

JPP

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

WRIT PETITION NO. 4512 OF 2013

Mr. A. Rajendram.

... Petitioner.

V/s.

The Chairman/Secretary

C.U. Shah Education Trust and Ors.

... Respondents.

Ms. V.V. Thorat i/b. Deepali Deherkar for the Petitioner.

Mr. A.G. Kothari for Respondents 1 & 2.

Ms. M.S. Bane 'B' Panel AGP for Respondents 3 and 4.

CORAM : N.M. JAMDAR, J.

DATE : 18 DECEMBER, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Respondents waive service.

2. The Petitioner challenges the order passed by the School Tribunal dated 20 December 2012 disposing off the application filed by the Respondent – Management holding that the School Tribunal has no jurisdiction under Section 9 of Maharashtra Employees of Private Schools Act, 1977 and

consequently returning the Appeal to be presented before the Competent Court.

3. The School Tribunal has taken note of the definition of a Recognized School under the provisions of Section 2(21) of the Act of 1977. The School Tribunal followed the decision of the Full Bench of this Court in the case of *Komal Rugwani v/s. State of Maharashtra [(2011) 4 Mh. L.J. 301]* and other decisions to hold that a school which is recognized and affiliated to ICSC Board will not fall within the purview of the definition of 'Recognized School' under the Act of 1977.

4. The learned Counsel for the Petitioner has placed on record the order passed on 11 September 2014 in Writ Petition No. 4908 of 2014 in the case of *Deepa Jain V/s. Principal, The Cathedral and John Connon School* in which it was observed as under :-

“9. The RTE Act was enacted with an object to provide free and compulsory education to all children below 6 to 14 years. Section 2(n) of the RTE Act defines 'School' as under -

“(n) 'school' means any recognised school imparting elementary education and includes -

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate

Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”

Section 38 of the RTE Act confers power upon the appropriate Government to frame rules to give effect to the provisions of the Act. Under Section 38(2) Clause (n), rule making power is conferred to provide for a machinery for redressal of grievances of the teachers. Pursuant to the rule making power, State of Maharashtra has framed RTE Rules which was brought into force on 11 October 2011. Rule 20 of the Rules, which deals with grievance redressal, reads as under -

“20 Grievance Redressal mechanism for teachers for purposes of section 24(3). – (1) A teacher or employee of a school other than a school run by Government or Local Authority, who is aggrieved by any of the decisions of the management regarding his or her service conditions or a teacher or any employee. –

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the management; or

(b) who is superseded by the management while making an appointment to any post by promotion shall have a right of appeal and may appeal against such order or supersession to the tribunal constituted under section 8 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Mah.III of 1978).”

Thus the right of appeal is provided under the RTE Act read with RTE Rules. Rule 20 refers to the procedural aspect,

that the appeal so filed will be governed by the provisions of the MEPS Act. Bare perusal of Section 2(n) of the RTE Act and Rule 20 of the RTE indicates that the remedy of an appeal is now conferred upon a much wider class and is not confined to only those working in the schools recognized under relevant provisions of the MEPS Act.

10. The Division bench in *Latika Mane* expanded the legal position holding that RTE Rules have enlarged the scope of the remedy and it is available to "any" teacher from "any" school, which are covered under the RTE Act and RTE Rules. The Division bench took note of the object and purpose of making such comprehensive remedy available to primary teacher across State of Maharashtra. Division bench held as under :

“10. The field of elementary education comprising of education from the first to eighth standards has now been comprehensively regulated by the Central Act. The Right to Education Act specifically contemplates that the grievances of teachers shall be redressed in such manner as may be prescribed by the rules. The rules which have been framed by the State of Maharashtra provide for a right to appeal to the Tribunal constituted under Section 8 of the MEPS Act in respect of the matters enunciated therein. Rule 20 is framed in broad terms. A right of appeal is conferred against the following orders: (I) An order of dismissal; (ii) An order of removal; (iii) An order otherwise terminating the services; (iv) An order of reduction in rank; and (v) An order of supersession by the management while making any appointment to a post by promotion. These categories correspond broadly to clauses (a) and (b) of Sub-section (1) of Section 9 of the MEPS Act. But significantly, the ambit of the remedy which is made available to primary school teachers by

Rule 20 is not only confined to these orders, but has been widened to include any decision of the management regarding the service conditions of a teacher or employee by which any teacher or employee is aggrieved. As a result of the framing of Rule 20, in accordance with, and under the power conferred by the Central Act, a comprehensive remedy in the form of an appeal before the School Tribunal is provided to any teacher or employee who is aggrieved by any decision of the management regarding his or her service conditions, including those decisions which result in one of the consequences spelt out in clauses (a) and (b).

11. The object and purpose of making a comprehensive remedy available to primary school teachers across the State of Maharashtra against any decision of the management with regard to their conditions of service, as well as decisions of the nature contemplated by clauses (a) and (b) of Rule 20 is to ensure that such teachers are protected against exploitation and unfair practices. The ability of a teacher to dedicate himself or herself to the cause of education of young children is contingent on a secure working environment and on conditions of work which provide certainty, transparency and objectivity in decision making by management. Leaving primary teachers to the whim and caprice of a private management was evidently a consequence which both the Central legislation and the rule making authority sought to obviate by providing a judicial remedy before the School Tribunal manned by a Judicial Officer. Access to judicial remedies is an integral part of any regime which provides just and stable conditions of work. This is also the ethos of the constitutional values in the Directive Principles of State Policy. Those values the Court has a duty to protect. It is necessary to emphasize this aspect

because in determining as to whether the rules which have been framed under the Right to Education Act, would apply to a situation where a termination of services has taken place even prior to the enforcement of the rules, the object and purpose of the remedy is an important circumstance which must be taken into account. The essential object and purpose is to provide access to justice to primary school teachers. The constitutional guarantee of free and compulsory primary education is given practical content by the Act and the Rules. As judges give substance to them in deciding cases, the importance of the constitutional guarantee must be borne in mind.”

11. It is not disputed and cannot be disputed that a school recognized by an ICSE board also falls within the ambit of the RTE Act and RTE Rules. A teacher working as a primary teacher in such school will have a right to file an appeal to the School Tribunal, on the condition laid down therein. After enforcement of the RTE Rules, the denial of right to file an appeal to a primary teacher, on the ground that the school is recognised by an ICSE board, is not permissible.

12. The Tribunal relied upon the decision of the Division bench of this Court in the case of Arjun Baburao (supra) which had held that the Green Laws High School, was recognised by ICSE Board and therefore, MEPS Act will not apply to it. This decision however was rendered in the year 2004, prior to the enactment of the RTE Rules in the year 2011. As observed earlier, the RTE Rules have enlarged the scope of remedy of appeal. The remedy is available to a teacher working in a school falling within the ambit of RTE Act and Rules. In view of the change in law, as observed in the decision of Latika Mane, right of appeal is enlarged and now will be available to teachers working in ICSE school, if such school falls in the ambit of RTE Act and Rules.”

3. In this decision taking the note of the decision of the Division Bench it was held that the School Tribunal will have jurisdiction to entertain the grievance of teachers who are working in the institution imparting the elementary education. In the circumstances, though the School Tribunal has held that it has no jurisdiction under Section 9 of the Act of 1977, in view of the enactment of RTE Rules framed by the State of Maharashtra which were brought in force on 11 October 2011 the School Tribunal will have jurisdiction to entertain the claim.

4. The learned Counsel for the Respondent submitted that the Respondent – Institution is a minority institution and the Petitioner was working in the Secondary School. However, for the purpose of determining jurisdiction of the Court, pleadings in the appeal will have to be noticed. On the pleadings of the Petitioner that the Petitioner was working in the institution imparting elementary education, the appeal will lie before the School Tribunal. It is always open to the Respondent to point out otherwise and upon such factual position being determined, the School Tribunal can always take an appropriate decision as regard its jurisdiction. Therefore, it is not necessary to decide and conclude that factual issue in the present Petition.

5. In the circumstances, even though the School Tribunal has held that it has no jurisdiction under Section 9 of the Act of

1977 and has returned the proceedings to be filed in the appropriate Court, the appropriate Court would be the School Tribunal itself as noticed by way of above referred position of law.

6. Therefore, the Appeal which is filed by the Petitioner stands restored to the file of the School Tribunal to be decided as per law and all contentions of the parties on merits as well as jurisdiction are kept open.

7. The School Tribunal will consider by giving priority to the disposal of the matter and make an endeavour to dispose off the same within period of one year from today, if there are no earlier commitments. It is open to the Tribunal to permit the parties to produce such additional material as the Tribunal deems fit.

8. Rule made absolute in above terms. No costs.

(N.M. JAMDAR, J.)