

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1572 OF 2015

Balasaheb Dagadu Yeole,
Age 42 years, Occ. Labour
R/o Dolasane, Tq. Sangamner,
District Ahmednagar.

..Petitioner

Versus

Sangamner Taluka Vikas Pratishthan
Bhairavnath Madhyamik Vidyalaya,
At Post Dolasane, Taluka Sangamner,
District Ahmednagar, through it's
President.

..Respondent

WITH
WRIT PETITION NO.1602 OF 2015

Arun Dattatraya Kahane,
Age 41 years, Occ. Labour
R/o Ambi Khalcha, Post Ghorgaon,
Tq. Sangamner, District Ahmednagar.

..Petitioner

Versus

Sangamner Taluka Vikas Pratishthan
Bhairavnath Madhyamik Vidyalaya,
At Post Dolasane, Taluka Sangamner,
District Ahmednagar, through it's
President.

..Respondent

...

Advocate for Petitioner : Shri Barde P.V.
Advocate for Respondent : Shri Patil Ashok h/f Shri Shinde S.K.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: December 09, 2016

...

ORAL JUDGMENT :-

1. Heard the learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. In both these petitions, the petitioners / workmen are aggrieved by the judgment and award dated 30.8.2014 by which, Reference (IDA) Nos.29 and 19 of 2010 have been answered in the negative on the ground that the Reference of the two cases before the Labour Court under Sections 10 and 12 of the Industrial Disputes Act, 1947 ("1947 Act") are not maintainable as the remedy under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the 1977 Act" for short) against termination / dismissal is available.

5. I have considered the submissions of the learned Advocates for the respective sides as well as Shri Ashok Patil, learned Advocate who had appeared for the respondent before the Labour Court at Ahmednagar in the Reference matter.

6. The first petitioner had put in about 4 years in service and the second petitioner had put in about 2 years in service before being orally terminated on 24.4.1997 and 20.9.1995 respectively. The

reference cases, upon failure of conciliation, were adjudicated upon by the Labour Court. The litigating sides led evidence in oral and documentary form. While delivering the impugned awards, the Labour Court considered both the cases on its merits. However, both the references were answered in the negative by placing reliance upon the judgment of this Court (Coram : P.R.Borkar, J.) in the matter of Adarsh Shikshan Sanstha Vs. Jaiprakash Ramvilas Lohia and another [2010 (1) BCR 810 = 2010 (2) Mah.L.J. 924] by concluding that since the remedy under the M.E.P.S.Act is available, the reference made by the appropriate Government to the Labour Court was not maintainable and it had no jurisdiction.

7. There is no dispute amongst the litigating sides that the learned Full Bench of this Court in the matter of St. Ulai High School and another Vs. Devendraprasad Jagannath Singh and others [2007 (1) Mh.L.J. 597], has considered, whether the introduction of the 1977 Act and Rules of 1981, framed thereunder (Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (“MEPS Rules” for short)), would lead to the exclusion of the Civil Courts.

8. It is concluded in the St. Ulai's judgment (supra) as under:-

“Conclusion:

For the reasons which we have indicated in the body of the judgment, we, therefore, hold as follows:

(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 9 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 Sanstha v. Dr. Vasant P. Satpute, and Rasta Peth Education Society v. Pethkar Udhao 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;*

(iii) *Neither the MEPS Act, 1977, nor the Rules framed thereunder mandate the grant of approval by the Education Officer as a condition precedent to a valid order of appointment. The requirement of approval which relates to the disbursal of grant in aid is a matter between the management and the State and want of approval will not invalidate an order of appointment;*

(iv) *The judgments of the Division Benches of this Court in Anna Manikrao Pethe v. Presiding Officer, and Shailaja Ashokrao Walse v. State of Maharashtra (supra) to the extent that they hold that an appeal is not maintainable before the Tribunal at the behest of an employee*

whose appointment has not been approved do not reflect the correct position in law and are overruled;

(v) A decision of the Education Officer on the issue of inter se seniority under Rule 12 of the MEPS Rules is not final. Where action is taken by the management against an employee on the basis of such a determination and where the action taken falls within the description contained in Clauses (a) and (b) of Sub-section (1) of Section 9, an appeal before the School Tribunal for challenging the action of the management would be maintainable. The Tribunal would have the jurisdiction, while deciding the lawfulness of the action of the management to adjudicate upon the correctness of the determination of the Education Officer under Rule 12 as an incidental question. Where no consequential action has been taken by the management, on the basis of the determination of the Education Officer, it would be open to the employee concerned, to seek recourse to his remedies against the decision under Rule 12 in accordance with law;

(vi) The Legislature having provided for a remedy before the Tribunal only in respect of the subjects spelt out in Clauses (a) and (b) of Sub-section (1) of Section 9, in those cases the jurisdiction of the Civil Court is impliedly barred. The jurisdiction of the Civil Court is barred to the extent to which the Legislature

has spoken. In other areas which are not covered by Clauses (a) and (b) of Sub-section (1) of Section 9, the remedy of an appeal before the Tribunal is not available and hence, the jurisdiction of the Civil Court is not barred.

(vii) We clarify that in the present reference, we have dealt with the question of the maintainability of a suit in the Civil Court in respect of matters which fall within the purview of Section 9 of the MEPS Act, 1977. The question as to whether the remedy under industrial legislation would be available to a member of the non-teaching staff has not fallen for consideration in these proceedings since that forms a subject matter of a separate reference to the Full Bench.

*The reference to the Full Bench is answered accordingly.”
(Emphasis supplied]*

9. It is, therefore, apparent that the jurisdiction of the Civil Court to the extent of the causes of action falling under Section 9(1) (a) and (b) and Rule 12 of the MEPS Rules (prior to the management initiating consequential action), has been excluded and the School Tribunal is the only remedy available to deal with such causes of action.

10. Clause (vii) reproduced above from the St.Ulai's judgment,

indicates that the learned Full Bench dealt with the question of the maintainability of the suit in the Civil Court. The question as to whether the remedy under Industrial legislation would be available to the members of the non-teaching staff had not fallen for consideration in the proceedings before the learned Full Bench and hence that issue has not been dealt with in the St.Ulai's (supra).

11. Though the learned Full Bench has observed in Clause (vii) that the issue of remedy under Industrial legislation was not being considered, *“since that forms a subject matter of a separate reference to the Full Bench”*, learned Advocates for the respective sides, after taking time in this matter and investigating as regards pendency of any reference or a decision on this count, have submitted that no such reference dealing with the remedy under the Industrial legislation has been addressed to a Larger Bench or a Full Bench. No such proceedings are pending, inasmuch as, there is no judicial pronouncement by the Full Bench on this issue. I have dealt with this issue only after recording the statement as above.

12. In the above backdrop, I have heard the learned Advocates on the issue as to whether a remedy of approaching the Labour Court / Industrial Court would be available to the non-teaching staff under the Industrial Disputes Act, 1947 ("the 1947 Act") or under the Maharashtra Recognition of Trade Unions and Prevention of Unfair

Labour Practices Act, 1971 (for short "the 1971 Act") with regard to termination / dismissal / removal / otherwise termination and reduction in rank, in the light of Section 9 of the 1977 Act. I am also considering as to which of the two remedies could be said to be an efficacious and expeditious remedy.

13. In the judgment delivered by the Honourable Apex Court in the matter of Ms. A. Sundarambal Vs. Government of Goa, Daman and Diu [AIR 1988 SC 1700], it has been held that though the School is an "industry", a Teacher imparting primary, secondary, graduate or post graduate education, cannot be called as a "workman" under Section 2(s) of the ID Act, 1947. Section 2(s) reads as under:-

"2. Definitions.

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950). or the Navy Act, 1957 (62 of 1957); or

- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”*

14. In the case of Bangalore Water Supply and Sewerage Board Vs. R.Rajappa [AIR 1978 SC 548], the issue of an “industry” under Section 2(j) of the ID Act was considered and school, colleges, universities, temples etc. have been held to be an “industry” under the ID Act.

15. In the case of Ms. Ms. A. Sundarambal (supra), the Honourable Apex Court has concluded in paragraph Nos.3 to 6 as under:-

“3. Two questions arise for consideration in this case; (1) whether the school, in which the appellant was working, was an industry, and (2) whether the appellant was a ‘workman’ employed in that industry. It is, however, not disputed that if the appellant was not a ‘workman’ no reference under Section 10(1)(c) of the Act could be sought.

4. The first question need not detain us long. In University of Delhi and Anr. v. Ram Nath : (1963)11LLJ335SC a bench consisting of three learned judges of this Court held that the

University of Delhi, which was an educational institution and Miranda House, a college affiliated to the said University, also being an educational institution would not come within the definition of the expression 'industry' as defined in Section 2(j) of the Act. Section 2(j) of the Act states that 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. Gajendragadkar, J., (as he then was) who decided the said case, held that the educational institutions which were predominantly engaged in teaching could not be considered as industries within the meaning of the said expression in Section 2(j) of the Act and, therefore, a driver who was employed by the Miranda House could not be considered as a workman employed in an industry. The above decision came up for consideration in Bangalore Water Supply and Sewerage Board, etc. v. R. Rajappa and Ors. : (1978)ILLJ349SC before a larger bench of this Court. In that case the decision in University of Delhi and Anr. v. Ram Nath, (supra) was overruled. Krishna Iyer, J. who delivered the majority judgment observed at page 283 of the Report thus:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves, employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, will be

true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

5. The learned Judge, however, observed that while an educational institution was an industry it was possible that some of the employees in that industry might not be workmen. At page 261 of the Report with reference to the case of *University of Delhi and Anr. v. Ram Nath*, (supra) the learned Judge observed thus:

*The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not 'workmen' by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the *University of Delhi*, proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the argument.*

6. Thus it is seen that even though an educational institution has to be treated as an industry in view of the decision in the *Bangalore Water Supply and Sewerage Board, etc. v. R. Rajappa and Ors.* (supra) the question whether teachers in an educational institution can be considered as workmen still remains to be decided.”

16. In the light of the above, there can be no debate as on date that a school or a college is an “industry” under Section 2(j) of the ID Act.

17. Similarly, while considering as to who could be a “workman” in an educational institution, the Honourable Apex Court in the Ms. A. Sundarambal case (supra) has observed in paragraph Nos. 8 to 11 as under:-

“8. In order to be a workman, a person should be one who satisfies the following conditions : (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e., (i) to (iv) mentioned in the definition of 'workman' in Section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

9. We are concerned in this case primarily with the meaning of the words 'skilled or unskilled manual, supervisory, technical or clerical work'. If an employee in an

industry is not a person engaged in doing work falling in any of these categories, he would not be a workman at all even though he is employed in an industry. The question for consideration before us is whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled or unskilled manual work, supervisory work, technical work or clerical work. If he does not satisfy any one of the above descriptions he would not be workman even though he is an employee of an industry as settled by this Court in May and Baker (India) Ltd. v. Their Workmen., : (1961)IILLJ94SC . In that case this Court had to consider the question whether a person employed by a pharmaceutical firm as a representative (for canvassing orders) whose duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing could be considered as a workman as defined in the Act. Dealing with the said question Wanchoo, J. (as he then was) observed thus:

As 'workman' was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical, then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the

duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that work as it existed before the amendment of 1956. The nature of the duties of Mukerjee is not in dispute in this case and the only question therefore is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of Section 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal's conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman, his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We,

therefore, set aside the order of the tribunal directing reinstatement of Mukerjee along with other reliefs.

10. *The Court held that the employee Mukerjee involved in that case was not a workman under Section 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as 'workman' under the definition of the expression 'workman' in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place Section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression 'workman' in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post graduate education cannot be called as 'workmen' within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their*

*character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workmen' as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *May and Baker (India) Ltd. v. Their Workmen*, (supra) precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a 'workman' though the school was an industry in view of the definition of 'workman' as it now stands.*

11. We may at this stage observe that teachers as a class cannot be denied the benefits of social justice. We are aware of the several methods adopted by unscrupulous managements to exploit them by imposing on them unjust conditions of service. In order to do justice to them it is necessary to provide for an appropriate machinery so that teachers may secure what is rightly due to them. In a number of States in India laws have been passed for enquiring into the validity of illegal and unjust terminations of services of teachers by providing for appointment of judicial tribunals to decide such

cases. We are told that in the State of Goa there is no such Act in force. If it is so, it is time that the State of Goa takes necessary steps to bring into force an appropriate legislation providing for adjudication of disputes between teachers and the Managements of the educational institutions. We hope that this lacuna in the legislative area will be filled up soon.”

18. It was, therefore, concluded that a “teacher’ would not be a “workman”, but a member of the non-teaching staff, who is performing his duties as is summarized in paragraph No.8 herein above, would be a “workman” under Section 2(s) of the ID Act. Needless to state, non-teaching employees performing supervisory or managerial duties may not be “workmen”

19. In the instant cases, there is no dispute that the petitioners are “workmen”. In the light of the conclusions of the Honourable Apex Court in Ms. A. Sundarambal case (supra), I have no hesitation in concluding that the school / educational institution at issue is an “industry” under Section 2(j) of the Act.

20. The Honourable Apex Court in the matter of Christian Medical College Hospital Employees’ Union Vs. Christian Medical College Vellore Association and others [AIR 1988 SC 37], dealt with as to whether Section 9A, 10, 11-A, 12 and 33 of the ID Act, 1947 do not interfere with a right of the “minority institution” and whether these

sections and the provisions of the ID Act would apply even to a “minority institution”. It would be apposite to reproduce paragraph No.12 of the said judgment, as under:-

“12. Section 2(k) of the Act defines an ‘industrial dispute’ as any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The Act provides for the Constitution of works committees in industrial establishments employing 100 workmen or more and they are charged with the duty of removing causes of friction between the employer and workmen in the day-to-day working of the establishment and promoting measures for securing amity and good relations between them. Industrial peace is most enduring where it is founded on voluntary settlement, and the works committees are entrusted with the duty of providing a machinery for the settlement of disputes. Section 12 of the Act provides for the appointment of Conciliation Officers in order to negotiate between the managements and their workmen and to bring about settlement if possible. If the conciliation proceedings fail, the Conciliation Officer has to make a report to the appropriate Government accordingly. A reference to an Industrial Tribunal of a dispute under Section 10 of the Act is made where both parties to an industrial dispute apply for such reference or where the appropriate Government considers it expedient so to do. An award of a Tribunal may be in operation for a period of one year subject to the provisions of Section 19 of the Act. The power to refer

disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock-out, which must remain inviolate, except where considerations of public interest override such rights. The Industrial Tribunals or Labour Courts constituted under the Act are presided over by persons having judicial experience such as a person who is or has been a Judge of the High Court or who has been for a period not less than three years a District Judge or an Additional District Judge or a person who has not less than five years' service as presiding officer of a Labour Court constituted under any law for the time being in force or who holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than ten years. The Presiding Officer of a Labour Court should also possess substantially the same qualifications and they are set out in Section 6 of the Act. Section 9-A of the Act, which is one of the sections the applicability of which to a minority educational institution is questioned, provides that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to the Act shall effect such change without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or within twenty-one days of giving such notice, except in certain cases which are mentioned in the proviso thereto. This section was introduced since there was a

persistent demand that notice should be given whenever it was proposed to make any change in the conditions of service of the workmen. Section 11-A of the Act confers powers on the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. It provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or national Tribunal for adjudication and, in the course of the adjudicational proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. On the basis of the materials on record, the Tribunal is empowered to pass an appropriate order under Section 11-A of the Act. Section of the Act provides that the conditions of service etc. of the employees should remain unchanged under certain circumstances during pendency of proceedings before an arbitrator or a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute. It further provides that no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with

the express permission in writing of the authority before which the proceeding is pending. If the conditions of service relate to any matter not connected with the dispute or if the misconduct of the workman is not connected with the dispute the management should seek the approval of the authority concerned and comply with the other conditions mentioned in the proviso to Section 33(2) of the Act. Section 33(3) of the Act provides that in the case of protected workmen the express permission of the authority concerned should be obtained before any such action is taken. Section 33-A of the Act provides for the making of an application before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal for appropriate relief if Section 33 of the Act is contravened. Thus it is seen that the Act is one which is enacted as a social security measure in order to ensure welfare of labour and it falls within one or the other of entry 22 - Trade Unions; industrial and labour disputes, entry 23 - social security and social insurance; employment and unemployment and entry 24 - welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits in the List III of the Seventh Schedule to the Constitution. The Act generally applies to all industries irrespective of the religion or caste to which the parties belong. It applies to industries owned by the Central and the State Governments too. Any decision given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Article 226 of the Constitution and an appeal to this Court under Article 136 of the Constitution. The Labour Court, the Industrial Tribunal, the High Court and this Court while dealing with matters arising out of the Act have to deal with them objectively. The

smooth running of an educational institution depends upon the employment of workmen who are not subjected to victimisation or any other kind of maltreatment. The conditions of service of workmen in all institutions including minority educational institutions have to be protected in the interest of the entire society and any unfair labour practice, such as 'hiring and firing', termination or retrenchment of the service of a workman on irrational grounds will have to be checked. The Act makes provisions in respect of these matters. The Act being a general law for prevention and settlement of industrial disputes cannot be construed as a law which directly interferes with the right of administration of a minority educational institution guaranteed under Article 30(1) of the Constitution. The law is not enacted with the object of interfering with any such right. It clearly falls within the observation of Mathew, J. in St. Xavier's College case : [1975] 1 SCR 173 (supra) that "regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgment."

21. In a similar case as like these two cases in hand, the Honourable Apex Court (three Judges' Bench), while deciding the case of Jai Bhagwan Vs. Management of Ambala Central Cooperative Bank Ltd. [AIR 1984 SC 286], concluded that an Industrial Tribunal (Labour Court would be included) on a Reference of an Industrial

Dispute (which would also include Reference of a dispute as regards termination, discharge, dismissal, retrenchment, otherwise termination), cannot decline to decide the Reference and surrender its jurisdiction only because an alternate remedy may be available. Jai Bhagwan, an employee before the Honourable Apex Court was held guilty of mis-conduct and was terminated from service. No reason was mentioned in the termination order. A reference was made for adjudication to the Industrial Tribunal, Haryana at Faridabad. With regard to an alternate remedy in the form of an appeal to the Board of the Management, the Honourable Apex Court concluded that the Industrial Tribunal cannot abdicate its jurisdiction. Considering the facts in these cases, this judgment would not be applicable.

22. In SPIC Pharmaceuticals Division Vs. Authority Under Sec. 48(1) of A.P. Act [AIR 2007 SC (Suppl) 712], the Honourable Supreme Court, while considering the conflict of jurisdiction in between the forum under ID Act and the jurisdiction of the authority under Shops and Establishments Act, concluded that the forum created under the ID Act can more effectively deal with broader issues raised by aggrieved employees. Paragraph No.5 of the said judgment reads as under:-

“5. The High Court accepted that the Act which makes the provisions of the ID Act applicable providing remedy to Sales

Promotion Employees is a special enactment dealing with service conditions of sales promotion employees employed in the establishment engaged in pharmaceutical industries. The Shops Act deals with specific rights created under that Act and it has been indicated that these provisions provided for some more measures for protecting interest of the employees. They are beneficial in nature. The High Court held that the jurisdiction conferred under the Shops Act cannot be said to have been taken away in respect to enforcement of rights conferred under the Act. We think it is unnecessary to go into these broader issues. We find that the forums created under the ID Act, on the facts of the case can more effectively deal with the issues raised. It is not to be understood that we have said that the Appellate authorities under the Shops Act do not have jurisdiction. We are not really deciding that issue as to whether there was exclusion of the jurisdiction of authorities under the Shops Act because it specifically provided that the forum under the ID Act can be approached. In the peculiar circumstances, therefore, we direct that the concerned State Governments i.e. Karnataka, Tamil Nadu and Maharashtra shall make reference to the appropriate forum under the ID Act within a month from today. The concerned forum shall make an effort to dispose of the reference to be made within three months from the date of receipt of the reference. If the respondent employees are entitled to any payment because of the pendency of the disputes, the same shall be paid within two months from today. We make it clear that we have not expressed any opinion on the merits of the case and the order for reference by the State Government is being made in view of the special features involved. Normally it is for the State Government to decide whether reference is to be made but in view of the conceded position by the

learned Counsel for the parties that the industrial disputes do exist, we direct the concerned State Governments to refer the dispute to the forum under the ID Act for adjudication as directed above.”

23. It is, therefore, apparent that all such employees who fall within the definition of “workman” under Section 2(s) of the ID Act and under Section 3(5) of the 1971 Act and where the employer is an “industry”, a remedy against all causes of action could be maintained under the appropriate Industrial legislations, depending upon the jurisdiction carved out under the respective acts as regards the Labour Courts and the Industrial Courts / Industrial Tribunals.

24. The issue is, as to whether the introduction of the Act of 1977 would specifically oust / exclude the jurisdiction of the Labour / Industrial Courts / Tribunals. At the very outset, it needs mention that the issue in these petitions is only as regards the cause of action pertaining to discharge, dismissal, termination, otherwise removal, reduction in rank and none other considering the ambit of Section 9(1)(a) and (b) of the Act of 1977. For clarity, it needs to be noted that matters like transfers, continuing a workman on daily wages or as temporaries or badalis for years together and similar other aspects falling under Schedule II, III and items 2 to 10 of Schedule IV of the 1971 Act would continue to lie before the Industrial Court as no remedy is provided under the 1977 Act against such causes of action

to the non-teaching employees in private schools.

25. In so far as the scheme of the ID Act is concerned, the statement of object and reasons read as under:-

“ Statement of Objects and Reasons. -- Experience of the working of the Trade Disputes Act, 1929, has revealed that its main defect is that while restraints have been imposed on the rights of strike and lock-out in public utility services no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering under Rule 81A of the Defence of India Rules the Central Government to refer industrial disputes to adjudicator and to enforce their awards. Rule 81 A, which was to lapse on the 1st October, 1946, is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as industrial unrest in checking which this rule has proved useful, is gaining momentum due to the stress of post industrial re-adjustment, the need of permanent legislation in replacement of this rule is self-evident. This Bill embodies the essential principles of Rule 81 A, which have proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.

The two institutions for the prevention and settlement of industrial disputes provided for in the Bill are the Works Committees consisting of representatives of employers and

workmen, Industrial Tribunal consisting of one or more members possessing qualifications ordinarily required for appointment as Judge of a High Court. Power has been given to appropriate Government to require Works Committees to be constituted in every industrial establishment employing 100 workmen, or more and their duties will be to remove cause of friction between the employer and workmen in the day-to-day working of the establishment and to promote measures for securing amity and good relations between them. Industrial peace will be most enduring where it is founded on voluntary settlement, and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill for the settlements of disputes infrequent. A reference to an Industrial Tribunal will lie where both the parties to an Industrial Dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes of Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the right of strike and lock-out, which must remain inviolate, except where considerations of public interest override such rights.

The Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility services and optional in the case of other industrial establishment. With a view to expedite conciliation

proceedings time limits have been prescribed for conclusion thereof - 14 days in the case of Conciliation Officers and two months in the case of Board of Conciliation from the date of notice of strike. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon by the parties and where no period has been agreed upon, for a period of one year, and will continue to be binding until revoked by a 3 month's notice by either party to the dispute.

Another important new feature of the Bill relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings of settlement reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government. The underlying argument is that where a dispute has been referred to conciliation for adjudication a strike or lock-out, in furtherance thereof, is both unnecessary and inexpedient. Where, on the date of reference to conciliation or adjudication a strike or lock-out is already in existence, power is given to the appropriate Government to prohibit its continuance lest the chances of settlement or speedy determination of the dispute should be jeopardized.

The Bill also empowers the appropriate Government to declare, if public interest or emergency so requires, by notification in the Official Gazette, any industry to be a public utility service, for such period, if any, as may be specified in the notification."

26. Considering the above, the act provides for redressal of grievances even before approaching the Courts, under Chapter II vide

Sections 3 to 6 of the ID Act, which read as under:-

“Section 3 - Works Committee.

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

(Maharashtra Amendment:-

In section 3, in sub-section (1), insert the following proviso, namely:--

" Provided that, where there is a recognised union for

any undertaking under any law for the time being in force, then the recognised union shall appoint its nominees to represent the workmen who are engaged in such undertaking.

Explanation.--In the proviso to sub-section (1), the expression 'undertaking' includes an establishment.)

Section 4 - Conciliation officers.

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Section 5 - Boards of Conciliation.

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.

(3) The chairman shall be an independent person and the

other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

Section 6 - Courts of Inquiry.

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a court consists of two or more members, one of them shall be appointed as the chairman.

(3) *A court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:*

Provided that, if the appropriate Government notifies the court that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed.”

27. Similarly, under the 1971 Act, after the dispute reaches the Labour or the Industrial Court, directions can be given to the investigating officers for investigating into the matters, which would render assistance to the respective courts for resolving the dispute before it. The 1971 Act also provides for interim relief Under Section 30(2).

28. It, therefore, appears that the intention of the legislature is that disputes falling under Section 2(k) and Section 2A of the 1947 Act could be settled at the level of the Conciliation Officer so as to ensure that the dispute is resolved before the matter reaches the Courts. These aspects are missing under the 1977 Act.

29. The learned Single Judge of this Court (Coram : B.H. Marlapalle,J.) dealt with a similar situation in the matter of Satyavadi Ganpatrao Pimple Vs. Sow. Aruna Ganpatrao Narwade [2000 (20 ALL MR 305)] and concluded that the jurisdiction of the Civil

Court would be barred to the extent of Section 9 of the 1977 Act. In relation to approaching the Labour or Industrial Court under the provisions of the 1971 Act, it was held that the teaching staff cannot approach the Labour / Industrial Court and the only remedy is under Section 9 of the 1977 Act. Paragraph No.11 of the said judgment reads as under:-

“11. A detailed examination of the scheme of the M.E.P.S. Act and the Rules framed thereunder, as has been summarized herein above, would indicate that sufficient provisions have been made to deal with the grievances relating to the service matters of the employees in the private schools, whether aided or unaided, and the remedy so provided is, undoubtedly, efficacious as well as complete. As has been held by the Supreme Court in the cases of Shri Panch Nagar (supra) and Dhulabhai (supra) when the provisions of a special statute do not specifically bar maintainability of a suit under section 9 of the Code of Civil Procedure, it is necessary to examine the provisions of such special statute to find out whether the jurisdiction of Civil Court is impliedly barred and if regards be had to the provisions of the M.E.P.S. Act and the rules framed thereunder, undoubtedly, the orders passed by the tribunal under section 9 as well as orders passed by the Education Officer, under Rule 12 of the M.E.P.S. Rules, are final in nature and there is a forum provided to deal with almost every grievance relating to service matters of the employees in the private schools. In a civil suit filed under section 9 of the Code of Civil Procedure, the Court cannot go beyond giving a declaration or granting relief as may be

provided under the Specific Reliefs Act. As against this, the powers given to the tribunal under section 11 and 13 of the M.E.P.S. Act are by way of a full, complete and speedy remedy, in as much as, the tribunal is empowered to substitute the punishment or modify the punishment order and grant relief, including reinstatement in service with or without backwages or part of backwages or compensation. Undoubtedly, such a relief cannot be granted by the Civil Court while decreeing a suit for declaration, etc. It would not be in the interest of employees in the private schools to hold that the remedy of filing a civil suit under section 9 of the Code of Civil Procedure is not barred under section 9 of the M.E.P.S. Act. The employees in private schools may consist of teaching and non-teaching and so far as non-teaching employees are concerned, they may have a remedy of a dual nature in as much as approach the school tribunal under section 9 in respect of the matters provided thereunder or to the Education Officer in respect of the matters regarding seniority or any other grievance and alternatively, to approach the Labour Court / Industrial Court, under the provisions of the M.R.T.U. & P.U.L.P. Act, 1971. However, so far as the teaching staff is concerned, they have the remedy only under the M.E.P.S. Act and the Rules framed thereunder in respect of the service matters and for both, the teaching as well as non-teaching staff, the remedy of filing a civil suit under section 9 of the Code of Civil Procedure in respect of the matters set out in section 9 of the Act and Rule 12 of the M.E.P.S. Rules is impliedly barred, in view of the enunciations of the Apex Court, as referred to hereinabove. It is, therefore, clear that the law laid down by this Court in the case of Rasta Peth Education Society (supra) can no more be held to be a good law. The view taken by me while disposing

the Civil Revision Application No. 930/1999 that a Civil suit, challenging the order of reversal, was not maintainable is correct and the review application, therefore stands rejected.”

[Emphasis supplied]

30. The judicial pronouncement in the case of Satyavadi (supra) appears to be the first judicial pronouncement, in which, it is concluded that the non-teaching employees have a remedy of a dual nature by approaching the Tribunal under Section 9 in respect of matters provided thereunder and alternatively, to approach the Labour / Industrial Courts under 1971 Act.

31. A common dispute, even against the termination, by a group of persons can be raised under Section 2(k) of the ID Act and the said dispute, upon failure of conciliation proceedings, can be referred to the Industrial tribunal. However, if an individual dispute against any type of removal from service is raised under Section 2A, upon failure of conciliation proceedings, such reference of a dispute is to be made to the Labour Court under the ID Act. No limitation is prescribed under the 1947 Act for raising an industrial dispute.

32. An “industrial dispute” under Section 2(k) reads as under:-

“(k) "industrial dispute" means any dispute or difference

between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;”

An “industrial dispute” under Section 2A reads as under:-

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate

Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

33. The learned Full Bench of the Karnataka High Court in the matter of H.S.Rangaramu Vs. The Management of Karnataka State Road Transport Corporation [2002 (94) FLR 592], dealt with the issue of an alternate remedy being available and concluded that merely because a remedy in the form of an department appeal would not exclude the jurisdiction of the Court. The observations under paragraph Nos.20 and 21 read as under:-

"20. It is well-settled that exclusion of jurisdiction of the Courts established under the Act is not to be readily inferred and such exclusion must be either implicitly expressed or clearly implied. It is a principle by no means to be whittled down and mere fact that regulations provide for certain remedies, would not by itself necessarily exclude the jurisdiction of the Courts established under the Act. In the case of State of Uttar Pradesh and Ors. v. Dr. Vijay Anand Maharaj AIR 1965 SC 946: [1962] 4 5ITR 414 (SC)), the

Supreme Court has observed as follows;

"The Industrial Disputes Act, 1947 also furnishes an example of an Act which creates new rights and obligations and provides machinery for adjudication of disputes pertaining to them. If an industrial dispute relates to the endorsement of a right or an obligation created under the Act then the only remedy available to the suitor is to get an adjudication under the Act".

21. *So far as the case-laws cited by learned Counsel Mr. P. Ramesh are concerned, they are not helpful to resolve the controversy in this reference. So far as the decision in Dhadi Sahu's case, supra, is concerned, their Lordships at paragraph 21 of the judgment held as follows:*

"It is also true that no litigant has any vested right in the matter or procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the Tribunal or the Court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested, right will continue in spite of the change of jurisdiction of the different Tribunals or forums".

In Workmen employed by Hindustan Lever Limited's case, supra, the Supreme Court disapproved the practice of raising preliminary objections to the reference, where the same was

validly made by appropriate Government to the Tribunal to adjudicate the dispute on merits.”

34. In the matter of the Principal, Shree Ayurved Mahavidyalaya Vs. Premchand Satyanarayan Joshi [2015 (2) All MR 794], this Court has dealt with the objections of the petitioner that the non-teaching employee could not have approached the Labour Court under the 1971 Act for challenging his termination. The challenge posed by the educational institution is noted in paragraph No.5 of the judgment, which reads as under:-

“4. Shri H.V. Thakur, the learned Counsel appearing for the petitioner submitted that both the impugned orders were liable to be set aside on the ground that the Labour Court had no jurisdiction to entertain proceedings by way of complaint under Section 28 of the said Act. According to the learned Counsel, the respondent No. 1 was a non-teaching employee in the petitioner college and therefore at the relevant point of time, the jurisdiction in that regard vested with the Tribunal constituted under the Nagpur University Act, 1974 [for short, 'the Act of 1974']. He submitted that the objection to jurisdiction was taken in the reply that had been filed before the Labour Court opposing aforesaid complaint. He further submitted that an application for dismissal of the complaint on said ground had also been filed before the Labour Court on said count. The Labour Court, however, relying upon the judgment of learned Single Judge in the case of Janata Janardan Shikshan Sanstha and another v. Dr. Vasant P. Satpute, reported in : 1986 Mh.L.J. 260, held that

the Labour Court had jurisdiction in the matter. However, he submitted that aforesaid decision has been overruled by the Full Bench in the case of St. Ulai High School and another v. Devenraprasad Jagannath Singh and another, reported in : 2007(1) Mh.L.J. 597. He, therefore submitted that the Labour Court had entertained the complaint on merits though it had no jurisdiction in the matter. To buttress aforesaid submission, the learned Counsel for the petitioner also relied upon the judgments of the learned Single Judge in the cases of Registrar, University of Mumbai v. Lata Bhor (Kum.) & Anr., reported in 2005 II CLR 209, Madhukar Baburao Achari v. Shikshak Smarak Sanstha & Anr., reported in 2000 II CLR 949, Director, Shri Guru Govind Singhji College of Engineering & Technology, Nanded v. Kishan, reported in 2012 (133) FLR 161 : [2012 (7) ALL MR 745], Meena d/o Laxman Kapashikar v. Vice Chancellor, Rashtrasant Tukdoji Maharaj Nagpur University and others, reported in 2012(5) Mh.L.J. 951 : [2012(5) ALL MR 34] and Owesh Alam Mohd. Yakub v. Principal of Maharashtra, college of Arts, Science and Commerce, Mumbai and another, reported in 2001(2) Mh.L.J. 72 : [2000(4) ALL MR 22].

It was then urged that the question as to whether the education was an 'industry' or not was pending in a reference before the Supreme Court of India and said factor was also relevant insofar as the jurisdiction of the labour Court was concerned. In this regard, he relied upon the decisions of the Supreme Court in the case of State of U.P. v. Jai Bir Singh, reported in (2005) 5 SCC 1 and Umesh Korga Bhandari v. Mahanagar Telephone Nigam Ltd., and another, reported in (2005) 12 SCC 691."

35. While answering the controversy, this Court has observed that the question as regards jurisdiction of the Labour Court to entertain proceedings of such nature had not been finally answered when the complaint was filed in the year 1987. The judgment in the case of Janata Janardan Shikshan Sanstha Vs. Vasant P. Satpute (Dr.) [1986 Mh.L.J. 260], was holding the field at that point of time.

36. In Writ Petition No.907 of 1989 (Venubai Umap Vs. The Principal, New English School and another) (unreported), the learned Division Bench at Aurangabad on 29.8.1989, adjudicated upon the challenge to an order passed by the Labour Court refusing to entertain the complaint of the petitioner therein, who was a non-teaching employee and was seeking reinstatement. He had approached the Labour Court by filing a complaint. The Labour Court refused to exercise jurisdiction. The learned Division Bench while deciding the said writ petition, held that as there was more than one forum available to the petitioner, it was open for him to select his forum. The order passed by the Labour Court, holding that it had no jurisdiction was set aside and the complaint was directed to be decided on merits.

37. It cannot be ignored that under item 1 of Schedule IV of the 1971 Act, a workman can approach the Labour Court even against the proposed termination or dismissal at the penultimate stage. In labour

jurisprudence as well as in service jurisprudence, a second show cause notice proposing the punishment is required to be issued in the light of the 42nd Amendment to the Constitution of India. Under the 15th Amendment, a workman had a right to be heard on the report of the Enquiry Officer and had no right of hearing on the quantum of punishment. By the 42nd Amendment, the right to show cause on the charge sheet as existing under the 15th Amendment, was maintained. However, the second right to show cause on the enquiry officer's report was altered by providing that an employee / workman would have a right to show cause on the proposed punishment. This aspect has been extensively dealt with by the Honourable Supreme Court in the case of Union of India Vs. Mohammed Ramzan Khan [AIR 1991 SC 471] and subsequently in the matter of Managing Director, Managing Director, ECIL, Hyderabad etc. Vs B.Karunakar etc. [AIR 1994 SC 1074 = (1993) 4 SCC 727].

38. Considering the above, the learned Division Bench of this Court in the matter of Ashok Vishnu Kate And Ors. Vs M.R. Bhope And Anr. [(1992) 94 BOM L R 185 = (1993) III LLJ 304 Bom], concluded that the jurisdiction of the Labour Court for entertaining complaints against dismissal / termination under item 1 of Schedule IV can be invoked even prior to actual issuance of the order of dismissal / termination. It was held that after receiving the second show cause notice, proposing the punishment of dismissal / termination at that

penultimate stage, the employee / workman could approach the Labour Court. This view was sustained by the Honourable Apex Court in the matter of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326].

39. It is trite law that the relief in the nature of reinstatement in service by staying the order of termination or dismissal is practically an anathema as it amounts to granting final relief at an interim stage. Considering the law laid down in the case of Hindustan Lever (supra), a non-teaching employee of a private school or college could approach the Labour Court under item 1 of Schedule IV in order to establish, prima facie, an inevitable occurrence of unfair labour practice, if the proposed punishment is to be inflicted.

40. Rule 37(4), (5) and (6) of the 1977 Act mandates the convener of the enquiry committee to forward the summary of proceedings, copies of the statements etc. and hear the employee through his explanation. Thereafter, the enquiry committee is to complete the enquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the management for specific action to be taken. The copy of the enquiry committee's report and its recommendations are also to be forwarded to the employees.

41. In this backdrop, if the remedy of approaching the Labour Court before the passing of the order of punishment is excluded, such an employee necessarily will have to wait till the final order of punishment is passed by the management. If the remedy before the Labour Court is not excluded, he may very well approach the Labour Court at the penultimate stage to make out a strong case of gross injustice and unfair labour practice at a *prima facie* stage and may succeed in obtaining prohibitory orders against the employer thereby preventing him from issuing the final order of punishment, of course keeping in view the note of caution expressed by the Honourable Apex Court in paragraph Nos.53 and 54 of the Hindustan Lever judgment (*supra*), which read as under:-

"53. Reference made in paragraph VI to the Bombay High Court's judgments also cannot be of any avail as they were based on the view which was accepted by the learned Single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the Judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier view taken by the learned single Judges of the Bombay High Court cannot be said to be well-sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of

the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant Clauses 7 of item I of schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated."

42. The learned Single Judge of this Court (Coram : F.I. Rebello, J.), in the case of People's Welfare Society and another Vs. Second Labour Court, Civil Lines, Nagpur and others [1998 (2) ALL MR 94], dealt with a similar controversy of a non-teaching employee of a college having approached the labour Court against his termination,

which was entertained and the management / education society approached this Court alleging that the Labour Court was excluded from exercising its jurisdiction and the University Tribunal alone could decide the issue of proposed termination under Section 59 of the Universities Act, 1994. This Court concluded in paragraph Nos.8 and 9 as under :-

“8. The above authorities, however, do not answer the point raised in the present petition. What is in issue presently is whether the complaint of the Respondents Nos. 3 to 9 filed even before their services were terminated could have been heard and decided by the Tribunal constituted under section 59 of the Maharashtra Universities Act. None of the judgments cited in support under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act lay down such a proposition. Even in the case of Maharashtra Shikshan Sanstha (supra) the complaint was filed after the services were terminated. The issue involved was whether interim relief could be granted in an appeal pending before it. The Division Bench was not seized with the issue nor has answered the issue whether the School Tribunal could entertain an appeal even before the services of an employee were terminated. The judgments cited, therefore, are of no assistance.

9. The employees involved in this petition are non-teaching employees. Such non-teaching employees could fall within the definition of workmen within the meaning of section 2(s) of the I.D. Act. Even in respect of the I.D. Act they could not have moved the courts under the said Act as

section 59 of the Maharashtra Universities Act would then squarely cover the case of such individual employees in so far as termination of their services are concerned as set out in section 59 of the Maharashtra Universities Act. However what is to be borne in mind is that the M.R.T.U. & P.U.L.P. Act for the first time by virtue of section 30(2) has conferred power on the courts constituted under the Act to prevent an employer from terminating the services of employees falling within the definition of section 2(s) of the I.D. Act. Such a remedy is not provided for either in the Maharashtra Universities Act or in the Industrial Disputes Act, 1947. The scheme of the I.D. Act and the M.R.T.U. & P.U.L.P. Act has been considered by the Apex Court in the case of Hindustan Lever Ltd. v. Ashok Vishnu Kate, reported in (1996) ILLJ 899 SC , wherein the Apex Court has held that (he M.R.T.U. & P.U.L.P. Act is supplemental Legislation to the I.D. Act. Section 30 of the M.R.T.U. & P.U.L.P. Act has for the first time given right in the form of remedy to a person who falls within the definition of section 2(s) of the Act to move the Court under the M.R.T.U. & P.U.L.P. Act to preempt his termination from service. Such a right is not traceable under section 59 of the Maharashtra Universities Act. On the contrary section 61 of the Maharashtra Universities Act it has been made clear that an appeal filed will have to be rejected if it does not come within the predicates of section 59 of the Maharashtra Universities Act. Thus clearly the Tribunal will have no jurisdiction to decide a case of threatened dismissal or termination. Even otherwise it can be seen that the jurisdiction under the M.R.T.U. & P.U.L.P. Act is not totally ousted. It is only in the matter of dismissal, removal or where services are otherwise terminated or where an employee reduced in rank would a remedy be available to an aggrieved

employee. In other matters pertaining to his conditions of services the remedy is not available under section 59 of the Maharashtra Universities Act. Thus there is no total ouster of jurisdiction in so far as Maharashtra Universities Act is concerned. If that be so it is not difficult to hold that even a case of threatened dismissal would not fall under section 59 of the Maharashtra Universities Act as the words used are "who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank". It is only after such an event has taken place as stated earlier that the right of Appeal is provided. In these circumstances I am of the opinion that the jurisdiction of the Labour Court is not ousted and to that extent the contention on behalf of the petitioners has to be rejected."

43. It is thus held in relation to the Universities Act, 1994 that the non-teaching employee could fall under the definition of "workman" and the jurisdiction of the Labour Court / Tribunal is not totally ousted. It was also held that in so far as proposed termination is concerned, the College Tribunal under Section 59 would not consider the case of threatened termination or dismissal and hence, the jurisdiction of the Labour Court was not ousted.

44. What is held about the proposed termination or threatened termination, would *pari materia* apply to actual termination / dismissal. The Labour Court can entertain a challenge to the termination since the non-teaching employee is a "workman"

(excluding those who may be exercising supervisory / managerial functions) and the school / college is an “industry”. As held in the Peoples' Welfare Society case (supra), the jurisdiction of the Labour Court is not specifically ousted and as such, an ouster or exclusion of jurisdiction of the Labour Court cannot be introduced when there is no specific provision under the 1977 Act excluding the Labour Court's jurisdiction.

45. Learned Advocate for the respondent Shri Shinde has placed reliance upon the judgment delivered by this Court (Coram : P.R. Borkar, J.) in the matter of Adarsh Shikshan Sanstha Vs. Jaiprakash Ramvilas Lohia and another [2010 (1) BCR 810 = 2010 (2) Mah.L.J. 924]. It appears that this Court was of the view that there is a special legislation covering employees of private schools and hence the non-teaching employees have a remedy to approach the School Tribunal and not the Labour Court. It cannot be ignored that the view taken by the Hon'ble Apex Court and this Court in the cases of Venubai Umap (supra), Ms. A. Sundarambal (supra), Christian Medical College (supra), Satyavadi Ganpatrao Pimple (supra), and Peoples' Welfare Society (supra), were not cited before the Court in Adarsh Shikshan case (supra).

46. Considering the above and the fact that the view taken by this Court in the above mentioned cases concluding that a non-teaching

employee / workman of a school, college or University can approach the Labour Court against the proposed / threatened termination / dismissal or actual termination / dismissal, was not cited, the view taken by this Court (Coram : P.R.Borkar, J.) cannot be said to be a good law.

47. A strenuous submission of Shri Shinde that the learned Full Bench of this Court in the case of St. Ulai (supra) has settled the issue, needs to be negated in the light of the specific observations of the learned Full Bench in Clause (vii) of its conclusions reproduced above, that the availability of the remedy under the Industrial legislation to a member / workman of the non-teaching staff, has not been adjudicated upon by the learned Full Bench.

48. In the light of the above, both these petitions are allowed. The impugned award dated 30.8.2014 delivered in Reference (IDA) Nos. 29 of 2010 and 19 of 2010, respectively, are quashed and set aside. Both these Reference Cases are remitted back to the II Labour Court, Ahmednagar for fresh adjudication on its merits.

49. The litigating sides shall appear before the said Labour Court on 6.1.2017. Formal notices need not be issued to the litigating sides. As the pleadings are complete and recording of oral and documentary evidence is also complete, the litigating sides shall

address the Labour Court finally and the Labour Court shall, therefore, decide both the Reference Cases on their own merits.

50. Needless to state, the issue of jurisdiction having been settled by this Court, would not be open for the Labour Court for consideration. It is expected that the Labour Court shall deliver its award as expeditiously as possible and preferably on/or before 29.4.2017.

51. Rule, in both the petitions, is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)

...

akl/d