

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

Writ Petition No.3907/2023

Smt. Nilima V Rashtriya Kamgar Education Society, Nagpur and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. A.Z. Jibhkate, Counsel for the petitioner.
Mrs. K.S. Joshi, AGP for respondent 2.
Mr. A.D. Dangore, Advocate for respondent 1.

CORAM : Rohit B. Deo and M.W. Chandwani, JJ.
DATE : 21-07-2023

The petitioner is assailing the order of suspension dated 09-06-2023 issued by the respondent 1 Management.

2. It is common ground that the Management is refused permission to issue the suspension order.

3. At this stage, Mr. Dangore, learned Counsel states that the application seeking permission to suspend is pending.

4. Rule 35 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (For Short, 'Rules 1981'), mandates prior permission, and the fact that the petition is pending is irrelevant.

5. Be that as it may, the consequences of suspension without prior approval of the Education Officer are considered by the Full Bench in Awdhesh Narayan Singh vs Adarsh Vidya Mandir Trust and another reported in 2004(1) Mh.L.J.

676 and it is held that where an employee of a recognized school is placed under suspension without approval sub-rule (4) of Rule 35 of Rules, 1981 will apply and the employee shall be entitled to subsistence allowance in accordance with the said sub-rule.

6. While the learned Counsel Mr. Jibhkate did make an attempt to persuade us to hold that the suspension is *mala fide*, in writ jurisdiction we find it difficult to consider such submission, at least at this stage inasmuch as the consideration shall have to be restricted to the averments in the chargesheet.

7. In this view of the matter, we are not inclined to interfere with the order of suspension.

8. However, we direct the Management to directly deposit the amount of the subsistence allowance, in accordance with law, in the salary account of the employee on or before the 5th day of every calendar month. We further direct that if the amount is not deposited, or otherwise paid to the petitioner as directed, the Management shall forthwith revoke the order of suspension.

9. Mr. Jibhkate, learned Counsel tells us that if the suspension continues beyond 4 months and the inquiry is not complete, the consequences provided under Rule 37 (2)(f) of the Rules 1981, shall ensue, and we should observe so. Inasmuch as we cannot presume that the inquiry will not be concluded as is the apprehension, we make no observation in

this petition. If there is an occasion to raise that grievance, the petitioner may do it an appropriate stage.

10. Petition is disposed of.

JUDGE

JUDGE

Deshmukh

Digitally signed by
SANDEEP
CHANDRASHEKHAR
DESHMUKH
Date: 2023.07.27
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