

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7700 OF 2022

Mallinath Basavanappa Samane ...Petitioner
Versus
The Assistant Commissioner Special District ...Respondents
Social Welfare Officer Solapur & Ors

Mr SG Kudle, for the Petitioner.
Mrs AA Purav, AGP, for the Respondent-State.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 8th August 2023

PC:-

1. Heard.

2. The Petition seeks a Mandamus against Respondents Nos. 3 and 4 to allow the Petitioner to continue in the 4th Respondent Ashram School and for release of salary, etc. Then there is a prayer for an injunction against Respondents Nos. 3 and 4 not to obstruct the Petitioner from joining the 4th Respondent School.

3. The 3rd Respondent is a society or institution which runs the 4th Respondent school. No relief is sought against the public authorities, Respondents Nos. 1, 2 and 5.

AMOL
PREMNATH
JADHAV

Digitally signed by
AMOL PREMNATH
JADHAV
Date: 2023.08.09
09:46:54 +0530

4. It is difficult to see how in a matter of service and suspension from service a writ of mandamus can issue to Respondents Nos. 3 and 4 in this fashion.

5. The short point canvassed by Mr Kudle is that his suspension for absenteeism without prior leave could not have been passed by the 1st Respondent, the Assistant Welfare Officer, Solapur but had to be passed by what Mr Kudle describes as the “appointing authority”, namely the 3rd Respondent. But the fact of the matter is that the 3rd Respondent is not only not aggrieved by the order of suspension but supports it and further it is stated that the order of suspension is with prior permission and leave obtained from the 3rd Respondent School itself.

6. There is no controversy about the absenteeism or the period of absenteeism. Mr Kudle says that the Petitioner had no choice. He had to look after an aged parent. That may be so, but these are some of the attendant perils of transferable government service of every description and at every level. This is not a reason for not availing of appropriate leave in the applicable category or seeking prior permission. It is not the leave itself that is actionable, but proceeding on leave without prior permission or sanction. It would create complete havoc in the functioning of every school if school staff, whether teaching or non-teaching, decided for themselves how much leave they wanted to take and when and for how long. No management could effectively run a school in such a situation.

7. We are not inclined to grant the relief in the terms sought.

8. The Petition is rejected. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)