

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1136 OF 2015

Mr. Datta Ganpat Bhosale

.. Petitioner

Versus

The Chairman,

The Society of St. Peters School Pachgani

Tal:-Mahabaleshwar, Dist:-Satara and others

.. Respondents

ALONGWITH

WRIT PETITION NO.1137 OF 2015

Mr. Rajendra Maruti More

.. Petitioner

Versus

The Society of St. Peters School Pachgani

Tal:-Mahabaleshwar, Dist:-Satara and others

.. Respondents

ALONGWITH

WRIT PETITION NO.1138 OF 2015

Mr. Jeet Bahadur Khadakbahadur Thapa

.. Petitioner

Versus

The Chairman,

The Society of St. Peters School Pachgani

Tal:-Mahabaleshwar, Dist:-Satara and others

.. Respondents

Mr. N. A. Kulkarni, for the Petitioners.

Mr. Atul G. Damle Senior Advocate a/w Rajesh Kinnerkar i/by Mr. R. R. Lanjekar, for the Respondent No.1.

Mr. S. D. Rayrikar, AGP for the Respondent No.3.

CORAM : R.M. SAVANT, J.

DATE : 13th JULY, 2015

PC.

1. The above Petitions take exception to the orders all dated 28.04.2010 passed by the Learned Presiding Officer, School Tribunal, Kolhapur Region, Kolhapur, by which orders the Appeals filed by the Petitioner in each of the Petitions were dismissed on the ground of want of jurisdiction. The Petitioners were working with the Respondent No.1 School which is recognized by the Indian Schools Certificate Board. The Tribunal held that it is therefore neither a recognized school within the meaning of Section 2(21) of the MEPS Act, 1977 which postulates that the recognition has to be by the Director of Education, Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards. The Tribunal also adverted to the definition of “employee” as given in the said Act, which posits that an employee has to be the member of the teaching and non-teaching staff of a recognized school. It is by applying the said tests namely whether the Petitioners are employees and whether the Respondent No.1 is a recognized school within the meaning of the MEPS Act that the Tribunal held that since the Respondent No.1 is not covered by the definition of recognized school the Appeal filed before it under Section 9 of the said Act is not maintainable.

2. On behalf of the Petitioners reliance is sought to be placed on the judgment of a Division Bench of this Court in Writ Petition 4673 of 2012 in the matter of Latika Rajaram Mane Vs. State of Maharashtra and others and the judgments of two Learned Single Judges of this Court in Writ Petition No.4908 of 2014 in the matter of Deepa Jain Vs. Principal The Cathedral and John Cannon School and in Writ Petition No.1773 of 2013 in the matter of Prabha Rajesh Singh Vs. The Chairman/Secretary, The Rural Educational & Medical Society India & others. The Division Bench, as well as the Learned Single Judges who followed the Division Bench judgment have held that in view of the Right to Education Act, 2009 and the rules framed thereunder by the State of Maharashtra, a teacher working in an unrecognized and unaided school as also a school affiliated to the Indian School Certificate Board would have the remedy by way of an Appeal under Section 9 of the MEPS Act. The aforesaid judgments were sought to be placed reliance upon by the Petitioners to buttress their case that the Appeals filed by them before the School Tribunal were maintainable. Upon this, the Learned Senior Counsel appearing on behalf of the Respondent No.1 drew this Court's attention to the Constitution Bench judgment of the Apex Court in Writ Petition No.416 of 2012 in the matter of Pramati Educational & Cultural Trust and others Vs. Union of India and others. The constitutionality of the

Right to Education Act, 2009 had come up for consideration before the Constitution Bench. The said issue had arisen in the context of the admission of students who were not belonging to the minority which was running the school. The Apex Court in paragraph 47 of the said judgment has held that the 2009 Act i.e. RTE Act in so far as it applies to the minority schools, aided or un-aided, covered under clause (1) of Article 30 of the Constitution is *ultra vires* the Constitution. The Respondent No.1 as indicated above, admittedly is a minority institution and therefore, the judgment of the Apex Court would apply on all fours to the Respondent No.1 and hence, the judgments (supra) of this Court would not aid the Petitioners in so far as the maintainability of their Appeals is concerned since the RTE Act would not apply to the Respondent No.1 institution.

3. The Learned Counsel for the Respondent No.1 however fairly conceded that the Petitioners may invoke the jurisdiction of the Labour Court under the MRTU and PULP Act, 1971 and if any such complaint is filed by the Petitioners, the Respondent No.1 would not raise the bar of jurisdiction as well as the bar of limitation. This the Learned Senior Counsel for the Respondent No.1 conceded in view of the fact that the Petitioners cannot be left remedyless. The above Petitions can therefore be disposed of by issuing the following directions :-

I) The Petitioners would invoke the jurisdiction of the

concerned Labour Court under the provisions of the MRTU and PULP Act, 1971 by filing complaints thereunder.

II) The Respondent Nos.1 and 2 as recorded herein above would not raise the issue of jurisdiction of the Labour Court or the bar of limitation in so far as the filing of the complaints are concerned.

III) In the event the occasion arises for grant of backwages, the fact that the Petitioners have filed the above Petitions in the year 2015 challenging an order passed in the year 2010 as also the complaints that they would be filing hereinafter, the said time lag would be taken into consideration by the Labour Court whilst considering the issue of the grant of backwages to the Petitioners.

IV) It is clarified that this Court has not gone into the justification or otherwise for the said delay of five years and the contentions of the parties on the said issue are kept open for being urged before the concerned Labour Court, this would only be in the context of the grant of backwages if the occasion so arises.

V) Needless to state that the complaints if filed would be

decided on their own merits and in accordance with law
uninfluenced by the earlier orders. With the aforesaid
directions, the Writ Petitions are disposed of.

[R.M. SAVANT, J]