

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.639 OF 2015
with
CIVIL APPLICATION NO.787 OF 2015

Shri Prabhakar Dattatray Khadilkar & anr. ... Appellants

Vs.

Shri Vinayak Gajanan Paranjape & Ors. ... Respondents

Mr.R.S. Apte, Sr.Advocate i/b Anant Vadgaonkar for the Appellants
Mr.S.D. Patil for Respondent No.1

CORAM: **MRS.MRIDULA BHATKAR, J.**

JUDGEMENT RESERVED ON: 14th SEPTEMBER, 2015
JUDGEMENT PRONOUNCED ON: **29th SEPTEMBER, 2015**

ORDER:

1. Admit. By consent of the parties, Appeal called out and heard finally.

2. This Appeal is directed against the order dated 2.2.2015 passed by the Adhoc District Judge 1, Sangli in Regular Civil Appeal No.247 of 2014 of setting aside the order of dismissal of the suit and of remanding the matter for fresh trial. The appellants are the original defendants. The respondent/original plaintiff has filed the regular Civil Suit No.314 of 2014 for declaration that the action initiated by the defendant Nos.1 and 2 is void and the Trust, namely, Swatantravir Savarkar Pratishthan, Sangli (for short, hereinafter referred to as 'the Trust') be restrained from taking any

decision about the post of the plaintiff as headmaster. The plaintiff is working as a headmaster in one Pradnya Prabodhini Prashala, Secondary School run by the Trust. The Trust has issued disciplinary notice dated 15.10.2013 to the plaintiff and initiated disciplinary action against him u/s 36 of the Maharashtra Employees of Private Schools (Conditions of Service Regulations) Act, 1977 (for short, 'MEPS Act') for misconduct. It is the case of the plaintiff that the action taken by defendant Nos.1, 2 and 3 is out of vengeance and the committee constituted is not legal. The defendant No.1 is a chairman of the management and is also a member of the committee. At the time of the hearing of the suit, preliminary issue was raised on the maintainability of the suit on the point of jurisdiction of the Court. The objection was raised on the point that the suit is filed against the Trust for which the permission under section 51 of the Bombay Public Trusts Act is required and it is not taken. Also it is not maintainable as the plaintiff wants to seek directions which are covered under the MEPS Act.

3. The trial Court held that the objections raised on maintainability are valid and dismissed the suit. The said order is challenged by the respondent No.1 / plaintiff in Appeal and the District Court set aside the judgment and order of the trial Court and directed that the suit be heard afresh and granted stay on delivery of decision/verdict of the 3-member enquiry committee of the defendants. Being aggrieved by the said order, this Appeal is filed.

4. Mr.Apte, the learned Senior Counsel for the Appellant, argued that the impugned order of District Judge is not sustainable in law. He submitted that the judgment of the trial Court is correct. In fact, the learned Judge of the trial Court has taken a correct view and rightly dismissed the suit. The learned Senior Counsel submitted that the District Court ought to have heard all objections and considered all the objections in appeal and ought to have decided the matter finally at the appellate stage and should not have remanded the matter. Moreover, the order of stay on the pronouncement of the decision of the 3-member Committee has caused not only inconvenience but has made the functioning of the school chaotic and the students in the school are leaving the school because of the method of working of the headmaster i.e., the original plaintiff. He submitted that to conduct enquiry u/s 36 of the MEPS Act, is an administrative decision and if at all, the plaintiff has any grievance in respect of the committee, he should have approached the School Tribunal but not the civil Court. He submitted u/s 9 of the MEPS Act, the jurisdiction of the civil Court is ousted and the civil Court cannot entertain and decide the issue in respect of the Trust. The employer in support of his submissions, relied on the judgment in the case of **Pearlite Liners vs. Manorama Sirsi**¹.

1 2004(3) SCC 172

5. Mr.Patil, the learned Counsel appearing for the respondents, opposed the appeal and defended the order passed by the learned District Judge. He submitted that the jurisdiction of the civil Court is not ousted if the issue involved in the suit is outside the purview of section 9 of the MEPS Act. In support of his submissions, he relied on the judgment of Nagpur Bench of this Court in the case of **Sanjay Gandhi Shikshan Prasarak Mandal vs. Nivrutti s/o. Tukaram Borkar**². He also relied on the judgment of Aurangabad Bench of this Court in **Gadgebaba High School and anr. vs. Pandhari Tukaram Kamble & anr.**³ He further submitted that the interim stay was earlier granted on the enquiry committee by the trial Court which was extended by the District Court and the same is rightly further extended when the matter is remanded.

6. This being an appeal against the order of remand, which was passed by the District Judge in Regular Civil Appeal No.241 of 2014, substantial question of law was framed in this Appeal from Order as follows:

“Considering scope of Section 9 of the MEPS Act, whether civil Suit is maintainable in the civil Court or not?”

2 2007 Vol. 109(1) Bom.L.R. 0717

3 2013 (3) BomCR 189

7. The plaintiff i.e., the respondent No.1, is admittedly working as a headmaster in the school run by the Trust. He has been issued a notice dated 15.10.2013 of the enquiry u/s 36 of the MEPS Act. The power to hold such enquiry is not challenged. The plaintiff has sought a declaration that the constitution and work of the enquiry committee is void and is to be cancelled and thereby no decision is to be taken pursuant to the notice dated 15.10.2013 about his post as a headmaster. Section 9 of the MEPS Act bars the jurisdiction of the civil Court, in respect of the dismissal, removal, termination and reduction in rank by the order passed by the management or if there is any supersession by the management while making the appointment to the post of promotion, then, the Tribunal under the MEPS Act had jurisdiction to decide these issues. Thus, the jurisdiction of the civil Court is barred in respect of the subject matter u/s 9 of the MEPS Act as it is a settled position of law that the civil Court has jurisdiction to entertain all the suits except the suits either expressly or impliedly barred. Thus, u/s 9, not all the matters wherein all the issues raised by the teacher or the staff are barred from the civil Court but only which are specified u/s 9. Thus, the scope of section 9 of the MEPS Act is not inclusive of issues pertaining to the employer and his service related in respect of the institution but only under the 4 categories i.e., dismissal, removal, termination and reduction in rank are covered. In support of this submissions, I rely on the ratio laid down in **Gadgebaba High School and**

anr. vs. Pandhari Tukaram Kamble & anr. (supra) and also in **Sanjay Gandhi Shikshan Prasarak Mandal vs. Nivrutti s/o. Tukaram Borkar**⁴ (supra), wherein a similar controversy was before the High Court. The plaintiff sought declaration in the civil suit that the enquiry committee constituted was void and the defendants be restrained from holding any enquiry and it was held that considering the relief prayed, would certainly take cognisance of the suit.

8. Considering the prayer (a), the case of the respondent falls under this category. The civil Court has every jurisdiction to try and entertain this suit. After recording evidence of the plaintiff and the defendant, whether the plaintiff has case on merit or not, is to be decided by the trial Court. The view taken by the trial Court that it has no jurisdiction, is erroneous and the Court has committed error in relying on the ratio in the case of **Pearlite Liners vs. Manorama Sirsi** (supra). The judgment in **Pearlite Liners (supra)** was pertaining to the industrial dispute. The plaintiff who was working in the company was transferred and the said order was challenged by her and for not obeying the order, a committee was constituted and started enquiry. She asked for permanent injunction restraining the defendant from holding enquiry against the plaintiff. The Supreme Court has held on the background of these facts, that such relief cannot be granted to the plaintiff. It held that the transfer is a normal

4 2007 Vol. 109(1) Bom.L.R. 0717

feature in the service and restraining the defendants from holding enquiry will ultimately amount to assist the plaintiff to continue her service. Thus, on facts, this case stands differently compared to the facts in the case in hand and it is not applicable. In the present case, the court has to test the jurisdiction on the basis of the scope of section 9 of the MEPS Act and therefore, the order passed by the learned District Judge is correct. As there was an interim order earlier, that is also passed rightly.

9. In the result, Appeal is dismissed. However, the appellant to appear before the trial Court on 1.10.2015 and the trial Court to proceed with the matter and try and expedite the same.

10. Appeal from order stands disposed of accordingly.

11. In view of the disposal of the Appeal from order, Civil Application No.787 of 2015 also stands disposed of.

(MRIDULA BHATKAR, J.)

CERTIFICATE

Certified that this Judgment/Order uploaded is a true and correct copy of original signed Judgment / Order.