

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5853 OF 2003

Secretary, Shri Swami Samarth
Apang Seva Mandal, Solapur
and Another ...Petitioners

versus

Madhukar Dashrath Ghodke
and Another ...Respondents

Mr. T.D. Deshmukh, for the Petitioners.
Mr. A.N. Mulla, for Respondent No.1.
Mr. A.D. Kango, AGP – Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 20TH FEBRUARY 2015

P.C. :-

. This petition is directed against the judgment and order dated 29th April, 2003 made by the School Tribunal setting aside the termination of respondent No. 1 effected on 9th May, 2012 and directing payment of back-wages and other consequential benefits.

2. There is no dispute that the respondent No.1 was an employee of the petitioner-school which is a special school governed by the physically handicapped special school code, 1985. In such circumstances, it is the case of learned counsel for the petitioner that no appeal lay before the School Tribunal under the provisions of Maharashtra Employees of Private Schools (conditions of Service) Regulation Act, 1977 but remedy lay by way of preferring an appeal to the District Social Welfare Officer i.e. respondent No. 2 herein.

3. There is substantial merit in the aforesaid submissions. This Court, in the case of *"Narsinnghrao Shivaji Dharmaji Industrial Home for the Blind vs. Suresh Dattatray Kulkarni and Others"*¹ has held that all orders made by school management of special school to whom the aforesaid code applies in the matter of termination of services of employees shall lay to the Dy. Director, of Social Welfare Officer.

¹ 2007(1) ALL MR 333.

4. The Apex Court in the case of "*Dagdu vs. President Anandrao Naik Shikshan Prasarak Mandal and Others*"² in the context of Ashram Schools has held that, an appeal would not lie before the School Tribunal set up for deciding disputes under the Maharashtra Employees of Private Schools (Conditions of Service) Act but had to be filed before the Divisional Social Welfare Officer of the division.

5. In view of the aforesaid legal position, the order impugned in this petition shall have to be set aside on the sole ground that the School Tribunal did not have the jurisdiction to make the same. The respondents however, can not be left in a lurch. Therefore, in case the respondent No. 1 institutes an appeal before Dy. Director, Social Welfare Officer within a period of four weeks from today, then the same shall be entertained and decided on merits by the said authority without raising any issue of limitation.

2. (2006) 9 Supreme Court Cases 782.

6. The learned counsel for the petitioner agrees that no such issue of limitation shall be raised in the matter.

7. Further, the Dy. Director, Social Welfare Officer shall dispose of the appeal that may be instituted by respondent No. 1, within a period of four months from today.

8. Accordingly, the present petition is disposed of with the following order :-

a) The order dated 29th April, 2003 made by the School Tribunal is set aside.

b) If respondent No. 1 institutes an appeal before the Dy. Director, Social Welfare Officer within a period of four weeks from today, then the said Appellate authority to consider and decide the said appeal on its merits within a period of four months from today.

9. It is clarified that this Court has not expressed any opinion on the merits of the matter which should be looked into by the appellate authority. All contentions are therefore, left open for decision by the appellate authority.

10. Rule. Rule, made absolute to the aforesaid extent.

(M. S. SONAK, J.)