

Anand

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

WRIT PETITION NO.1286 OF 2015

Dayashankar Harinarayan Tiwari .Petitioner

v/s.

The Chairman/Managing Trustee Jawahar .Respondents
Education Society And Ors.

Mr.Sureshkumar J. Panicker i/b. Panicker & Associates, Advocate,
for the Petitioner
Mr.Vikas Pandey, Advocate, for the Respondent Nos.1 & 2
Mr.Mohit Jadhav, AGP, for the Respondent Nos.3 & 4

CORAM : A.A.SAYED, J.

DATE : 14.07.2015

P.C.

. The challenge in this petition under Article 226 of the Constitution of India is to the order of the School Tribunal, Mumbai dated 13.04.2015 rejecting the application for interim relief.

2. Para 6 of the impugned order of the School Tribunal records -
“It is pertinent to note that the interim application filed by the appellant is containing only the names of the parties and prayers. The pleadings are missing in the application. The appellant has nowhere stated in the application that he is having good prima facie case, balance of convenience lies in his favour as well as if the interim relief is not granted he will suffer irreparable loss”. In para 8 of the impugned order, it has been observed - “In view of the above

stated facts, it is difficult to come to the conclusion that, appellant has made out prima facie case and balance of convenience is in favour of the appellant. He has also failed to prove the irreparable loss which would cause to him if the interim reliefs are not granted. Therefore, I answer the point no.1 and 2 in the negative and proceed to pass the following order.”

3. My attention has been invited by the learned counsel for the Petitioner to the Affidavit-in-support of the interim application wherein the Petitioner in paras 1 & 2 has stated as follows :

“ 01) I say that I have filed the Appeal before this Hon'ble Tribunal U/s.9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 challenging the Order of Termination dated 16.07.2014. I have also taken out Application for Interim Relief. I crave leave to refer to rely upon the Appeal Memo AND the Application for Interim Relief as and when produced before this Hon'ble Tribunal. I repeat, reiterate and confirm the averments made in the Appeal, as if the same is repeated herein “*in verbatim*”. The contents of the Appeal and the Application for Interim Relief may be treated as if the same is forming the part and parcel of this Affidavit.

02) I say that great injustice is be done to me, and if the reliefs as prayed for in the Appeal and Application for Interim Relief are not granted, I shall suffer from irreparable injury and loss which cannot be compensated in terms of money. I have a very good case on merits. No harm or prejudice will be caused to the Respondents, if the reliefs as prayed for are granted. The balance of convenience lies in my favour.”

(emphasis supplied)

4. The impugned order has apparently been passed without considering the averments in the Affidavit-in-support of the interim application and appeal wherein specific contentions have been raised. In any event, the impugned order does not deal with the merits of the matter as such.

5. In these circumstances, the impugned order of the School Tribunal, Mumbai cannot be sustained and will have to be set aside and is accordingly set aside. The petitioner would be at liberty to file additional Affidavit, if so advised. The School Tribunal, Mumbai shall hear the interim application of the Petitioner afresh without being influenced by the impugned order. It is clarified that this Court has not gone into the merits of the matter and the application shall be decided on its own merits.

6. The Petition is disposed of in the aforesaid terms.

(A.A.SAYED, J.)