

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6925 OF 2016

1. Yogeshwari Shikshan Sanstha,
Through its Secretary,
Parli Road, Ambajogai,
District Beed.

2. Swami Ramanand Tirth College,
Arts and Commerce Jr. College,
Through its Principal,
Parli Road, Ambajogai,
District Beed.

..Petitioners

Versus

1. Sujata Prakash Ansarwadkar,
Age 43 years, Occ. Service
R/o Yogeshwari Vasahat,
Parli Naka, Ambajogai,
District Beed.

2. The Dy. Director of Education,
Station Road, Aurangabad.

..Respondents

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Advocate for Petitioners : Shri Milind M. Patil (Beedkar)

Advocate for Respondent 1 : Shri D.R. Jethliya

AGP for Respondent 2 : Shri P.N. Kutti

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 27, 2016

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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. The petitioners are aggrieved by the order dated 15.1.2016 delivered by the School Tribunal, Aurangabad, by which, the application preferred by the petitioners contending that Appeal No.20 of 2014 filed by respondent No.1 - widow is not maintainable, has been rejected and the appeal has been held to be maintainable under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short).

5. The issue raised by the petitioners in this petition is as to ***"Whether the widow of an employee can lodge an Appeal under Section 9 of the MEPS Act before the School Tribunal on the ground that the employee himself is not alive to challenge his removal from service?"***

6. The contentions of Shri Patil, learned Advocate for the petitioners can be summarized as under:-

(a) Prakash Ansarwadkar was the employee of the petitioner.

- (b) He had put in 18 years in service.
- (c) A departmental enquiry was conducted as per Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short) and upon him finding guilty, he was dismissed from service.
- (d) He was terminated by the management on 12.10.2009.
- (e) On 28.10.2009, the said employee committed suicide and is said to have blamed the management for his miseries.
- (f) Respondent No.1 widow of the employee has filed Appeal No.20 of 2014.
- (g) The prayers put forth by the widow indicate that the Tribunal is called upon to set aside the enquiry and the termination dated 12.10.2009.
- (h) The petitioner filed it's written statement opposing the Appeal.
- (i) An application was filed for objecting to the maintainability of the Appeal on the ground that the appellant (widow) is not an employee under Section 2(7) of the MEPS Act.
- (j) The appeal filed by the appellant is not tenable under Section 9 of the MEPS Act.
- (k) Since the appellant is not an employee, she could not

have instituted the Appeal, as an employee alone can file such an appeal.

(l) Reliance is placed upon the following judgments:-

(i) B. Premanand Vs. Mohan Koikal and others [AIR 2011 SC 1925] and

(ii) St. Ulai High School and another Vs. Devendraprasad Jagannath Singh and others [2007 (1) Mh.L.J. 597].

7. Shri Patil has strenuously canvassed his submissions on the basis of the definition of 'employee' and the language used in Section 9 to contend that the employee alone could prefer an appeal. The word 'an employee' is specifically used in Section 9 and which is defined under Section 2(7), thereby indicating that the intent of the legislature is to exclude any person other than an employee, notwithstanding whether any other person is an 'aggrieved person'. He, therefore, submits that respondent No.1 appellant can, at the most, be termed as being an 'aggrieved person', but she cannot fall within the meaning of 'employee' under Section 2(7) read with Section 9.

8. He draws my attention to Section 9 of the MEPS Act and Section 19 of the Administrative Tribunals Act, 1985 to contend that

under Section 19 "any aggrieved person" can file an Appeal or initiate proceedings, unlike Section 9, which does not permit any aggrieved person to lodge an appeal under the MEPS Act. He further submits that Section 11 of the MEPS Act provides for reliefs that could be granted only to an 'employee'. As such, the widow of the employee cannot be granted such reliefs.

9. He has then referred to paragraph No.9.2 of the judgment delivered by the learned Full Bench in St.Ulai case (*supra*), in support of his contention that the words, 'and who is aggrieved' have been considered and it has been held that these words do not create a separate head of challenge. Paragraph 9.2 reads as under:-

"9.2 One of the submissions urged before the Court is that in the group of words "and who is aggrieved", the "and" should be read as "or". So read, the submission is that an employee of a private school would have a comprehensive right to move the School Tribunal against all grievances and not merely those which fall under Clauses (a) and (b) of Sub-section (1) of Section 9. The submission cannot be accepted. Clauses (a) and (b) of Sub-section (1) of Section 9 define categories of action on the part of the managements which can be challenged in an appeal before the School Tribunal. The words "and who is aggrieved", do not create a separate head of challenge. Those words clarify that the intention of Legislature is to confer a right of appeal upon an employee of a private school who is aggrieved by the action of the management falling in the description contained in one of the categories referred to in

Clauses (a) and (b) of Sub-section (1). Following the judgment in Dhulabhai (supra), the provision contained in Section 12 of the Act conferring finality on the orders of the Tribunal would not exclude those cases where the provisions of the Act have not been complied with or, the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.”

10. Shri Patil then relies upon paragraph No.15 of the judgment delivered in Premanand's case (*supra*), which reads as under:-

“15. In M/s. Hiralal Ratanlal v. STO : AIR 1973 SC 1034, this Court observed:

In construing a statutory provision the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.” (emphasis supplied).

11. He, therefore, contends that while interpreting a statutory provision, the Court has to see as to what does the provision say and what is the intent of the legislature. He further submits that, had the appellant widow stepped into the shoes of her deceased husband,

after her husband had preferred the Appeal, the Tribunal could have considered her participation after determining whether such a person is or is not the legal representative under Order XXII Rule 5 of the Code of Civil Procedure. He, therefore, prays that the impugned order be quashed and set aside.

12. Shri Jethaliya, learned Advocate appearing on behalf of the appellant / widow submits that;

- (a) Her husband had rendered 18 years of service with the establishment.
- (b) False charges were levelled upon him.
- (c) The management subjected her husband to disciplinary proceedings and have terminated his services vindictively.
- (d) He committed suicide within fifteen days.
- (e) Criminal proceedings with regard to abetment to commit suicide are pending before the competent court for adjudication.
- (f) A permanent blot has been attached to the service tenure and reputation of the employee.
- (g) She is the legally wedded wife of the employee.
- (h) She succeeds in interest of the deceased and hence can

be termed as a successor in interest.

(i) The MEPS Act is a beneficial legislation and the death of the employee should not render the illegal act of the management, unassailable.

(j) The intent and object of the Act is to ensure that the employee must be in a position to challenge the injustice caused to him.

(k) If in tragic circumstances, an employee is not alive, his wife or a legal representative would be entitled to pose the challenge to the unlawful act committed by the employer.

(l) The definition of 'employee' under Section 2(7) should be legally construed to include a legal heir.

(m) The opening sentence under Section 2 would indicate that Section 2(7) is not to be given a contracted meaning.

(n) Reliance is placed upon the judgment of the learned Full Bench of this Court in the matter of Shikshan Prasarak Mandal and another Vs. Ramesh Bhimrao Narayankar and others [2016 (3) All M.R. 375].

(o) The learned Full Bench has considered in paragraphs 17, 18, 41 and 42 that the provisions of the MEPS Act have to be construed in such a manner that, they would provide the employees with security and stability, which includes his/her family.

(p) The opening words of Section 2 have been considered to

mean that they should be read subject to the qualification variously expressed and it is possible for the word to have a somewhat different meaning.

(q) Reliance is placed upon the judgment of the Central Administrative Tribunal, Jodhpur in the matter of Smt. Pushpa Devi Vs. Union of India and others - O.A.No.295 of 1996, decided on 17.2.2000.

(r) A narrow meaning, if given to the definition of 'employee' or Section 9 read with Section 11, would defeat the purpose of the Act.

(s) Reliance is placed upon the judgment of the Honourable Apex Court in the matter of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation [(1985) 4 SCC 71], to contend that the principles of statutory construction require that the words occurring in statutes are not to be given a limited meaning.

13. Having considered the submissions of the learned Advocates, I have gone through the impugned order and the judgments cited.

14. It is evident that the facts of this case are peculiar and such peculiarity cannot be visualized while drafting any enactment. The appellant is the widow of the employee, who has committed suicide within 15 days from the date of his stigmatic termination.

15. The vehement contention of the petitioner that since the appellant did not challenge his termination, it indicates that the deceased employee did not intend to question his termination, is fallacious. The peculiar facts indicate that after the termination of the employee, he must have been in misery and which drove him to take an extreme step of purportedly committing suicide within 15 days. It cannot, therefore, be accepted that he was in a stable state of mind so as to take a decision of challenging his termination. It also, therefore, has to be negated that it leads to a presumption that he did not intend to question his termination.

16. The preamble to the MEPS Act reads as under:-

“ An Act to regulate recruitment and conditions of service of employees in certain private schools.

WHEREAS, it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently;

AND WHEREAS, it is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the

Management and contribute their might for improving the standard of education;

AND WHEREAS, it is also necessary to make certain supplemental, incidental and consequential provisions; it is hereby enacted in the Twenty-eighth year of the Republic of India as follows;”

17. It requires no debate that when the legislators draft an enactment, it is not possible to visualize every possibility, much less, an unforeseen situation or sequence of events as like in this case. It cannot be expected that the definition of 'employee' under Section 2(7) was aimed at disqualifying a widow in such circumstances or that it was intended by the legislature to keep such a widow away from the litigation.

18. Such definitions appearing in different enactments are to be considered in the light of the opening sentence, “In this act, unless the context otherwise requires”.

In paragraph 41 of the Shikshan Prasarak Mandal's judgment (*supra*), while considering the effect of the above mentioned sentence, it was concluded by the learned Full Bench as under:-

“41. There is one more reason why we are unable to agree with the counsel propounding a contrary view. For every definition in any statute opens with the following words :

"In this Act, unless the context otherwise requires"

In a decision in Vanguard Fire and General Insurance Co. Ltd. Madras v. Fraser and Ross and another reported in : AIR 1960 SC 971, the Supreme Court had an occasion to construe such words. In paragraph 6 of this decision, this is what is held :

"6. The main basis of this contention is the definition of the word "insurer" in Section 2(9) of the Act. It is pointed out that that definition begins with the words "insurer means" and is therefore exhaustive. It may be accepted that generally the word "insurer" has been defined for the purposes of the Act to mean a person or body corporate etc. which is actually carrying on the business of insurance i.e. the business of effecting contracts of insurance of whatever kind they might be. But Section 2 begins with the words "in this Act, unless there is anything repugnant in the subject or context" and then come the various definition clauses of which (9) is one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes

generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word "insurer" as used in the Act would mean a person or body corporate actually carrying on the business of insurance, it may be that in certain sections the word may have a somewhat different meaning."

19. As such, the sentence, "In this Act, unless the context otherwise requires" will have to be interpreted in reference to the context in which a particular definition is being applied. Under the MEPS Act, though Section 2(7) defining "an employee" will ordinarily

mean "an employee". However, if the present context in which the definition is to be applied, it would require a somewhat different interpretation. The said definition will have to be understood in a sense which would give a broader meaning to the term 'employee'. The intent and object of the Act should not be defeated by interpreting the definition of 'employee' in a constricted manner.

20. The petitioners have based their submissions on the observations of the learned Full Bench in the St. Ulai judgment (*supra*). Paragraph 9.2, as is reproduced above, would indicate that the learned Full Bench was considering a case of an employee, who is aggrieved, and his *locus* to challenge such acts, that would fall under Section 9(1)(a) and (b). Section 9(1) and (2) read as under:-

“Section 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, ¹[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 supersession 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 1st 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."

21. While considering the above, the learned Full Bench concluded that the intent of the legislature is to confer a right of appeal upon an employee, who would be aggrieved by any of the two actions of the management. It requires no debate that the peculiar facts appearing in this case, were not before the learned Full Bench, inasmuch as, the learned Full Bench was not considering a case in which the actual employee was not alive and his legal representative or legal heir was exercising his right under Section 9. It is clear from paragraph No.9.2 in the St.Ulai case (supra) that the litigating sides had canvassed that the sentence, " and who is aggrieved" should be

read as "or who is aggrieved" so as to create a head of challenge, which would include other causes of action excluding the two set out in Section 9(1)(a) and (b) of the Act. The learned Full Bench rejected the said contention by concluding that the said words cannot be interpreted so as to create a different head of challenge and thus include all causes of action under Section 9.

22. The petitioners have further contended that an alternate remedy may be available to a widow. When confronted, it is submitted that the widow may approach the High Court. I do not find any merit in such submission since the institution at issue is a private school and the High Court would not have the jurisdiction to consider the challenge to the order of dismissal by preferring a Writ Petition under Article 226 of the Constitution of India. The submissions of the petitioner are aimed at frustrating the remedy available under Section 9 so as to oust the jurisdiction of the Tribunal.

23. If a legal heir / widow can step into the shoes of a deceased husband, who has instituted the Appeal, on the basis of being a successor in interest, such a widow could then also institute such an appeal when the deceased husband is not available for assailing the order of dismissal. It, therefore, needs to be considered that, in such circumstances and more so when the employee has passed away

within the limitation period, the successor in interest could pose a challenge to the purported injustice caused to a deceased employee, in the light of the ratio set out in paragraph 41 of the Shikshan Prasarak Mandal case (*supra*).

24. It is noteworthy that Section 11(2) empowers the Tribunal to issue directions to the management if the appeal is to be allowed. Sub-section (e) below Section 11(2) empowers the Tribunal to grant compensation where it is decided not to reinstate the employee or in any other appropriate case. This would mean and include any case wherein reinstatement is not possible. Similarly, under Section 11(2) (f), the Tribunal is empowered to mould the relief by having regard to the circumstances at issue.

25. In the case of Smt. Pushpa Devi (*supra*), reliance was placed on the judgments of the Honourable Supreme Court, in paragraph No.15 as under:-

" 15. In 1995 (2) SLR Page 335, Christina v. Management of Karnataka State Road Transport Corporation, it was held as under:-

"Locus standi--Right of widow to challenge the punishment awarded to her husband--Order of removal from service passed when the petitioner's husband was almost on his death bed--Since that order is being pressed into service against the

petitioner (his wife) she has every right to challenge the order in question--Held that order of removal stands modified to the extent that it will have to be held that the petitioner's husband was liable to the punishment to the extent of loss of all his emoluments and benefits for the entire period of his absence from duty--The order of removal from service to that extent is legally untenable and is liable to be set aside."

In the aforesaid ruling, rule propounded in AIR 1982 SC 1473 - People's Union for Democratic Rights and Ors. v. VOI and Ors., more specially known as ASIAD Workers' case was followed, and it was held therein that-

"Constitution of India, Articles 226, 32 - Locus Standi - Concept of- Espousal of cause of workmen engaged in Asiad Projects by a social organisation - Allegation of violation of various labour laws - Held, the organisation had locus standi to maintain writ petition."

Keeping the principles propounded in the aforesaid rulings in view, it can safely be concluded that the rights of the applicants are affected, therefore, she had a right to seek redressal of her grievance departmentally by filing an appeal before the appellate authority and on failure to get relief, she has a right to file this Original Application. Therefore, it would be grossly unjust to observe that such affected persons have no right to file appeal against the removal/ dismissal order. The applicant, who is the widow of the removed Railway servant, is claiming these benefits on the ground that removal order was never served on her husband and he continued to remain in service till his death, which we have

also found to be correct, therefore, her right to challenge the removal order in appeal cannot be denied. As such, the arguments on this point are required to be rejected."

26. In the case of Christina Vs. Management of KSRTC [1995 (2) SLR 335], the Karnataka High Court dealt with the right to challenge the punishment imposed by the Corporation in the backdrop of the death of the employee. Placing reliance upon the decision of the Honourable Supreme Court in the case of People's Union For Democratic Rights and others Vs. Union Of India & Others [AIR 1982 SC 1473] and in the case of S.P. Gupta vs President Of India And Ors [AIR 1982 SC 149], the Karnataka High Court concluded that the right of a widow to challenge an order of punishment passed shortly before the death of her late husband could hardly be questioned. It, therefore, concluded that the order of punishment issued when the employee was on his death bed, could rightly be challenged by the widow, after his death.

27. While considering the ratio in Christina (supra), I have considered the Conduct and Discipline Regulations introduced by the Home Department, State of Karanataka under Section 45 of the Road Transport corporations Act, 1950 (Central Act 64 of 1950). The definition of "Corporation Servant" under Section 2(c) reads as under:-

"2. Definitions:

In these Regulations, unless the context otherwise requires:-

- (a)
- (b)
- (c) *'Corporation Servant' means an Officer or servant of the corporation whose conditions of appointment and service can be determined by the Corporation by Regulations made under the Road Transport Corporation Act, 1950;*
- (d)"

28. Section 30 of the KSRTC Corporation Service (Conduct and Discipline) Regulations, 1971 provides that a "Corporation Servant" can prefer an appeal against all orders passed by the employer. Section 30 reads as under:-

"30. Orders against which appeal lies:- Subject to the provision of Regulation-29 Corporation Servant may prefer an appeal against all or any of the following orders, namely:-

- (i) *An order of suspension made or deemed to have been made under Regulation-21;*
- (ii) *An order imposing any of the penalties specified in Regulation-18 whether made by the Disciplinary Authority or by any Appellate Authority;*
- (iii) *An order enhancing any penalty imposing under Regulation-34.*

Explanation:- In this Regulation the expression

"Corporation Servant" includes a person who has ceased to be in the Corporation Service."

29. It is, therefore apparent that the definition of an "employee" under Section 2(7) is similar to the definition of a "Corporation Servant" under Section 2(c) and the right of an employee to file an appeal under Section 9 is similar to the right of a "Corporation Servant" to file an appeal under Section 30. In this backdrop, the conclusion of the Karnataka High Court in paragraph No.2 in the Christina's case (supra), reads as under:-

"2. This is an unusual case for more than one reason and therefore, the petitioner herself has anticipated the possibility of the respondents questioning her locus standi to challenge the order dated January 9, 1993. The petitioner has sought to rely on a Division Bench decision of the Calcutta High Court in the case of Neela Devi Rai and Others v. State of West Bengal and Others wherein, some of the similar cases the Calcutta High Court permitted the legal heir of a deceased employee to challenge a removal order. The Court in that instance had placed reliance on Bhagat Ram v. State of Himachal Pradesh and Ranjit Thakur v. Union of India and Others. It is true that the respondents have not seriously questioned the locus of the present petitioner to challenge the termination order passed against her late husband, but, the question will have to be gone into as a preliminary issue because if this Court is to consider that order or interfere with it, then the locus of the person challenging it will have to be determined. The law with regard to the question of

locus standi has now been considerably expanded and the grounds on which a writ Court will shut out a party are extremely restricted such as in instances where the petitioner has no nexus with the cause of action or where it is mischievous, frivolous or motivated. Particularly after the Asiad worker's case and the decision of the Supreme Court in the Judge's case the right of a widow to challenge an order of punishment passed shortly before the death of her late husband can hardly be questioned. In the present instance, the order was passed where the petitioner's husband was almost on his death bed and since that order is being pressed into service against the present petitioner, to my mind, she has every right to challenge the order in question. More so, the challenge in the present case proceeds on a pure point of law." (Emphasis supplied).

30. In the present case, the consequences of the dismissal of the deceased employee, would surely affect his widow and his family. The entire family would suffer the consequences of his dismissal, which especially, would cause grave financial losses to his family, besides ignominy. When the rights of his widow and minor children are affected, it would certainly be unjust to conclude that his widow can not assail his dismissal.

31. Considering the intent and object of the Act and the unforeseen circumstances emerging in a case as like the one in hand, I do not find that the widow of the employee could be precluded

from posing a challenge to the stigmatic termination of her husband, who is not alive to take up the challenge. The impugned order of the School Tribunal, therefore, cannot be branded as being perverse or erroneous.

32. This petition being devoid of merits is, therefore, dismissed.

33. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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