



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

WRIT PETITION NO. 3204 OF 2023

(PUBLIC EDUCATION SOCIETY, THR. ITS PRESIDENT...VS..AJAZ UDDIN ZAHIR UDDIN & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.M.Vaishnav, Advocate for Petitioner.
Shri A.J.Kadu, Advocate for Respondent No.1.
Shri A.J.Gohokar, A.G.P. for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 14, 2024.

1. Heard.
2. This writ petition takes exception to the order dated 18/01/2023 passed by the School Tribunal, Amravati in Appeal No.6 of 2020 recording affirmative finding on additional issue, namely, whether the appellant is entitled for subsistence allowance? If yes, for which period? Thereupon, it is held that the appellant/respondent is entitled for the subsistence allowance for the period from 26/08/2019 to 05/07/2022.

The brief facts of the present matter are as under:

3. The respondent filed an appeal before the School Tribunal challenging his termination dated 22/01/2020 after holding the enquiry. The respondent was under suspension during the pendency of the enquiry w.e.f. 26/08/2019 till the termination on 22/01/2020.

4. The learned Tribunal set aside the order of termination vide judgment and order dated 22/04/2022 and thereby further permitted the petitioner-management to conduct *de novo* enquiry.

5. Thereupon, the respondent No.1 preferred a writ petition viz. W.P. No.3145 of 2022 before this Court on a limited ground to the extent of entitlement of the respondent No.1 for subsistence allowance.

6. This Court vide judgment dated 21/11/2022 remanded the matter back to the School Tribunal to decide the issue of entitlement of the respondent No.1 for subsistence allowance and accordingly, the School Tribunal framed an additional issue and answered the same in favour of the respondent.

7. I have heard the learned counsel for the respective parties.

8. Shri Vaishnav, learned counsel for the petitioner-Management submits that since the *de novo* enquiry was directed, the question of back wages would be considered after the conclusion of the enquiry as the principle relate back would apply to the present case. It is therefore, submitted that the learned School Tribunal has committed an error in holding the respondent No.1

entitled for grant of subsistence allowance. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *N.T.C. (WBAB & O) Ltd. ..vs.. Anjan K. Saha*, reported in **2004(7) SCC 581**, the Division Bench judgment of this Court in the case of *Kashiram ..vs. B.R.B.Damle.... Society*, reported in **1997(3) Mh.L.J. 235**, a judgment of the Coordinate Bench of this Court in the case of *Mumbai Cricket Association..vs..Pramod*, reported in **2011(5) Mh.L.J. 36** and in the case of *Abdul Salam..vs..Shah Babu Edu. Society*, reported in **2014(5) Mh.L.J. 41**.

9. On the other hand, Shri Kadu, learned counsel for the respondent No.1 and the learned A.G.P. support the impugned judgment and order of the School Tribunal on additional issue as regards the subsistence allowance and pray for dismissal of the present writ petition.

10. In light of the rival contentions, I have perused the record and the impugned order.

11. In the matter at hand, there is no dispute that the Tribunal in the appeal filed by the respondent No.1 challenging the order of termination, set aside the order of termination vide judgment and order dated 22/04/2022 and permitted the management to conduct *de novo* enquiry.

12. This Court in Writ Petition No. 3145 of 2022, filed at the instance of the respondent No.1 for grant of subsistence allowance, remanded the matter back to the Tribunal for deciding the said issue.

13. Thus, the whole controversy revolves around the entitlement of the respondent No.1 for subsistence allowance during pendency of the enquiry.

14. In light of the above referred question, involved in the present writ petition it would be beneficial and appropriate to reiterate the law in this regard.

15. The Hon'ble Supreme Court of India and this Court in similar matters on reinstating the employee and treating him under deemed suspension, directed the Management to pay the subsistence allowance till the final outcome of the enquiry. (As observed and held by the Hon'ble Supreme Court of India in the case of *Vidya Vikas Mandal ..vs.. Education Officer* (2007)11 SCC 352 and by this Court in the cases of *Kai. Venkatrao Deshmukh Shilwanikar, Shaikshanik va Samaji Sanstha, Shilwani and another ..vs.. Sharad Shridharrao Deshmukh and others* 2016 SCC OnLine Bom 211, *Tazoddin ..vs.. Shivshakti ... Mandal* 2019(2) Mh.L.J. 242 and *Anita Rohidas Ukade ..vs.. Secretary, Ambika Bahuuddeshiya Mahila Mandal and Oth.* 2022 SCC OnLine Bom 9030).

16. From the above referred well settled law and considering the findings recorded by the learned School Tribunal, in holding the respondent No.1 entitled for subsistence allowance, I am of the opinion that no error has been committed by the learned Tribunal.

17. Accordingly, the Writ Petition is **dismissed**. No order as to costs.

JUDGE

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