

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4764 OF 2013

Swati Bhausaheb Gaikwad,
Age: 31 yrs, Occ: Service
(Presently nil), R/o. Saishraddha
Chowk, Vrindawan Colony,
Behind 132 KV Sub Station,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

...PETITIONER

VERSUS

Head Master,
P.G. Ambare Patil Primary School,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar and others.

...RESPONDENTS

...

Mr. Suhas R. Shirsat, Advocate holding for
Mr. Santosh S. Jadhavar, Advocate for petitioner.
Mr. S.T. Shelke, Advocate for respondent Nos. 1
and 2.
Mr. A.B. Gatne, Advocate holding for
Mr. S.K. Shinde, Advocate for respondent No. 3.

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CORAM: S.S. SHINDE J.

DATE : 24TH DECEMBER, 2013

PER COURT :

. Heard learned Counsel appearing for the
parties. Learned Counsel appearing for the

petitioner submits that, the School Tribunal has jurisdiction to entertain the appeal filed by the petitioner. In support of this contention, the Counsel appearing for the petitioner placed reliance upon the reported judgment of this Court in the case of **Latika Rajaram Mane vs. State of Maharashtra and others [2013(4) ALL MR 59]** and also upon unreported judgment of this Court in the case of **Gorakshanath Ganpat Dherenge vs. The President Shankarrao Gaikwad Gramin Education Society and others**) in Writ Petition No. 9686 of 2012 decided on 27/11/2013.

2. Learned Counsel appearing for the respondents submits that, the School Tribunal relying upon the Full Bench judgment of this Court has rightly held that, the tribunal has no jurisdiction to entertain the appeal/application filed by the petitioner.

3. Upon hearing the Counsel appearing for the parties, the controversy raised in this

petition is no longer *res-integra* and same is covered by the authoritative pronouncement of this Court in the case of **Latika Rajaram Mane** (*supra*). Paragraph-14 from the said judgment reads thus :

"14. The judgment of the Full Bench of this Court in Komal Rugwani's case considered the position in law as it obtained prior to the enforcement of the Right to Education Act which was enacted by Parliament and the Rules which were framed by the State Government. Under the MEPS Act, 1977, a right of appeal under Section 9(1) is provided to employees of private schools. In order to be a private school, a school has to be recognized by one of the authorities specified in Section 2(21). Since primary schools governed by the Bombay Primary Education Act, 1947 were not recognized by the Director, the Divisional Board or the State Board, primary schools were not recognized schools within the meaning of the MEPS Act, 1977. As we have noted, the expression "private school" is defined in Section 2(20) to mean a recognized school established or administered by a

management other than by the Government or local authority. Unless a school is recognized by one of the authorities prescribed by Section 2(21), it did not meet the definition of the expression "private school" with the result that employees of primary schools were deprived of a remedy of an appeal under Section 9. This position held the field as noted in the judgment of the Full Bench in Komal Rugwani's case. The framing of the Rules under the Right to Education Act by the State Government has fundamentally altered the situation. The forum of the School Tribunals is now provided to employees of primary schools in the State of Maharashtra who are aggrieved by any of the decision of the management regarding their conditions of service and in regard to the matters referred to in Rule 20. As a consequence of the notification of the Rules framed by the State Government in exercise of the power conferred under the Right to Education Act, there has been a fundamental change in the position in law as it obtained prior thereto. The position in law which held the field prior to the framing of the Rules under

the Right to Education Act, has now been materially altered as a result of which a right of appeal is provided to teachers of primary schools in respect of decisions falling within the purview of Rule 20."

4. Relying upon the said judgment this Court in Writ Petition NO. 9686 of 2012 has also held that, appeal filed by the primary school teachers is maintainable. In that view of the matter, the impugned order dated 06/02/2013 passed by the Presiding Officer, School Tribunal, Pune Region, Solapur below Exhibit-1 and 14 in Misc. Application No. 15/2012 is set aside. Misc. Application No. 15/2012 alongwith appeal is restored to its original file. The School Tribunal is directed to hear and decide the same on merits in accordance with law. The writ petition stands disposed of on above terms.

[S.S. SHINDE, J .]