

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

WRIT PETITION NO.2961 OF 2019

Shri Khemraj Sadashiv Ratnapure,
Aged about 48 years, Occupation-Lab Assistant,
R/o Sawangi, Post Fegad,
Tah. Kuhi, Dist. Nagpur. **PETITIONER**

...VERSUS...

1. Deputy Director of Education,
Nagpur Division, Nagpur.
2. Education Officer,
(Secondary), Zilla Parishad, Nagpur.
3. Shri Chaitaneshwar Shikshan Mandal, Fegad,
Tah. Kuhi, District Nagpur.
Through its President.
4. Head Master,
Bhartiya Dnyanpeeth, Fegad,
Tah. Kuhi, District Nagpur.

..... **RESPONDENTS**

Shri V. N. Patre, Advocate for petitioner.
Shri Amit Madiwale, Assistant Government Pleader for respondent nos. 1
and 2.
Shri G.N.Khanzode, Advocate for respondent nos. 3 and 4.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE :- 23rd MARCH, 2023.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel
for the parties.

2. The petitioner who was employed as a Peon at the respondent no.4-School run by the respondent no.3-Society came to be arrested on 11.07.2018 pursuant to a First Information Report lodged against him vide FIR No.129 at Police Station Veltur. The petitioner was placed under suspension with effect from 12.07.2018. He was released on bail on 19.07.2018. His services came to be terminated on 11.03.2022. The petitioner seeks grant of suspension allowance for the period from 09.07.2018 to till the date of his termination in terms of Rule 34 (1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981).

3. Shri V. N. Patre, learned counsel for the petitioner submits that for the period of suspension till termination of his services, the petitioner was not paid subsistence allowance. According to him, in terms of Rule 34(1) of the Rules of 1981, it is the responsibility of the Management to make such payment. Though the petitioner was placed under suspension, the relationship of employer and employee continued till 11.03.2022. Hence the petitioner could not be deprived of subsistence allowance.

4. Shri G.N.Khanzode, learned counsel for the respondent nos. 3 and 4 submits that in the light of the provisions of Rule 33(5) of the Rules of 1981, the petitioner is not entitled to receive any subsistence allowance considering the gravity of the offence. He submits that in case the petitioner is acquitted in the criminal trial and thereafter reinstated in service, he would be paid the subsistence allowance in accordance with law.

Shri Amit Madiwale, learned Assistant Government Pleader for the respondent nos.1 and 2 has relied upon the affidavit in reply and submits that as criminal proceedings were pending against the petitioner, the Education Officer (Secondary) was not liable to pay subsistence allowance.

5. On hearing the learned counsel for the parties, we find that the provisions of Rule 34(1)(b) of the Rules of 1981 would enable the petitioner to receive subsistence allowance. The entitlement to receive subsistence allowance under Rule 34(1)(b) is for a period of four months and the position thereafter is governed by Rule 37(2)(f) if any enquiry is conducted. In the present case, no such enquiry has been conducted. There is also no order passed putting an end to the period of suspension. It is however stated that the petitioner's services were terminated on 11.03.2022. Reliance placed upon Rule 33(5) is misconceived for the reason that said provision pertains to adjustment of pay and allowances which would exclude subsistence allowance. This position has been considered by the Division Bench of this Court in **Writ Petition No.3015 of 2021** [*Baba Pralhad Padwekar vs. Department of Higher and Technical Education and ors.*] decided on 03.02.2023. The learned counsel for the petitioner is justified in placing reliance on the decision in *Madhukar Namdeo Patil vs. Chairman, Sudhagad Education Society and others* [2000(4) *Mh.L.J.* 206]. In paragraph 3 it has been observed as under:

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Rule 33(5) lays down that an employee “shall be considered as under suspension” (i) where proceedings have taken on a criminal charge against the employee or (ii) where the employee is detained under any law for the time being in force

providing for preventive detention. Sub-rule (5) however is qualified by the period during which the employee shall be regarded as under suspension. The said sub-rule stipulates that the employee in such a case shall be considered as under suspension for any period during which he is under preventive detention or where he is detained in police or judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment. In a case where, as in the present facts, the employee is in police or judicial custody, he shall be considered as under suspension when the period of custody exceeds 48 hours. Moreover, the suspension can only be for the period during which the employee is in police or judicial custody and only if the period of such custody exceeds 48 hours. In other words, the period of suspension under the provisions of sub-rule (5) of Rule 33 must necessarily come to an end once the period of judicial or police custody is terminated. Suspension under Rule 33 (5) is not an indefinite suspension during the pendency of a criminal prosecution. That was not the intention underlying the framing of Rule 33(5) and the words used in the said Rule militate against an interpretation which extends the period of suspension to the pendency of the criminal proceedings. The period of suspension under Rule 33(5) comes to an end once an employee ceases to be in police or judicial custody.”

6. In the light of the aforesaid, it is clear that the petitioner would be entitled to receive subsistence allowance in accordance with Rule 34 of the Rules of 1981. Since the services of the petitioner have now been terminated, the relief of reinstatement cannot be granted in the present proceedings. The petitioner would have to challenge the same in accordance with law. The respondent nos. 3 and 4 shall however within a period of three months from today pay the petitioner subsistence allowance to which he is entitled in accordance with the aforesaid provisions from 19.07.2018 till 11.03.2022.

It is open for the respondent nos. 3 and 4 to thereafter forward the pay bills of the petitioner to the respondent no.2. The pay bills if forwarded shall be considered by the Education Officer (Secondary) in accordance with law.

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

(M. W. CHANDWANI,, J.)

(A.S.CHANDURKAR, J.)

Andurkar.