
(2023) 02 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 3015 Of 2021

Baba Pralhad Padwekar

APPELLANT

Vs

Department Of Higher And Technical Education And Others

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 33(5), 33(6)

Indian Penal Code, 1860 — Section 34, 120B, 403, 406, 409, 420, 465, 468, 479

Citation : (2023) 02 BOM CK 0014

Hon'ble Judges : A.S.Chandurkar, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : Anand Parchure, S.M.Ghodeswar, P.A.Markandewar, R.D.Murkute

Final Decision : Dismissed

Judgement

A.S.Chandurkar, J

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

2 The question that arises for consideration in this writ petition filed under Article 226 of the Constitution of India is whether an employee of a private school who was arrested in a proceeding taken against him on a criminal charge is entitled to receive increment after the expiry of the period of suspension from service in the light of Rule 33(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981).

3. The facts lie in a narrow compass. The petitioner while serving as a Full Time Instructor at the Junior College which is run by the fourth respondent-Education Society came to be arrested on 27.04.2016 on account of registration of a First Information Report against him vide Crime No. 21 of 2016 for the offence punishable under Sections 420, 403, 406, 409, 465, 468, 479, 34, 102-B of the

Indian Penal Code. He was in custody till 27.07.2016 and pursuant to his release on bail, he resumed his duty as Instructor from 28.07.2016. Since the services of the petitioner were approved, the third respondent-District Vocational Education and Training Officer issued a communication on 15.06.2017 to the Management stating therein that subject to final outcome of the criminal prosecution, the petitioner be paid salary at the rate at which he was being paid prior to his suspension. Based on the final decision in the said proceedings, further steps would be taken. The petitioner however sought to claim increment that was due and payable to him during the aforesaid period. He therefore made representations in that regard and by the communication dated 30.01.2020 the second respondent-Joint Director, Department of Vocational Education and Training, Nagpur reiterated the stand that the petitioner would be entitled to receive salary that he was receiving prior to his suspension and that based on the outcome of the pending proceedings, further entitlement would be adjudicated. Being aggrieved by the aforesaid stand taken by the second respondent, the petitioner has challenged the communication dated 30.01.2020 in this writ petition.

4. Shri Anand Parchure, learned counsel for the petitioner submitted that the Authorities were not justified in withholding the increment that was due and payable to the petitioner on account of the fact that the petitioner was placed under suspension. Depriving the petitioner of such benefits relating to his pay and allowances would amount to a penalty without there being any order to that effect. The mere fact that the petitioner was in custody for the period from 27.04.2016 to 27.07.2016 could not be a reason for depriving him of such pay and allowances in the form of increment. The action taken by the said respondent was not in accordance with the provisions of Rule 33(5) of the Rules of 1981 and the petitioner ought to be paid the increment to which he was entitled. In support of his submissions, the learned counsel placed reliance on the decisions in *Mritunjai Singh vs. State of U.P. and others* [AIR 1971 All 214] and *Union of India Vs. P.C.Misra and others* [2010 SCC Online Del 628]. It was thus submitted that without following the prescribed procedure the petitioner could not be deprived of such benefits flowing from the service rendered by him.

5. Shri S.M.Ghodeswar, learned Assistant Government Pleader for the respondent nos. 1 to 3 supported the impugned communication. According to him, the Authorities had rightly interpreted the provisions of Rule 33(5) of the Rules 1981 since the petitioner was in custody for the period from 27.04.2016 to 27.07.2016 in view of proceedings taken on a criminal charge and was thus under suspension. It was clear from the provisions of Rule 33(5) of the Rules of 1981 that depending upon the conclusion of the criminal proceedings further benefit with regard to pay and allowances would be admissible. Since that stage was yet to be reached, the prayer made by the petitioner could not be granted at this stage and to that extent such prayer was premature. It was thus submitted that no interference was called for with the impugned communication.

6. We have heard the learned counsel for the parties and we have perused the documents on record. After giving due consideration to the rival submissions, in our considered view the second respondent by taking the stand that the petitioner would be entitled for adjustment of pay and allowances as regards increment during the period of detention consequent upon the adjudication of the criminal proceedings is in accordance with the provisions of Rule 33(5) of the Rules of 1981. It is not in dispute that the petitioner was proceeded against by virtue of his alleged involvement in Crime No.21/2016. He was arrested on 27.04.2016 and remained in custody till 27.07.2016. He was released on bail on 28.07.2016. In this regard, the provisions of Rule 33(5) which read as under are relevant.

"Rule 33. Procedure for inflicting major penalties:

(1)

(2)

(3)

(4)

(5) An employee against whom proceeding have been taken on criminal charge or who is detained under any law for the time being in force providing for preventive detention shall be considered as under suspension for any period during which he is under such detention or he is detained in police or judicial custody for a period exceeding forty-eight hours or is undergoing imprisonment, and he shall not be allowed to draw any pay and allowances for such period until the termination of the proceedings taken against him or until he is relieved from detention and is in a position to rejoin duty after producing documentary proof of his release (otherwise than on bail) or acquittal, as the case may be. An adjustment of his pay and allowances for such periods shall be made according to the circumstances of the case, the full amount being given only in the event of the employee being acquitted of charge or detention being held by the Court to be unjustified."

It can be seen that an employee who is placed under suspension as a consequence of being detained in police custody for a period exceeding forty-eight hours would not be allowed to draw any pay and allowances for such period till he is in a position to re-join duty after his release on bail and the adjustment of his pay and allowances for such period has to be made on the conclusion of the proceedings before the Court. As of today the criminal trial has not yet concluded and hence such stage for adjustment of the petitioner's pay and allowances for the period from 27.04.2016 to 27.07.2016 has not yet been reached. The impugned communication dated 30.01.2020 merely reiterates what has been stated in Rule 33(5) that the petitioner would be entitled to receive his pay and allowances as earlier excluding the period from 27.04.2016 to 27.07.2016. It is for that reason that the petitioner has been deprived of his

annual increment that became admissible during the said period. We find that the petitioner has been rightly held not entitled to the annual increment by virtue of Rule 33(5) of the Rules of 1981. This deprivation is not by way of penalty but is dependent on the outcome of the proceedings taken against the petitioner on a criminal charge.

7. The Division Bench in *Kashiram Rajaram Kathane vs. Bhartiya R.B.Damle Gram Sudhar Tatha Shikshan Prasar Society and others* [1997(3) Mh.L.J. 235] while considering the Rules of 1981 has held in clear terms that when an enquiry is held against such an employee, the Enquiry Committee by virtue of Rule 33(5) of the Rules of 1981 has the jurisdiction to go into the question as regards consequential relief that such delinquent would be entitled on reinstatement when it exonerates such employee. It is thus clear that such deprivation of pay and allowances during the concerned period is of a temporary nature and is dependent upon the outcome of the proceedings pending before the Court/ conclusion of the Departmental Enquiry under the Rules of 1981. Till the conclusion of such proceedings, Rule 33(5) prohibits grant of such pay and allowances.

The decisions relied upon by the learned counsel for the petitioner are based on distinct Rules that were considered in the said proceedings. It is clear that since the provisions of Rule 33(5) are not in pari materia the Rules that were considered in *Mritunjai Singh and P. C. Misra & others* (supra), the ratio thereof cannot be made applicable to the facts of the present case.

8. For aforesaid reasons we do not find any case made out to interfere in writ jurisdiction. The impugned communication dated 30.01.2020 has been issued in accordance with Rule 33(5) and (6) of the Rules of 1981 and the same does not call for any interference. The writ petition is thus dismissed. Rule stands discharged with no order as to costs.