

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

WRIT PETITION NO. 6104 OF 2022

Satyapramod Govindrao Kulkarni,
Age : 43 years, Occ. Service,
R/o. Kasgi, Tq. Omerga,
District Osmanabad.

...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary for
School Education and Sports Department,
Mantralaya, Mumbai.
2. The Education Officer (Primary),
Zilla Parishad, Osmanabad,
District Osmanabad.
3. Samajseva Shikshan Sanstha,
Naichakur, Tq. Omerga,
District Osmanabad,
Through its President
4. Superintendent of Pay Unit (Primary),
Zilla Parishad, Tq. And Dist. Osmanabad. ...Respondents

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Mr. A. V. Hon – Advocate for the petitioner
Mr. S. K. Tambe – AGP for respondent no. 1
Mr. Mayur V. Salunke h/f Mr. V. D. Salunke – Advocate for
respondent no. 3
Mr. B. B. Bhise – Advocate for respondent nos. 2 and 4

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CORAM : RAVINDRA V. GHUGE

AND

SANJAY A. DESHMUKH, JJ.

DATED : 18th APRIL 2023

ORAL JUDGMENT [Per Ravindra V. Ghuge, J.] : -

1. Rule. Rule made returnable forthwith and heard finally
with the consent of the parties.

2. This is a peculiar case wherein the Education Officer (Primary), Zilla Parishad, Osmanabad – Mrs. Sudha Solunke and Mrs. Seema Patil, Superintendent of Pay Unit, have displayed an intention of over-looking the judgment of the Hon'ble Supreme Court.

3. The issue before us is as regards suspension allowance to be paid to the petitioner. It is undisputed that the petitioner was earlier suspended without seeking prior permission of the Education Officer. Thereafter, a departmental enquiry was conducted and the petitioner was dismissed from service vide order dated 26th August, 2019. He approached the School Tribunal in Appeal No. 48 of 2019. The School Tribunal concluded vide its judgment dated 14th December, 2021 that the order of termination is bad in law and the enquiry is vitiated. Unfortunately, when the School Tribunal delivered this judgment, not a single lawyer representing the litigating sides cited the law laid down by the Hon'ble Apex Court in the case of **Vidya Vikas Mandal and Another Vs. Education Officer and Another**, 2007 (3) Mh.LJ 801.

4. In **Vidya Vikas Mandal** (supra), considering the fact that the enquiry was vitiated, the Hon'ble Supreme Court has concluded in paragraph nos.8 and 9 as under: -

"8) As rightly pointed out by the learned counsel for the appellants, Rule 37 (6), which is mandatory in nature, has not been strictly complied with. The Inquiry Committee comprising of three members, as already noticed, only one member nominated by the Management has submitted his Inquiry report within the time stipulated as per Rule 37 (6) and admittedly, the other two members nominated by the employee and an independent member have not submitted their report within the time prescribed under Rule 37 (6). However, the learned Judges of the Division Bench, though noticed that the two members out of three found the employee not guilty, failed to appreciate that the said findings by the two members of the committee were submitted after the expiry of the period prescribed under Rule 37(6). In our opinion, the report submitted by individual members is also not in accordance with the Rules. When the Committee of three members are appointed to inquire into a particular matter, all the three should submit their combined report whether consenting or otherwise. Since the report is not in accordance with the mandatory provisions, the Tribunal and the learned Single Judge and also the Division Bench of the High Court have committed a serious error in accepting the said report and acted on it and thereby ordering the reinstatement with back wages. Since the reinstatement and back wages now ordered are quite contrary to the mandatory provisions of Rule 37 (6), we have no hesitation in setting aside the order passed by the Tribunal, and learned Single Judge and also of the Division Bench of the High Court. In addition, we also set aside the order passed by the Management based on the report submitted by the single member of the Committee, which is also quite contrary to the Rules.

9) 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."

5. Nevertheless, the School Tribunal directed that the petitioner should be treated as being under suspension and a fresh enquiry be conducted against him. The petitioner approached this Court in Writ Petition No. 3764 of 2022. By order dated 12th April, 2022, this Court referred to **Vidya Vikas Mandal** (supra) and as the enquiry was vitiated and was directed to be conducted from the stage at which it was initiated, the petitioner was directed to be under deemed suspension in view of law laid down in **Vidya Vikas Mandal** (supra).

6. In view of the above, it is far-fetched on the part of the Education Officer (Primary), Zilla Parishad, Osmanabad, to continue to insist that suspension allowance will not be paid by the Government as the petitioner was suspended without the approval of the Education Officer. When the Hon'ble Supreme Court has laid down the law and in view of the order of this Court that the Petitioner will be deemed to be suspended, the Education Officer cannot hold an opposite view.

7. In view of the above, **this petition is partly allowed.** We

direct the Education Officer to clear all the suspension allowance bills tendered by the Management, with effect from 26th August, 2019 onwards, within 30 days from today. Insofar as the dispute between the Management and the petitioner that the petitioner left the headquarters without prior permission of the Management and, therefore, the Management need not pay the subsistence allowance from its pocket as no prior permission of the Education Officer was obtained for suspending the petitioner till 26th August, 2019, we leave the issue open. Needless to state, the issue as to whether the initial suspension of the petitioner could be termed as being illegal, is also kept open.

[SANJAY A. DESHMUKH]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE