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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 1682 OF 2015

M/s. Goenka & Associates Educational
Trust and Ors.

... Petitioners.

V/s.

Sushil Bagkar.

... Respondent.

Mr. A.V. Bukhari, Sr. Advocate a/w. Mr. Burhan Bukhari and Ms.
Jyostna Wahane i/b. A.M. Nathani for the Petitioners.
Ms. Seema Chopda a/w. T.R. Yadav and Mr. F.R. Mishra for the
Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 8 SEPTEMBER, 2015.

P.C. :-

By this Petition the Petitioner challenges the order passed by the Industrial Court, Mumbai in Complaint (ULP) Nos. 191 of 2012 and 340 of 2012 filed by the Respondent as well as the order passed in the Review Application. The common order has been passed in the two complaints on 19 September 2014 and Review Application is decided by order dated 21 February 2015.

2. The Respondent was working as a Gent Attendant on a school bus. He was charge-sheeted for drunken driving and causing causing injury to seven persons and a FIR was registered against him. The Respondent filed Complaint (ULP) No. 191 of 2012 on the apprehension that his services were likely to be terminated. He also sought wages for period of four months. The Respondent filed another Complaint (ULP) No. 340 of 2012 wherein he challenged his order of transfer.

3. In these complaints the Petitioner took up a preliminary objection as regard maintainability on the ground that considering the reliefs prayed for, the Industrial Court will not have jurisdiction and it will be the Labour Court which will have jurisdiction. It was also contended that since the services of the Respondent were governed by Maharashtra Employees of Private Schools Act, 1977, the Industrial Court will not have jurisdiction. By the order dated 19 September 2014, the applications made for framing a preliminary issue on jurisdiction were disposed off by the Industrial Court holding that deciding these applications will involve various disputed facts and therefore, it is not necessary to decide these applications at this stage and the issue was kept open.

4. Mr. Bukhari, the learned Senior Counsel appearing for the Petitioner contended that course of action adopted by the Industrial Court in deferring the hearing of the preliminary issue is

not legal and proper. He submitted that there are various decisions of the Apex Court and this Court which lay down that if preliminary objection to jurisdiction are raised, the Court must hear the issue first before proceeding with the trial.

5. Ms. Seema Chopda, the learned Counsel for the Respondent has pointed out that the interim relief in case of transfer was refused. As regards apprehended termination, the Industrial Court had directed the Petitioner not to terminate the services of the Respondent without following the due process. It is informed that thereafter, the Respondent is terminated from the services after holding an enquiry. The only issue that remains in the complaint is of payment of four months' wages.

6. The Industrial Court by the impugned order has not decided the issue of jurisdiction and has kept it open to be decided at the time of trial. It is not necessary to interfere in each and every order of the subordinate Courts and Tribunals. The only question that remains to be decided in the complaint is four months' wages and the services of the Respondent is terminated and he is pursuing his remedy in some other forum. Considering the pendency of matters before the Industrial Court, it is not necessary to direct the Industrial Court to take up this issue on priority basis for consideration. The Industrial Court has kept the issue open on merits. The question of law raised by Mr. Bukhari, learned Senior Counsel for the Petitioners as regards mandate on

the Industrial Court to decide such issues at preliminary stage can be considered in an appropriate case.

7. Considering the fact of the present case, I am not inclined to interfere in the course of action adopted by the Industrial Court, Mumbai, the Writ Petition is therefore not entertained and is rejected.

(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 Order.