

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9328 OF 2016

1. Janseva Sevabhavi Sanstha,
Ghatsavli, Tq. and Dist.Beed,
Through its Secretary,
Chandrakant S/o Shivajirao Phad,
Age-31 years, Occu-Service,
R/o Ghatsavli, Tq. and Dist. Beed,
2. Janseva Sevabhavi Sanstha,
Ghatsavli, Tq. and Dist.Beed,
Through its President,
Shakuntala W/o Shivajirao Phad,
Age-55 years, Occu-Household,
R/o Ghatsavli, Tq. And Dist.Beed – PETITIONERS

VERSUS

1. Dhananjay S/o Dhondiram Phad,
Age-35 years, Occu-Nil,
R/o Ghatsavli, Tq. And Dist.Beed,
2. The Education Officer (Secondary),
Zilla Parishad, Beed. – RESPONDENTS

WITH
WRIT PETITION NO.9332 of 2016

1. Janseva Sevabhavi Sanstha,
Ghatsavli, Tq. and Dist.Beed,
Through its Secretary,
Chandrakant S/o Shivajirao Phad,
Age-31 years, Occu-Service,
R/o Ghatsavli, Tq. and Dist. Beed,
2. Janseva Sevabhavi Sanstha,
Ghatsavli, Tq. and Dist.Beed,
Through its President,
Shakuntala W/o Shivajirao Phad,
Age-55 years, Occu-Household,

R/o Ghatsavli, Tq. And Dist.Beed – PETITIONERS

VERSUS

1. Shankar S/o Nivrutti Tambade,
Age-40 years, Occu-Nil,
R/o C/o B.G.Tambde,
Near Canada Bank,
Dhanora Road, Beed,
2. The Education Officer (Secondary),
Zilla Parishad, Beed. – RESPONDENTS

Mr.S.S.Jadhavar, Advocate for the petitioners.
Mr.R.I.Wakade, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/09/2016

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 04/08/2016 and 22/08/2016 passed by the School Tribunal, Aurangabad in Misc.Appl.No.29/2015 and 28/2015 respectively. Respondent No.1 in both these petitions are identically placed employees.

3. Earlier, the School Tribunal has delivered its judgment dated 24/04/2015 in Appeal No.26/2012 and 27/2012 respectively by

which respondent No.1 in both these petitions have been granted reinstatement with continuity and 30% back wages. Their terminations were set aside. The petitioner/Management in both these petitions had approached this Court in WP No.2775/2016 and 12568/2015 respectively for challenging the judgment of the Tribunal in favour of these two employees. By judgment dated 03/08/2016, this Court dismissed both the petitions and sustained the judgments of the Tribunal.

4. Both the respondents/employees have preferred their Misc. Application Nos.29/2015 and 28/2015 seeking execution of the judgment of the Tribunal u/s 13 of the M.E.P.S.Act. By the first order dated 04/08/2016, the Tribunal appointed a practicing advocate as the Court Commissioner to oversee the joining of the respondents/employees in service with the Management. The petitioners moved an application below Exh.24 and 25 respectively praying for recalling of the order dated 04/08/2016 as a Court Commissioner can not be appointed by the School Tribunal. By the impugned order dated 22/08/2016, both these applications have been rejected.

5. Mr.Jadhavar, learned Advocate for the petitioner/Management

has strenuously criticized the impugned orders by raising two issues. Firstly, that since Section 13 of the MEPS Act is silent as to which Authority should entertain an application for execution, the School Tribunal would not have jurisdiction since the punishment prescribed u/s 13 can be awarded only by a Court which is vested with jurisdiction under the Code of Criminal Procedure. Secondly, since the misc. applications for execution were not tenable, the School Tribunal could not have exercised its jurisdiction and should have returned the files to the employees. Alternatively, it could have transferred the files to the learned Magistrate of the Criminal Court.

6. Mr.Jadhavar has placed reliance upon the judgment of the learned Division Bench of this Court in the matter of Shaikh Badarunnisa Begum Shaikh Abbas Versus State of Maharashtra and others, [2004(2) Bom.C.R. (Cri.) 472 = [2004(2) Mh.L.J.407] and the judgment of the learned Single Judge in the matter of Shriprakash Chandmal Bora and another Vs. Mutyal Vilas Rambau [2011 (suppl) Bom.C.R. 563].

7. Mr.Wakade, learned Advocate appearing on behalf of both the respondents/employees, submits that the order of the Tribunal dated 04/08/2016 has already been complied with and fully implemented.

The Court Commissioner has submitted a report that the Management declined to permit the respondents/employees from joining duties on the pretext that its' two petitions, challenging the judgment of the Tribunal u/s 9 of the MEPS Act, were pending. He, therefore, submits that it is undisputed that the petitioner /Management declined to allow the employees to report for duties.

8. I find from the judgment of this Court dated 03/08/2016 that both the petitions filed by the petitioner/Management were dismissed on the said date. The order of the Tribunal allowing appointment of a Court Commissioner was passed on 04/08/2016 which is a day after the dismissal of the petitions filed by the Management.

9. Even in these proceedings, learned Advocate for the petitioners submits on instructions that since there is a possibility of an amicable settlement between the parties, the respondents/employees can not be reinstated without the terms of settlement, being placed on record.

10. Mr.Wakade submits on instructions that only 30% back wages have been granted by the Tribunal. The employees had put forth a proposal that they should be reinstated forthwith and their proposals

for regularization and permanent approval be forwarded to the Education Officer. After the permanent approval is accorded, the respondents/employees would waive their back wages. Further condition was that they should be paid their regular salaries at par with comparable employees. He submits that owing to these conditions, the Management did not settle the matter and the employees apprehend that the Management would be vindictive.

11. In so far as the first contention of Mr.Jadhavar is concerned, the said issue is no longer *res-integra*. Paragraph Nos.10,11,12 of the Shaikh Badarunnisa judgment (supra) reads as under :-

“10. It can, therefore, be concluded that the Tribunal is a Civil Court within the meaning of the Code and the orders passed by the Tribunal are executable and can be executed by taking recourse to the provisions of the Code relating to the execution of a decree. A person in whose favour an order of reinstatement and payment of backwages is made can approach the Tribunal for execution of that order. It will be open to a person in whose favour an order of reinstatement and back wages is passed to approach the State Government requesting compliance of the said order. Since, it is possible for an employee to get the order executed by following the procedure laid down by this Court in Vilas Deshmukh’s case (supra), unless that procedure is followed, this Court will not entertain a contempt petition filed by such an employee against the management. However if the State

Government does not follow the procedure laid down by this Court in Vilas Deshmukh's case (*supra*) without any just or sufficient cause, this Court may, in a given case, entertain a petition invoking provisions of the [Contempt of Courts Act](#) against the management. However, prosecution under [Section 13](#) is an independent provision and an employee can maintain a complaint against an erring management in addition to his adopting any other proceedings. Such a complaint will have to be entertained by the concerned Magistrate.

11. Now the question, in this case, will be whether the complaint which is not pressed by the petitioner can be now entertained. It is pertinent to note that in this case, the complaint is not dismissed. The learned Magistrate has only directed that the complaint be returned to the petitioner as he has not pressed it. Therefore, [Section 203](#) of the Code of Criminal Procedure will not be attracted to this case. At this stage, it is also necessary to have a look at [Section 26\(b\)](#) of the Code of Criminal Procedure. [Section 26\(b\)](#) reads thus:

"26. Subject to the other provisions of this Code. --

(a) X X X

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by -(i) the High Court, or
(ii) any other Court by which such offence is shown in the First Schedule to be triable."

12. Since it is not specifically stated as to in which Court a complaint under *Section 13* of the said Act should be filed, *First Schedule of the Criminal Procedure Code* will have to be referred to. *Section 13* provides for imprisonment for less than three years or fine. Therefore, as per the First Schedule, such a complaint can be entertained by any Magistrate. Therefore, the employee can lodge a formal complaint before a Magistrate of competent jurisdiction.”

12. It is, therefore, clear that this Court has ruled that u/s 13, the original appellant may either pray for simplicitor execution of the judgment of the Tribunal or may seek imposition of punishment u/s

13. Section 13 of the M.E.P.S. Act reads as under :-

“13. Penalty to Management for failure to comply with Tribunal's directions :

(1) If the Management fails, without any reasonable excuse to comply with any direction issued by the Tribunal under **Section 11** or any order issued by the Director under Clause (a) of Sub-**section (1)** or Sub-**section (4)** of **Section 4A** within the period specified in such direction, or as the case may be, under Sub-**section (5)** of **Section 4A** or within such further period as may be allowed by the Tribunal or Director, as the case may be, the Management shall, on conviction, be punished,

(a) for the first offence, with imprisonment for a term which may extend to fifteen days or with fine which may extend to fifty thousand rupees or with both: Provided that, in the absence of

special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than ten thousand rupees and

(b) for the second and subsequent offences, with imprisonment for a term which may extend to fifteen days or with fine which may extend to seventy five thousand rupees, or with both :

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than twenty thousand rupees.

*(2) (a) Where the Management committing an offence under this **section** is a society, every person, who at the time the offence was committed, was in charge of, and was responsible to the society, for the conduct of the affairs of the society, as well as the society, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;*

*Provided that, nothing contained in this Sub-**section** shall render any person liable to the punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.*

(b) Notwithstanding anything contained in Clause (a) where the offence has been committed by a society and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any president, chairman, secretary, member, Head or manager or other officer or servant of the society, such president, chairman, secretary, member, head or manager or other officer or servant concerned

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”

13. The learned Division Bench in the case of Shaikh Badarunnisa (supra) has relied upon the judgment delivered in the matter of Vilas Shankarrao Deshmukh Vs. S.A.Ghode, Principal, Navprabhat Vidya Mandir and Junior College, Khadegaon [2001(1) Mh.L.J.261]. The learned Single Judge of this Court in Shriprakash Chandmal Bora (supra) has observed in paragraph No.6 and 9 as under :-

“6. In (Mohammad Salam Anamul Haque Vs. S.A.Azmi and others) reported in 2001 (Supp.2) Bom.C.R. 37 : 2000(III) C.L.R. 287, this Court has taken a view that for breach of an order of the School Tribunal, direct contempt petition in the High Court cannot be filed but School Tribunal is empowered to execute the order. It was further held that the order of the School Tribunal is like an execution of a decree passed in his favour under Order 21, Rule 10 of Code of Civil Procedure. The learned Counsel for the respondents 3 and 4 relying upon another judgment of this Court rendered in (V.S.Deshmukh Vs. S.A.Ghode) reported in 2001(2) Bom.C.R. 116 (N.B.) : 2001(1) Mh.L.J. 261 contended that School Tribunal has no jurisdiction of imposing a penalty which can be imposed only by a Competent Court of criminal jurisdiction. In the said judgment a Single Judge has taken the view that the forum of filing of Complaint under section 13 of the M.E.P.S.Act, is a Criminal Court of competent jurisdiction. At the first blush there may appear to be conflict between views taken

in the aforesaid judgments. After careful analysis, I am of the opinion that there is no conflict between the two judgments ; under section 13 aggrieved teacher has two remedies (1) he can file a criminal complaint for punishment and (2) he can file a execution petition. If he prays for punishment, then he has to go to the Criminal Court, but if he wants to simply execute the order then as held in the case of Mohd. Salam Anamal Haque (supra) he can file the execution petition before the School Tribunal. Directing the person to pay a penalty is one of the methods of execution. For example when in execution of a money decree, Civil Court orders detention of a judgment debtor in a civil prison, the Court is not inflicting a punishment but is executing a decree. Viewed thus, the order of payment of Rs.5000/- made by the School Tribunal can be construed as an order in execution of its previous order.

9. It is made clear that the remedy of filing of application of execution order passed by the School Tribunal is different than invoking Section 13 of the M.E.P.S.Act for punishment. We need to respect to the provisions, as well as, the procedure prescribed under the M.E.P.S.Act for execution, as well as, for punishment if any, so provided separately.”

14. The contention of Mr.Jadhavar, therefore, deserves to be rejected in the light of the settled position in law and as such, the execution proceeding u/s 13, seeking simplicitor execution of the judgment of the Tribunal is maintainable as the reliefs claimed are of

civil nature and the Tribunal would therefore be exercising jurisdiction of the Civil Court. Consequentially, the second submission of Mr.Jadhavar also stands rejected as there is no necessity in such circumstances for the Tribunal to return the Misc. Applications to the respondents.

15. In so far as the jurisdiction of the Tribunal to appoint a Court Commissioner for executing its judgment is concerned, there can be no dispute that the Tribunal cannot abdicate its powers and vest the same in a Court Commissioner to ensure the execution of its judgment. In the impugned orders, I do not find that the School Tribunal has abdicated its powers in favour of the Court Commissioner. Though the Tribunal has observed that the Court Commissioner is directed to reinstate the petitioner, I find that the said construction of the sentence is not appropriately worded. Similarly, the Court Commissioner could not have been directed to intimate the concerned Police Station that he was proceeding to get the order of the Tribunal implemented. Nevertheless, this issue need not be dealt with since the petitioner has declined to reinstate the respondents / employees and the said report is already placed on record.

16. In the light of the peculiar facts above, both these petitions are disposed of by recording that the direction of the School Tribunal in permitting the Court Commissioner to carry out the work of reinstatement with advanced intimation to the concerned Police Station, could not have been issued. It needs mention that when the Education Officer is a party to the proceedings, the Tribunal should avoid the appointment of a Court commissioner and instead should take the assistance of the Education Officer to find out whether the Management is implementing the judgment of the Tribunal in letters and spirit. Subsequent to the said exercise, the Tribunal could then proceed to decide the misc. applications u/s 13.

17. As such, the School Tribunal shall, therefore, proceed with both the appeals on their merits and by considering the fact that the petitioner/Management as on date has not shown any inclination to implement the judgment of the Tribunal.

18. Rule is discharged.

(RAVINDRA V. GHUGE, J.)