

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO. 5309 OF 2015

1 The President,  
Rashtriya Shikshan Samittee,  
Purshottam S/o Manohar Mahajan,  
Age : 85 years, Occ : Business.

2 The Secretary,  
Rashtriya Shikshan Samittee,  
Lachiram S/o Rajaram Yemul,  
Age : 94 years, Occ : Business.

3 The Head Master,  
Rashtriya Shikshan Samittee,  
Amruta Karbhari Pawar,  
Age : 57 years, Occ : Service.

All R/o C/o Bharat Vidyalaya,  
Shakti Nagar, Nanded,  
Tq. & Dist.Nanded.

...PETITIONERS

-VERSUS-

1 Shriram Limbaji Rathod,  
Age : 40 years, Occ : Service,  
R/o Datta Nagar, Nanded,  
Tq. & Dist.Nanded.

2 The Education Officer (Secondary),  
Zilla Parishad, Nanded,  
Tq. & Dist.Nanded.

...RESPONDENTS

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Advocate for Petitioners : Shri Ghatge Mahesh V.

AGP for Respondent 2 : Shri D.R.Korde.

Advocate for Respondents 1 : Shri S.R.Shirsath h/f Shri S.S.Jadhavar.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 08<sup>th</sup> January, 2016**

Oral Judgment:

1            Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2            The Petitioner is aggrieved by the order dated 10.04.2015 delivered by the School Tribunal, Latur in Appeal No.34/2014 by which the Application Exhibit-16 filed by the Petitioner/ Management was rejected.

3            Shri Ghatge, learned Advocate for the Petitioner/ Management, submits that the First Respondent had preferred the above stated appeal for challenging his order of suspension dated 15.03.2014. There was no dispute that besides the order of suspension, Respondent No.1 has not raised any challenge to any other act of the Petitioner.

4            He submits that the Petitioner moved the application Exhibit-16 praying to the School Tribunal that the appeal preferred by Respondent

No.1 was not maintainable under Section 9 of the MEPS Act, 1977 since the order of suspension does not fall within the ambit of Section 9. By the impugned order, the School Tribunal has concluded that the punishment of suspension meted out to Respondent No.1 would fall within the jurisdiction of the School Tribunal as a major penalty was awarded and hence, the cause of action put forth by Respondent No.1 would fall under Section 9 of the MEPS Act, 1977.

5           Shri Shirsath, learned Advocate appearing for Respondent No.1, has strenuously defended the impugned order. He submits that the cause of action is his suspension by way of punishment for a period of almost six months. The employee would be rendered remedy-less if his appeal is held to be untenable under Section 9 of the MEPS Act, 1977. The suspension of Respondent No.1 for six months could be termed as being temporary termination from service. He, therefore, submits that the impugned order is neither perverse nor erroneous and this petition deserves to be dismissed with costs.

6           The learned AGP appearing on behalf of Respondent No.2 submits that plain reading of Section 9 of the MEPS Act, 1977 would indicate that the order of suspension cannot be challenged before the School Tribunal. He, however, submits that if Respondent No.1 is

aggrieved by the said order of suspension, his remedy lies elsewhere.

7 I have considered the submissions of the learned Advocates for the respective sides as have been recorded herein above.

8 Section 9 of the MEPS Act, 1977 reads as under:-

“9. *Right of appeal to Tribunal to employees of private schools:—*

(1) *Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school, —*

*(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, and who is aggrieved, shall have a right of appeal and may appeal against any such order or suppression to the Tribunal constituted under section 8;]:*

*Provided that no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1<sup>st</sup> July 1976.*

(2) *Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:*

*Provided that, where such order was made before the appointed date, such appeal may be made*

*within sixty days from the said date.*

- (3) *Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.*
- (4) *Every appeal shall be accompanied by a fee of [five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.”*

9           It is not in dispute that any act of dismissal, removal, reduction in rank and any such act of the Employer which would fall within the scope of “otherwise termination” would be governed by Section 9 and as such, the said grievance could be voiced before the School Tribunal. It is also not in dispute that there is no judicial pronouncement by this Court which could be said to have laid down the law that the order of suspension either pending disciplinary proceeding or by way of punishment, would be covered by Section 9 of the MEPS Act, 1977.

10           From the impugned order passed by the School Tribunal, it appears that the School Tribunal has relied upon Rule 29 r/w Rule 31 of the MEPS Rules, 1981 while coming to the conclusion that the appeal is maintainable. There is no dispute that the Petitioner Management has conducted the disciplinary proceeding against Respondent No.1 in

accordance with Rules 36 and 37 of the MEPS Rules, 1981. Minor and major punishments are prescribed under the MEPS Act and Rules.

11           It is not the case of Respondent No.1 that he has been removed from service or has been reduced in rank or the act of the Employer would amount to otherwise termination of his services. Merely because the Rules provide punishment to be awarded to errant employees, the act of the Employer of suspending Respondent No.1 for six months, would not amount to temporary termination of the services of Respondent No.1 for six months.

12           In the light of the above, I find that the School Tribunal has misdirected itself while delivering the impugned order. The same is perverse and erroneous.

13           In the result, this petition is allowed. The impugned order of the School Tribunal dated 10.04.2015 is quashed and set aside. Application Exhibit-16 stands allowed and therefore, Appeal No.34/2014 pending before the School Tribunal is disposed of as being untenable under Section 9 of the MEPS Act, 1977.

14           Needless to state, Respondent No.1, who cannot be rendered

remedy-less, is at liberty to assail his order of suspension by availing of such remedy as may be available in law.

15           Rule is made absolute in the above terms.

*kps*

(RAVINDRA V. GHUGE, J.)