

(2016) 07 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 8080 of 2015.

**Rajaram s/o. Dnyandeo Nakade, Age 45 years, Occu : Nil, R/o. Nakade Wadi, At Post Jat-Deole, Taluka Pathardi, District Ahmednagar -
Petitioner @HASH The State of Maharashtra, Through its Secretary,
School Education Department, Mantralaya, Mumbai-32 - Resp**

Date of Decision : 15-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALLMR 218 : (2017) 1 BCR 805

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. Amol N. Kakade, Advocate, for the Petitioner; Mrs. M.A. Deshpande, AGP, for the Respondent Nos. 1 and 2; Mr. S.B. Talekar, Advocate, for the Respondent No. 3

Final Decision : Disposed Off

Judgement

S.S. Shinde, J. - Heard the learned counsel appearing for the petitioner, learned AGP appearing for the respondent - State and the learned counsel appearing for Respondent No.3.

2. This Petition takes exception to the order dated 17th July, 2015 by which the petitioner is placed under suspension, thereby suspending the services of the petitioner as Headmaster of respondent no. 3 school.

3. The learned counsel appearing for the petitioner submits that the petitioner has rendered services in respondent no.3 society as Headmaster for the period of 13 years. Respondent management issued a show cause notice alleging various charges against the petitioner. The Enquiry Committee was constituted and after enquiry the services of the petitioner came to be terminated by an order dated 07.07.2012, which shall take effect w.e.f. 07.01.2012. It is submitted that the petitioner assailed the said order of termination before the School Tribunal and the School Tribunal allowed the appeal filed by the petitioner, however, liberty was granted to respondent no. 3 that, it can initiate fresh enquiry if so desired. It

is submitted that though the petitioner was reinstated, in pursuance of the order of the School Tribunal, immediately he was placed under suspension. It is submitted that the order of suspension without issuing charge sheet and without seeking prior permission of the Education Officer is contrary to the provisions of MEPS Act and Rules, arbitrary and illegal, and therefore, the impugned order deserves to be quashed and set aside. It is submitted that the show cause notice issued by respondent no.3 earlier or the impugned order is tainted with the mala fides and arbitrary exercise of the powers by respondent no.3, and therefore, the same deserves to be quashed and set aside.

4. It is further submitted that though the petitioner is placed under suspension, no subsistence allowance is paid till filing of the Petition and after filing of the Petition, part of subsistence allowance is paid. It is further submitted that from the perusal of the affidavit filed by respondent no.3 it seems that the management has paid the subsistence allowance in respect of suspension of the petitioner from 05.01.2012 to 07.07.2012, from 07.07.2015 to 31.12.2015 and thereafter from 01.01.2016 to 31.03.2016. It is submitted that thereafter no subsistence allowance is paid. It is submitted that respondent has not deposited the amount towards back wages as ordered by the School Tribunal. It is submitted that the Supreme Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another, AIR 1999 SC 1416 held that non-payment of subsistence during suspension period is violative of fundamental right to life, and therefore, such non-payment of subsistence allowance, it is held that the departmental proceedings stand vitiated. The learned counsel further presses into service exposition of law in the case of O.P. Gupta v. Union of India and others, AIR 1987 SC 2257 and submits that the suspension pending departmental enquiry for long duration, is illegal. The expression "life" does not merely connote animal existence or a continued drudgery through life. The learned counsel for the petitioner in support of his contention that the enquiry has to be conducted in accordance with the law and procedure places reliance on the exposition of law in the case of Vidya Vikas Mandal and another v. Education Officer and another, (2007) 11 SCC 352. Resultantly, the learned counsel for the petitioner submits that the Petition deserves to be allowed.

5. The learned AGP appearing for respondent - State relying upon the averments in the affidavit-in-reply filed on behalf of respondent no.2 submits that respondent no.3 did not take permission before the petitioner was placed under suspension. It is submitted that the proposal submitted by the management has been rejected by respondent no.2, therefore, it is liability of respondent no.3 to pay subsistence allowance. It is submitted that even the earlier issuance of show cause notice and ultimate termination of the services of the petitioner by respondent no.3 was the result of the actions taken by respondent no.3 and therefore, respondent no.2 is not liable to pay back wages as ordered by the School Tribunal. It is submitted that the School Tribunal has directed respondent no.2 to pay back wages to the petitioner.

6. The learned counsel appearing for respondent no.3 relying upon affidavit-in-reply, additional affidavit-in-reply and short affidavit submits that the subsistence allowance has been paid to the petitioner for the period for which the petitioner's services were suspended. He submits that in pursuance of the liberty granted by the School Tribunal, after reinstatement of the petitioner, again the petitioner has been placed under suspension and the enquiry is in process. It will take another one month to conclude the enquiry. It is submitted that the management transferred the subsistence allowance in respect of the period of suspension of the petitioner during the period between 05.01.2012 and 07.07.2012 in his bank account on 18th March, 2016. The management paid the subsistence allowance in respect of suspension of the petitioner during the period between 17.07.2015 and 31.12.2015 amounting to Rs.1,26,364/- in his bank account on 16th January, 2016. Similarly subsistence allowance in respect of the period between 01.01.2016 and 31st March, 2016 is also deposited in the petitioner's bank account on 18th March, 2016. The management has paid the entire amount of subsistence allowance. He further submits that even thereafter subsistence allowance has been paid. It is submitted that the management is ready to pay subsistence allowance for further period till the enquiry is concluded by the management. It is submitted that so far back wages are concerned, the Execution Petition is filed by the petitioner, and therefore, the petitioner cannot claim back wages in this petition. The learned counsel for the respondent no.3 submits that in the case of Chairman-cum-Managing Director, Coal India Limited and others v. Ananta Saha and others, (2011) 5 SCC 142, the Supreme Court has taken a view that the relief sought by the delinquent that the appellants should be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained. He invites our attention to the observations in para 46 to 50 of the said judgment and submits that the respondent management is ready to conduct enquiry, and will conclude enquiry within four weeks subject to co-operation by the petitioner. Therefore, he submits that the petition may not be entertained.

7. We have heard the learned counsel appearing for the petitioner, learned AGP appearing for respondent nos. 1 and 2 and the learned counsel appearing for respondent no. 3. With able assistance of the learned counsel appearing for the parties, perused the pleadings in the Petition, annexures thereto, affidavit-in-reply, additional replies filed by the respondents, rejoinder affidavit filed by the petitioner and also judgments cited at Bar by the learned counsel appearing for the respective parties. It appears that the School Tribunal, while allowing the appeal filed by the petitioner, granted liberty to the respondent management to conduct fresh enquiry against the appellant, if desired by the management. It further appears that the School Tribunal directed the management to reinstate the petitioner with continuity in service and with full back wages from the date of his termination till the date of reinstatement. There is no doubt that it is a settled legal proposition that the result of fresh enquiry relates back to the date of termination. However, in the facts of the present case, the petitioner did

approach the School Tribunal for implementation / execution of the directions / order of the School Tribunal in his appeal. The Tribunal transferred these proceedings to Civil Court for execution. Admittedly, the said execution proceedings are yet pending. It appears that the period for which the petitioner was placed under suspension before his services were terminated, the subsistence allowance has been disbursed to him. It further appears that again the petitioner is placed under suspension after his reinstatement and thereafter, the management has disbursed the subsistence allowance till the end of March 2016. It further appears that this Court, by an order dated 26th November, 2015, ordered that until further orders enquiry shall not proceed further, as a result enquiry is stayed.

8. It is also true that in the affidavit-in-reply filed by respondent no.2, it is stated that the petitioner is placed under suspension without prior permission of respondent no.2. Respondent no.2 has also stated in the affidavit-in-reply that respondent no.3 is responsible to pay back wages as ordered by the School Tribunal and respondent no.2 is not under any obligation to pay such back wages. It is also true that the petitioner is placed under suspension for considerably long a period. It is also true that respondent no. 3 challenged the judgment and order passed by the School Tribunal by filing Petition before the High Court, however, the said Petition was withdrawn unconditionally and as a result the order passed by the School Tribunal attained finality. However, it appears that the enquiry proceeded till the same was stayed by the order dated 26th November, 2015 passed by this Court. Therefore, without entering into the disputed questions of facts and keeping in view the exposition of law laid down by the Supreme court in the case of Chairman-cum-Managing Director, Coal India Limited (supra) and in particular para 48 to 50, we pass the following order:

ORDER

- i) The interim order dated 26th November, 2015, thereby staying the further enquiry stands vacated.
- ii) Respondent no.3 can continue with the enquiry subject to depositing the subsistence allowance for further period from April 2016 to July 2016 in the bank account of the petitioner within two weeks. Respondent no.3 shall continue to pay subsistence allowance till conclusion of the enquiry.
- iii) Subject to compliance of the directions in clause (ii), respondent no.3 shall proceed with the enquiry and conclude the same, as expeditiously as possible, however, within 6 weeks from today and if necessary on day to day basis. The petitioner shall extend full co-operation for such enquiry.
- iv) In case the enquiry is not initiated and concluded within 6 weeks from today in spite of co-operation of the petitioner, the petitioner will be entitled to revive the prayers in this petition.
- v) All the contentions raised in the present proceedings by the parties are kept

open to be agitated at the appropriate time including the claim for payment of back wages.

vi) The Writ Petition stands disposed of in the above terms.

vii) The parties shall act upon authenticated copy of this order.

viii) No costs.

9. After pronouncement of judgment, the learned Counsel appearing for the petitioner prays for further continuation of the interim order, which was in force during pendency of this Petition.

10. The said prayer is vehemently opposed by the learned counsel appearing for the respondents.

11. We are not inclined to continue the interim order since the enquiry was stayed for a considerable period due to interim order passed by this Court.