



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

WRIT PETITION NO. 4926 OF 2018

PETITIONER :- Sudhir Murlidhar Kamble,
Aged about 42 years,
Occ. Service (Assistant Teacher),
R/o. C/o. Shri Murlidhar Janbaji Kamble,
Behind Bhure Kirana Shop, Ganesh Nagar,
Ward No. 3, Borgaon Meghe, Wardha Ganj,
Tah. & Dist. Wardha.

...V E R S U S...

RESPONDENTS :- 1. The Education Officer (Primary),
Zilla Parishad, Wardha.
2. Sharad Gramin Vikas Bahuuddeshiya
Shikshan Sanstha through its Secretary,
Deoli, Dist. Wardha.
3. Bharat Ratna Rajiv Gandhi Uccha Primary
School, Deoli, Dist. Wardha through its
Headmaster.
4. The Convener, Enquiry Committee,
Sharad Gramin Vikas Bahuuddeshiya
Shikshan Sanstha, Deoli, Dist. Wardha.

Shri P. P. Thakare, Advocate for petitioner.
Shri N. M. Kolhe, Advocate for respondent no. 1.
Ms. Radhika Bajaj, Advocate for respondent no. 2, 3 and 4.

CORAM :- SUNIL B. SHUKRE AND
S. M. MODAK, JJ.

DATED :- 21.08.2019.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.):

1. Rule. Rule is made returnable forthwith. Heard finally by
consent of learned counsel appearing for the parties.

2. Learned counsel for the petitioner, on instruction, does not press prayer clause '(b)' and other clauses thereafter. His argument is confined to only prayer clause '(a)' which seeks direction from this Court to the respondents to pay subsistence allowance to the petitioner and arrears of subsistence allowance since February-2018 till completion of the departmental enquiry. Ms. Radhika Bajaj appearing for respondent nos. 2 to 4 submits that the management was not at all responsible for the delay caused in the matter, and therefore, management cannot be burdened with liability to pay the arrears of subsistence allowance.

3. Although, the opposition made to the limited prayer of the petitioner at the first blush is impressive, it pales into insignificant movement when we consider the provision contained in Rule 35 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('Rules of 1981' for short).

4. This Rule, in particular sub-rule (3) thereof says that where the employee has been suspended with prior approval of Education Officer, for the first four months he is required to be paid subsistence allowance by the Department and thereafter the subsistence allowance is required to be paid by the management concerned. Sub-rule (4) of the Rule 35 of the Rules of 1981 says that when the employee is

suspended by the management without obtaining prior approval of appropriate authority, the subsistence allowance even during the first four months of suspension, and for further period thereafter till the completion of inquiry, shall be made by the management itself.

5. The duty cast upon the management is mandatory and it escapes nobody's attention. Therefore, the management would be required to abide by the provisions contained in Rule 35 of the Rules of 1981 and whosoever may be responsible for the delay in the matter, it has no place anywhere in Rule 35 of the Rules of 1981, and as such this petition would have to be allowed to the extent of prayer clause '(a)'.

6. The writ petition is partly allowed and the management comprising respondent no. 2 and 3 is directed to pay subsistence allowance to the petitioner together with its arrears for the period from 01.02.2018 till completion of the departmental enquiry in accordance with the provisions of Rule 35 of the Rules of 1981.

7. Rule is made absolute in these terms. No costs.

JUDGE

JUDGE

RR Jaiswal