



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

WRIT PETITION NO. 1366 OF 2024

1. Bhagyashree Shikshan Sanstha C/o
P.B.Turkhede, Subodh Colony, V.M.V. Road,
Amravati, Tq. & Dist. Amravati, through its
President/Secretary
2. Bhagyashree Madhyamik Va Ucchamadhyamik
Vidyalaya, Surbhi Vihar, Amravati Tq. and
Dist. Amravati through its Head Master ...Petitioners

// VERSUS //

1. Sau. Chitra Mahadeorao Datir, Chitra Satyam
Akolkar, Aged about 44 years, Occ. Service
R/o Karaigaon, Tq. Chandur Bazar, Dist.
Amravati
2. Deputy Director of Education, Amravati
Division, Amravati Tq. and Dist. Amravati ... Respondents

Shri M.G.Bhangde, Senior Advocate assisted by Shri R.M.Bhangde,
Advocate for the petitioner.

Shri S.M.Vaishnav, Advocate for the respondent no.1.

Mrs. Mayuri Deshmukh, AGP for the respondent no.2/State.

CORAM : ANIL S. KILOR, J.

DATED : 6th MAY, 2024.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated
8th February, 2024 passed by the School Tribunal, Amravati Division,
Amravati to the extent a direction to the petitioners to pay subsistence

allowance as per the law to the respondent no.1 from the date of her termination i.e. 2nd September, 2021.

3. Shri Bhangde, learned Senior Advocate appearing on behalf the petitioner submits that this matter is squarely covered by the judgment of this Court in a case of Rukhmini Laxman Jadhao Vs. Yavatmal Zilla Akhil Kunbi Samaj, through its President/Secretary and others¹. It is submitted that, in the said judgment since the employee was never under suspension during the pendency of the inquiry, the discretion was left on the Management to take a decision in that regard.

4. It is submitted that in the present matter too the respondent was never under suspension. It is therefore prayed that, the similar order may be passed.

5. Shri Bhangde, learned Senior Advocate has further drawn my attention to the judgment of the Hon'ble Supreme Court in the case of the Secretary, Yavak Mandal, Pusad and another Vs. Shiladevi Narayan Munneshwar and another passed in Civil Appeal No(s). 11699 of 2018, wherein, the Hon'ble Apex Court has held that the question of whether the employee would be entitled for full wages, for the period of illegal dismissal is left open to be agitated in appropriate proceedings.

6. Shri Vaishav, learned counsel for the respondent while opposing the present writ petition points out another judgment of this Court dated 14th February, 2024 in the Writ Petition No. 3204 of 2023

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wherein such order of directing to pay subsistence allowance as directed in the present matter, was upheld. However, at the same time he submits that in view of the above referred reported judgment of this Court in the case of *Rukhmini Laxman Jadhao Vs. Yavatmal Zilla Akhil Kunbi Samaj* (supra), the review is sought of the said judgment dated 14th February, 2024.

7. In light of rival contentions of the parties, I have perused the record and the impugned order. Thereupon, I have reached to the conclusion that the present matter is squarely covered by the judgment in the case of *Rukhmini Laxman Jadhao Vs. Yavatmal Zilla Akhil Kunbi Samaj* (supra) for the reason recorded herein below

8. Admittedly, in the present matter, during the pendency of inquiry, the respondent no.1 was not under suspension.

9. However, the learned School Tribunal vide judgment and order dated 8th February, 2024 while partly allowing the appeal and directing the petitioners to reinstate the respondent no.1 to her former post, granted permission to conduct the fresh inquiry against the appellant since beginning i.e. from the stage of Rule 33 of the M.E.P.S. Rules. The learned Tribunal while doing so also granted liberty to the Management to suspend the respondent no.1 during the pendency of the inquiry. The Management however contrary to law is directed to pay subsistence allowance from the date of her termination i.e. 2nd September, 2021.

10. It is further observed that the payment of subsistence allowance shall be condition precedent to initiate the fresh inquiry against the respondent no.1.

11. It is a settled law that in case of no enquiry or defective enquiry, proper relief is to set aside the dismissal with direction to the Management to hold enquiry from the stage the illegality has crept in and that the reinstatement is to be treated for the purpose of holding fresh enquiry and no more.

11. Thus, the learned School Tribunal has rightly permitted to the Management to initiate the inquiry. However, the learned School Tribunal has ignored the well settled law as far as backwages i.e. entitlement as regards backwages is to make dependent on the final outcome of the fresh enquiry and therefore it is necessary to left at the discretion of the Management to take decision as regards suspension. In case, the Management takes a decision to place the respondent no.1 under suspension pending inquiry the respondent no.1 is entitled to receive the subsistence allowance from the date of suspension and not from the date of termination.

12. In that view of the matter, the writ petition is allowed and thereby the impugned judgment dated 08.02.2024 to extent it directs the

petitioners to pay subsistence allowance to the appellant from the date of her termination i.e. 02.09.2021, is hereby quashed and set aside.

[ANIL S. KILOR, J.]