

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 Writ PETITION NO.7874 OF 2022

DILIP PUNJA KASABE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

.....
Advocate for Petitioner : Mr. P.R. Nangare
AGP for Respondent Nos. 1 to 3: Mr. S.P. Tiwari
Advocate for Respondent No.4 : Mr. Vivek Dhage h/f Mr. V.S. Bedre
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 14th MARCH, 2023.**

PER COURT :-

1. The Petitioner has put forth prayer clauses B, C and D,
as under:-

- "B) By issuing Writ of mandamus or any other appropriate Writ or directions, to direct the respondent no. 1 to 3 to take strict action against the respondent no. 4 and 5 as contemplated in Government resolution dated 1st March 2011 for non compliance of their directions issued in letters dated 25/03/2022 and 6/04/2022.
- C) By issuing Writ of mandamus or any other appropriate writ, to direct the respondent no. 4 and 5 to forward the proposal for sanctioning pension to the petitioner and to take immediate steps for sanctioning pension to the petitioner.
- D) By issuing Writ of mandamus or any other appropriate writ, to direct the respondents to release all arrears of salary of the petitioner from the date of termination from the services i.e.

18/01/2016 to 31/05/2017 i.e. till the date of attaining age of superannuation."

2. We have considered the strenuous submissions of the learned advocates for the respective sides and the learned A.G.P. . Respondent No.4 employer has entered an additional affidavit in reply, dated 12.03.2023 alongwith certain documents.

3. The undisputed factors are as under:-

- a) The Petitioner, who was working as a Head Master of the school, was alleged to have indulged in serious misconducts.
- b) The prior permission of the Education Officer to place the Petitioner under suspension, was obtained on 18.03.2015.
- c) The Petitioner was suspended on 25.04.2015.
- d) The Petitioner challenged the departmental enquiry as well as the order of suspension in Writ Petition Nos. 4049 of 2015 and 6106 of 2015.
- e) Writ Petition No. 4049 of 2015 was dismissed. Writ Petition No. 6106 of 2015 was withdrawn by the Petitioner.
- f) The departmental enquiry commenced on 25.06.2015 and the enquiry was concluded beyond three months.

- g) After completing the enquiry, the Petitioner was dismissed from service on 18.01.2016.
- h) Prior to the above, the management had moved an application dated 05.09.2015 seeking continuation of suspension.
- i) The Education Officer (Secondary) passed an order on 22.09.2015, rejecting the request and directed that the Petitioner be reinstated on the post of Head Master. The said order is challenged in Writ Petition No. 10303 of 2015, which is still pending before this Court.
- j) The Petitioner again approached this Court in Writ Petition No. 14828 of 2017 alleging that the enquiry has not been completed within 120 days.
- k) By order dated 3.5.2018, this court disposed off the Writ Petition with a direction that the entitlement of suspension allowance after lapse of 120 days can be verified by the Education authority.
- l) By communication dated 11.7.2018, the Education Officer directed the management to pay 100% subsistence allowance to the Petitioner after 120 days from the date of suspension.
- m) This communication dated 11.7.2018 was challenged by the management in Writ Petition No. 8533 of 2018. By judgment dated 25.8.2022, this court dismissed the Petition by relying upon the judgment of the Hon'ble Supreme court in ***Vidya Vikas Mandal and another vs.***

the Education Officer and others, [2007 (3) Mh.L.J. 801], wherein the Hon'ble Supreme court has concluded that if the enquiry conducted against the delinquent is held to be vitiated, the order of dismissal would stand set aside and he would be deemed to be under suspension till the completion of the enquiry, to be conducted de-novo from the stage at which it was vitiated.

- n) The management approached the Hon'ble Supreme Court by preferring a Special Leave Petition (Civil) No. 21571 of 2022. By order dated 09.12.2022, the S.L.P. was disposed off concluding that as the Petitioner has attained the age of superannuation, the Special Leave Petition is being dismissed. The question of law, if any, was kept open.
- o) The Petitioner was suspended on 25.4.2015 and was dismissed on 18.1.2016. The School Tribunal delivered it's judgment on 13.3.2020, concluding that the enquiry was vitiated and directed the management to proceed with the enquiry from the stage at which it was vitiated, to be completed within six months. Prior to the delivery of this judgment, the Petitioner retired from service, after attaining the age of superannuation, on 31.05.2017.
- p) The management did not initiate the de-novo enquiry within six months and approached the learned Single Judge by filing Writ Petition No. 12702 of 2021 to challenge the order of the School Tribunal, only in December, 2020 which is beyond six months granted to it by the Tribunal. Even if the case of the Petitioner is taken as it's best, he would earn benefits of service only up to 31.5.2017, when he is superannuated.

4. Since the communication of the Education Officer dated 11.7.2018, directing the management to pay 100% subsistence allowance from the date of suspension to the Petitioner, has been upheld by the judgment of this Court, dated 25.08.2022, which is sustained by the Hon'ble Supreme Court, the Petitioner would now be entitled for suspension allowance as per Rules, until the date of his superannuation, since he is superannuated before the *de-novo* enquiry could be concluded.

5. The management desires to argue on the point as to whether the Education Officer would have a right to extend the suspension or whether it would be the Deputy Director of Education who has jurisdiction to pass such orders, in it's pending 2015 Writ Petition.

6. The learned advocate for the management has brought to our notice certain subsequent events. The management has already forwarded the pension papers of the Petitioner on 13.03.2023 to the appropriate authority. We, therefore, direct the concerned authority to ensure that the pension papers of the Petitioner are cleared within 45 days from today and the payment of regular pension is commenced from 01.05.2023. All arrears of pension amount would carry interest as per the admissible rate and the said

arrears, with such interest, shall be paid to the Petitioner, within 90 days from today.

7. It is, thus, apparent from the factors recorded above that the management alone can be blamed for this self created situation. The enquiry was conducted haphazardly and, therefore, set aside. The management was given the liberty to conduct a *de-novo* enquiry from the stage at which it was vitiated, within six months, though the Maharashtra Employees Private Schools (Condition of Service) Regulation Rules 1981, permitted the enquiry to be concluded within 120 days. Yet the management did not go ahead and complete the enquiry and kept the Petitioner under deemed suspension. After seven months of the order of the Tribunal and beyond six months granted to the management, a Writ Petition was filed before the learned Single Judge of this court which was also dismissed. The Special Leave Petition filed by the management, challenging the judgment of the Division Bench of this court, has also been dismissed. Even the Review Petition filed by the management has been dismissed.

8. The management makes a statement that entire arrears of suspension allowance would be initially paid by the management to the Petitioner and if the management succeeds in the pending Writ Petition No. 10303 of 2015, the management would abide as per the direction that may be issued in the said Writ Petition.

9. The Petitioner desires to render a quietus to the matter and is willing to accept 75% of his salary, as a comprehensive resolution to the dispute, for the period 18.1.2016 till 31.5.2017.

10. As such, to balance the equities and considering the law laid down in ***Vidya Vikas Mandal and another (supra)*** that, we direct the management to pay the said amount of 75% from 18.1.2016 to 31.5.2017. If this amount is paid within 45 days, there would be no interest on the said amount. If the management does not choose to pay this amount in this period, there would be interest at the rate of 6% p.a. from 01.06.2017.

11. With the above directions, this Writ Petition is disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/