

JPP

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

CIVIL WRIT PETITION NO. 4082 OF 2015

- | | | |
|----|--|---|
| 1. | M/s. Goenka & Associates | } |
| | Educational Trust, | } |
| | Yashodham High School Building, | } |
| | Yashodham, Goregaon (East), | } |
| | Mumbai – 400 063. | } |
| | | |
| 2. | Yashodham High School, | } |
| | Yashodham, Goregaon (East), | } |
| | Mumbai – 400 063. | } |
| | | |
| 3. | Ms. Sunita Goenka – Trustee | } |
| | Goenka & Associates Educational Trust | } |
| | | |
| 4. | Mrs. Usha Raina – Trustee | } |
| | Goenka & Associates Educational Trust, | } |

Both having address at :

Yashodham High School, Yashodham,	}	
Goregaon (East), Mumbai – 400 063.	}	... Petitioners.
	}	(Orig. Respondents)

V/s.

Sushil Govind Bagkar.	
C/o. Maharashtra Employees Union,	
Kokanipada, Kurar Village,	
Malad (East), Mumbai – 400 097.	... Respondent. (Orig. Petitioner)

Mr. A.V. Bukhari, Sr. Advocate a/w. Mr. Burhan Bukhari and Ms. Jyostna Wahane i/b. A.M. Nathani for the Petitioners.
Mr. Shaikh Nasir Masih a/w. F.R. Mishra for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 8 SEPTEMBER, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. The Respondent waives service. Taken up for disposal by consent.

2. By this Petition the Petitioner challenges the order passed by the Tribunal dated 6 January 2015 holding that the School Tribunal has jurisdiction to decide the appeal filed by the Respondent and rejecting the application filed by the petitioners challenging the maintainability of the appeal.

3. The Respondent filed an Appeal No. 2 of 2014 in the School Tribunal, Mumbai challenging his termination from service. It is the case of the Respondent that Petitioner No.1 – Trust is engaged in various activities including running the educational institute and Petitioner No. 2 – School is controlled by Petitioner No.1 – Trust. It is the case of the Respondent that he was appointed to work as a Gent Attendant on a bus from 1.6.2005 to 7.1.2014, whereupon on that date his services came to be

terminated. After termination he filed the present Appeal. In this Appeal the Petitioner took out an application under Exhibit 13 calling upon the School Tribunal to decide maintainability of the Appeal filed by the Respondent. According to the Petitioners, the School Tribunal did not have jurisdiction as the Respondent was not an employee of the Petitioner No.2 – School but he was appointed by Petitioner No.1 - Trust. It was also contended by the Petitioners that the Petitioners did not fall under the definition 2(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977. This application was rejected by the School Tribunal holding that the Petitioners conducted an enquiry under Rule 36 and 37 of the Maharashtra Employees Private Schools Rules, 1981 and therefore, they were precluded from contending that the Respondent is not an employee of the School. The School Tribunal also took note of the stand taken by the Petitioners in Complaint (ULP) No. 191 of 2012 filed by the Respondent. Accordingly, by order dated 6 January 2015, the application filed by the Petitioner was rejected.

4. Apart from the position as to whether it is mandatory on the part of the School Tribunal to take up an application as regard maintainability at the threshold, since the School Tribunal had entertained the Application to decide maintainability, it was expected that the School Tribunal would dealt with the rival contentions, which has not been done.

5. As regards the position that the Petitioners are precluded from contending that the Respondent is not an employee of the School since the Petitioner conducted an enquiry under Rule 36 and 37 of the Rules 1981. Mr. Bukhari, learned Senior Counsel for the Petitioners has relied upon the decision of the Division Bench of this Court in the case of ***German Remedies, Mumbai v/s. R.D. Lotlikar [(2008) II CLR 1006]***. The Division Bench in his decision under the provisions of MRTU & PULP Act, 1971 has held that merely because the procedure under a particular Act was followed, it does not mean a party cannot raise a contention regarding jurisdiction of the Court. Therefore, only on this ground the Petitioners could not have been non-suited. The second contention is regarding the stand taken by the Respondent in a complaint filed in the Industrial Court. Even here, since the issue of jurisdiction is concerned, it will have to be decided independently of the stand taken by the Petitioner in some other forum. The main contention of the Petitioner is that the Respondent is not the employee of the Petitioner No.2 – School but he was appointed by Petitioner No.1 – Trust and therefore, he is not an employee of a Recognized School. The School Tribunal has noted this contention, however has failed to address itself to this main contention of the Petitioners.

6. Mr. Bukhari, learned Senior Counsel for the Petitioners has sought to urge various aspects of this issue so as Mr. Masih, the learned Counsel for the Respondent who has relied upon the

Division Bench decision of this Court in the case of *Sudhakar s/o. Vinayak Karegaonkar v/s. State of Maharashtra & Ors. [2000 (4) BomCR 113]* to contend that since the Trust does not have any other activity except education and the documents on record show that the Respondent was engaged by Petitioner No.2 – School, the School Tribunal has jurisdiction. Mr. Bukhari has disputed this assertion. In any case it is not possible to render this factual finding for the first time in writ jurisdiction. Since the School Tribunal had decided to take up the application regarding maintainability and the issue as to whether the Respondent was employed by the Trust of the School, was the main issue, the School Tribunal ought to have done this exercise.

7. In the circumstances, I am of the opinion that the impugned order passed by the School Tribunal dated 6 January 2015, requires to be quashed and set aside and it is accordingly, set aside. The Application filed by the Petitioners for deciding maintainability of the Appeal below Exhibit 13 stands restored to file to be decided by the School Tribunal as per law. It will be open to the School Tribunal to permit the parties to file additional documents, if the School Tribunal is of the opinion that the facts and circumstances of the case requires such course of action. Considering the fact that the Application is regarding maintainability of the Appeal, the School Tribunal will give priority to the hearing of this Application.

8. Rule is made absolute in above terms. No order as to costs.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Judgment.