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

WRIT PETITION NO. 5918 OF 2004

- 1 Gramin Janta Shikshan Sanstha,
Poharegaon, Taluka Renapur,
District Latur.
Through it's Secretary,
Shri Santram Sambhaji Chewale,
Age : 70 years, Occ : Agriculture
and legal practitioner,
R/o Sindhgaon, Taluka Renapur,
District Latur.
- 2 Janta Secondary and Higher Secondary
School, Poharegaon, Taluka Renapur,
District Latur.
Through it's Principal.

...PETITIONERS

-VERSUS-

- 1 Laxman Nagorao Khadap,
Age : 31 years, Occ : Agri,
R/o Poharegaon, Taluka Renapur,
District Latur.
- 2 The Deputy Director of Education,
Aurangabad, now at Latur.
- 3 The Presiding Officer,
School Tribunal, Pune Region,
Solapur.

...RESPONDENTS

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Advocate for Petitioners/ Management : Shri V D Gunale.

Advocate for Respondent No.1/ Employee : Shri V.V.Bhavthankar.

AGP for Respondent No.2 : Shri S.G.Sangle.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 01st October, 2015

Oral Judgment:

1 This petition was admitted by order dated 28.10.2004 and interim relief in terms of prayer clause (D) was granted. Prayer clause (D) of this petition reads as under:-

“(D) *Pending the hearing and final disposal of this Writ Petition, the effect, operation, execution and implementation of the impugned judgment and order dated 03.09.2004 passed by the learned Presiding Officer, School Tribunal, Pune Region, Solapur in Misc. Application No.60/2004 filed in Appeal No.210/1996 be stayed.*”

2 I have heard Shri Gunale, learned Advocate for the Petitioners/ Management, Shri Bhavthankar, learned Advocate for Respondent No.1 and the learned AGP on behalf of Respondent No.2. Respondent No.3 is a formal party.

3 It would be apposite to reproduce the interim order passed by this Court dated 28.10.2004 as under:-

“*Heard Shri V.D.Gunale, learned Advocate for the petitioners and Shri Milind Patil, learned Advocate for the respondent No.1.*”

This petition raises an important issue as to whether the School Tribunal, constituted under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 can review its own order. Undisputed facts in this petition are that the respondent has filed an appeal initially being Appeal No.23/1997. During appeal was pending, the petitioner by filing a purshis withdrew the appeal making a statement in the purshis that the parties have compromised out of the Court and to withdraw the appeal. Thereafter, it appears that the alleged assurance is not honoured by the Management. Then the petitioner rushed to the Tribunal filed an application before the Tribunal seeking restoration of appeal. That application came to be rejected. The respondent has then approached this Court by filing writ petition being W.P. No.5816/1999 but he failed to convince this Court, but however, the learned Single Judge has observed that the petitioner has right to initiate an appropriate proceeding u/s 13 of the MEPS Act. The order passed by the learned Single Judge was challenged in the L.P.A., that L.P.A. came to be dismissed. Thereafter, the petitioner moved the Tribunal afresh by filing an application for calling back the order of withdrawal and accordingly, the Tribunal accepted the contention of the petitioner and allowed the application by the order dated 13.09.2004, which is subject matter of this writ petition.

Shri Patil, learned advocate appearing for the respondent placed reliance on Section 10 of the Act and contended that the Tribunal has powers of the appellate court as enumerated U/o 41 of the C.P.C.. Having considered Section 10 sub-section 1, I am not entirely agree with the submission, reference is made to the powers of reference court in the C.P.C. to the extent of granting interim relief. There is no other provision made applicable which are explicit in the Code and not borrowed by the legislature U/s 10(1) of the Act. Hence, in view of this position, the point which is raised by the petitioner required to be considered.

*Rule.
Interim relief in terms of prayer clause (D).
Hearing expedited.”*

4 The issue, therefore, is whether, the Respondent / Employee could move Miscellaneous Application No.60/2004 in Appeal No.210/1996, which has been withdrawn.

5 It is not in dispute that the Respondent/ Appellant had moved an application seeking withdrawal of the said Appeal No.210/1996. The School Tribunal has passed the following order while permitting the Respondent/ Employee to withdraw the appeal:-

*“The Appellant and his Advocate are present.
For the reasons stated in the application, the
Appellant is permitted to withdraw the appeal
unconditionally. No orders as to costs.”*

6 Since the Respondent/ Employee preferred a fresh Appeal No.23/1997 with an application for condonation of delay and the same having been rejected as being untenable, prompted the Respondent to approach this Court in Writ Petition No.5816/1999. This Court concluded that as the Respondent/ Appellant claimed that there was compromise in between the litigating sides and as the terms of compromise were not complied with, he was at liberty to initiate appropriate proceedings under Section 13 of the MEPS Act, 1977. The said petition was, therefore,

dismissed vide order dated 20.02.2001.

7 The Respondent/ Employee approached the Division Bench of this Court in Letters Patent Appeal No.29/201 which was dismissed vide order dated 18.06.2001 and the learned Division Bench concurred with the conclusions of the learned Single Judge.

8 Despite the strenuous submissions of Shri Bhavthankar and a valiant attempt made to support the impugned order dated 03.09.2004 by which the School Tribunal has restored the disposed of Appeal No.210/1996, I find that the said order is unsustainable in the light of the conclusions drawn by the learned Single Judge in his order dated 20.02.2001 by which Writ Petition No.5816/1999 filed by the Respondent/ Employee was rejected. Since the learned Single Judge and the learned Division Bench have held that the Respondent/ Employee has the remedy of preferring proceedings under Section 13 for seeking implementation of the terms of compromise, the impugned order restoring the disposed of appeal could not have been passed.

9 In the light of the above, this Writ Petition is allowed. The impugned order dated 03.09.2004 delivered by the School Tribunal in Miscellaneous Application No.60/2004 is quashed and set aside. The

Miscellaneous Application is, therefore, rejected.

10 Needless to state, the Respondent/ Employee is at liberty to avail of the remedy as has been observed by the learned Single Judge in paragraphs 3 and 4 of the order dated 20.02.2001 and the view expressed by the learned Division Bench in the order dated 18.06.2001 in LPA No.29/2001.

11 Rule is, therefore, made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)