

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 409 OF 2014

Smt. Revati Subhash Hawaldar & Anr. .. Applicants
vs.
Sau. Shubhlaxmi Hambirao Patil & Ors. .. Respondents

Mr. Aniket Nikam for Applicants
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 06 MAY 2015

P.C. :-

- 1] The learned counsel for the applicants files affidavit of service which indicates that service is complete in the matter.
- 2] This Court by its order dated 12 January 2015 had put the parties to the notice that this CRA may be disposed of finally at the stage of admission.
- 3] This CRA challenges order dated 19 March 2014 by which the 2nd Joint Civil Judge, Senior Division at Kolhapur has dismissed the applicants application at Exhibit 73 objecting to jurisdiction of the Civil Court to entertain Regular Civil Suit No. 734 of 2013.
- 4] The aforesaid suit came to be instituted *inter alia* by the

respondent no. 1, a teacher in Rajashri Shau Shikshan Sanstha, which is stated to be an aided and recognised school for the purposes of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978 (said Act). Upon a meaningful reading of the plaint, it is clear that the plaint questions the termination of services of the respondent no. 1 w.e.f. 18 May 2012 or in any case from 15 July 2013. The reliefs have however been couched in a form as to seek permanent injunction from restraining the applicants – defendants in the suit from obstructing the respondent no. 1 from discharging her teaching duties. However, there is a specific relief with regard to back wages and declaration that the order dated 18 May 2012 or any other order or letter is illegal and ultravires. It is quite clear that in effect, the suit seeks to question the termination of service.

5] The Full Bench of this Court in the case of *St. Ulai High School & Anr. vs. Devendraprasad Jagannath Singh & Anr.*¹, upon detailed consideration of the provisions of the said Act has held that a suit seeking to question the order of termination made by an employee of a private school whose conditions of service are governed by the provisions of the said Act is impliedly barred. In the conclusions recorded at paragraph 13(i) and 13(ii), the Full Bench of this Court has held as under:

1 2007 (1) Mh. L. J. 597

“(i) In respect of those matters upon which an appeal lies to the Tribunal under clauses (a) and (b) of sub-section (1) of section of the MEPS Act, 1977, the jurisdiction of the Civil Court is impliedly barred;

(ii) The decisions of the learned Single Judges of this Court in Janata Janardan Shikshan Sanshtha vs. Dr. Vasant P. Satpute, and Rasta Peth Education Society vs. Pethkar Udhaio Bhimashankar (supra) which hold that an employee aggrieved by the action of the management has a choice to elect one of two forums – an appeal under the Act or a Civil Suit do not, with respect, reflect the correct position in law and are overruled;

6] In view of the aforesaid, the impugned order dated 19 March 2014 will have to be set aside and is hereby set aside. The applicants application at Exhibit 73, questioning the jurisdiction of the Civil Court is allowed and as a consequence Regular Civil Suit No. 734 of 2013, to stand dismissed.

7] The respondent no. 1, despite notice has chosen not to appear in this petition. Although, the impugned order is being set aside and it is held that the Civil Court had no jurisdiction to examine the legality and validity of the termination of services of the respondent no. 1 by the applicants, nevertheless, it cannot be said that the respondent no. 1 is rendered without any remedy to question such termination. The respondent no. 1, was bonafide

pursuing the issue of her termination by instituting the civil suit. The learned Civil Judge, by the impugned order, had held that the Civil Court is the proper forum to pursue such a matter. Although, in the light of the decision of the Full Bench of this Court, it is not possible to uphold the view of the learned Civil Judge, it cannot be said that the respondent no. 1 was either indolent or was not pursuing the matter with regard to termination of her services with diligence. In this view of the matter, ends of justice would be met, if the respondent no. 1 is permitted to institute an appeal to question her termination within a period of two months from the date of obtaining a copy of this order. In case, the respondent no. 1 institutes such an appeal before the concerned School Tribunal, then the School Tribunal to consider the same on merits, without going into the issue of limitation.

8] The applicants are directed to serve an authenticated copy of this order upon the respondent no. 1 as expeditiously as possible and in any case within a period of four weeks from today. In the covering letter to accompany the authenticated copy of this order, the applicants are directed to invite attention of the respondent no. 1 to the liberty granted by this Court to the respondent no. 1 to institute an appeal questioning her termination of services.

9] Rule is accordingly made absolute to the aforesaid extent.

There shall be no order as to costs.

10] All concerned to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka