of the School was cancelled. The names of permanent employees were listed in the waiting list along with the Petitioner, so as to be absorbed in any school where there are vacancies. The School was subsequently transferred to Desai Gunj, Wadsa, District Gadchiroli.

5. By the judgment dated 27.01.2022, the Petitioner was acquitted of the charges. He, thereafter, started making applications to Respondent No.4 to include him in the list of surplus teachers for absorption. So also, he requested for revocation of the suspension order. It is mentioned in the order of suspension that it would last till the decision in the criminal proceedings. He superannuated on 31.05.2023.

6. The learned AGP has strenuously opposed this Petition on the ground that the registration of FIR against the Petitioner and subsequent criminal trial, indicates that he deserves no sympathy. The learned AGP has personally verified from online system that the State of Maharashtra has not preferred an appeal against the acquittal.

7. It is undisputed that the departmental enquiry was not conducted against the Petitioner after he was placed under

suspension. The same continued till his superannuation. In the absence of the departmental enquiry, the Petitioner is to be held innocent in the light of the judgment of acquittal delivered by the Trial Court. Had the departmental enquiry been conducted and the Management would have come to the conclusion that it has lost faith in the employee, an independent order of punishment could have been passed. Since this has not been done, the Petitioner will be entitled for full salary for the entire period of the suspension, by adjusting the suspension allowance already paid, and so also the retiral benefits.

8. In view of the above, **this Writ Petition is allowed in terms of prayer clause C-1, reproduced above.**

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)