

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

WRIT PETITION NO. 10000 OF 2015

Pandurang Ganpati Bachapalle ..PETITIONER

VERSUS

Shivshakti Samaj Seva Mandal and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 10210 OF 2015

Tajoddin Raheman Maniyar ..PETITIONER

VERSUS

Shivshakti Samaj Seva Mandal ..RESPONDENTS

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Mr. V.D. Gunale, Advocate for petitioner.

Mr. P.D. Suryawanshi, Advocate for Respondent No.3.

Mr. R.P. Adgaonkar, Advocate for Respondent Nos.1 and 2.

Mr. K.B. Jadhavar, Advocate for Respondent No.3 in WP 10210/15.

Mr. P.G. Borade, AGP for Respondent No.4.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th MARCH, 2016

ORDER :

1. The petitioner is aggrieved by the impugned order of the School Tribunal, Aurangabad dated 06.08.2015 by which the appeals filed by these two petitioners against the same respondent -management have not been entertained by the School Tribunal under Section 9 of the M.E.P.S. Act, 1977 considering the law that the respondent-education

institution is not a private school as is defined under Section 2(20) of the M.E.P.S. Act.

2. The learned Counsels have appeared for the respondents. There appears to be no dispute on the count that the respondent-Ashram School is not a private school. Respondent Nos.3 and 4 – the Social Welfare Department have supervision and control over the said school.

3. Mr. Gunale, learned Counsel for the petitioner-employees makes a grievance that the learned Division Bench of this Court in Writ Petition No. 4664/2014 filed by the first petitioner herein had considered the objection of the learned Counsel for the respondent that an alternate remedy was available to the petitioners in the light of the law laid down in the case of *Latika Rajaram Mane Vs. State of Maharashtra and Others, 2013 BCI 211*. He submits that he had indeed preferred an appeal before Respondent No.4 herein on 05.05.2014 and since they orally expressed their reluctance to entertain the appeal, he had rushed to this Court.

4. With the assistance of the learned Counsel for the respective sides, I have gone through the judgment delivered by the learned

Division Bench in the case of Latika Rajaram Mane (supra) as well as the judgment delivered by the learned Full Bench of this Court in the case of ***Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati Shikshan Prasarak Mandal, 2002(3) Mh.L.J. 659***. Paragraph Nos.11 and 12 of the Latika Rajaram Mane's judgment (supra) do not support the contentions of Mr. Gunale. The learned Division Bench has considered the effect of the introduction of the Right of Children to Free and Compulsory Education Act, 2009 and the rules that were to be framed thereunder. It is now stated that the rules have been framed under the Right of Children to Free and Compulsory Education Act, 2009 and employees of private schools even working in the primary section are now able to prefer an appeal under Section 9 of the M.E.P.S. Act.

5. The learned Full Bench in the case of Suryakant Sheshrao Panchal (supra) has concluded that the Ashram Schools running classes from 1st to 7th standard or at any intermediary level would not require recognition from any of the authorities as is specified in Section 2(21) of the Act. As such, such schools are not private schools within the meaning of Section 2(20) of the Act. It has therefore been concluded that an employee working in an Ashram School which is a secondary and higher secondary Ashram School, has a right to approach to the School Tribunal

by filing an appeal under Section 9 of the Act. The remedy of such appeal is however not available to the employee working in the basic/primary Ashram School or an Ashram School up to the primary level.

6. For the sake of clarity, the observations of the learned Full Bench in paragraph nos. 16 to 21 are reproduced as under:-

“16. When it comes to an Ashram school which is only a primary school, it does not satisfy the definition of "private school" within the meaning of Section 2(20) of the Act. However, if an Ashram school is running classes from 1st to 10th standard obviously it would have recognition from the Divisional Board and thus, would fall within the ambit of the term "private school". On the other hand, Ashram school running classes from 1st to 7th standard or any intermediary level, would not require recognition from any of the authorities as specified in Section 2(21) of the M.E.P.S. Act and therefore, it would not be a "private school" within the meaning of the said Act. Resultantly, the employees working under the Ashram Schools which are only primary level cannot maintain an appeal under Section 9 of the M.E.P.S. Act. However, an employee working in an Ashram school which is a secondary and higher secondary Ashram school has a right to approach the School Tribunal by filing an appeal under Section 9 of the Act against an order of

punishment/termination of service or for redressal of grievances enlisted in the said section as they come within the ambit of the term employee as defined under Section 2(7) of the said Act.

17. *We now come to the Ashram Schools Code as formulated by the State Government in the year 2001. It is well established in law that the provisions of a statute cannot be amended by administrative orders, circulars or Codes. The provisions of Section 9 of the M.E.P.S. Act state that notwithstanding anything contained in any other law or contract for the time being in force any employee in a private school 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 who is superseded by the management while making an appointment to any post by promotion shall have a right of an appeal and may appeal against any such order or supersession to the Tribunal constituted under Section 8 of the said Act, When a statute has provided a remedy to an employee in a private school, such a remedy cannot be extended to an employee in any school and the meaning of the terms 'employee' and 'private school' cannot be altered or amended by formulating a Code.*

18. *We have already held above that a secondary or higher secondary Ashram School satisfies the definition of the term "private school" within the meaning of Section 2(20) of the M.E.P.S. Act and therefore, any employee of such a school*

has a remedy of an appeal under Section 9 of the said Act. However, when such a remedy is not available to an employee working in a basic Ashram school or an Ashram school upto primary level under the provisions of Section 9 of the M.E.P.S. Act, the State Government cannot provide for such a remedy by formulating a Code. The provisions of a statute cannot be amended or deemed to be amended by an administrative order or circular or a code and therefore, if the State Government was convinced that the employees working in basic Ashram schools or primary Ashram schools ought to be provided that remedy of an appeal under Section 9 of the M.E.P.S. Act it could do so only by amending the relevant provisions of the said Act so as to make it applicable to an employee in any school. This has not yet been done by the Legislature. What is required to be done by the Legislature cannot be done by the State Government by issuing administrative orders or circulars or by formulating a Code. In this regard we may usefully refer to a decision of the Supreme Court in [Commissioner of Income Tax v. Sirpur Paper Mills](#), . We, therefore, hold that the remedy of an appeal provided under the Code is not available to the employees working in the basic/ primary Ashram schools.

19. In Letters Patent Appeal Nos. 111 and 112 of 2001, a Division Bench of this Court has already noted that the employees working in the basic Ashram schools have been provided with a remedy of filing an appeal before the Deputy Director/ Commissioner of Tribal Development. When such a

remedy is available there was no reason for the State Government to formulate' a Code which virtually amounts to amending the provisions of Sections 2 and 9 of the Act.

20. To conclude, we answer the reference as under:

(a) There is no controversy between the views enunciated by the respective Division Benches in Writ Petition No. 2919 of 1991 and Letters Patent Appeal No. 293 of 1999.

(b) Secondary or Higher Secondary Ashram Schools or Blind Schools are "private schools" within the meaning of Section 2(20) of the M.E.P.S. Act and any employee of such a school has a remedy of an appeal under Section 9 of the said Act.

(c) The Ashram School Code providing for remedy of an appeal to the employees working in the basic/primary Ashram Schools is contrary to the provisions of Section 9 of the Act and to that extent same is hereby held to be invalid. It is declared that an employee working in a primary Ashram school or any other school which does not fall within the ambit of the term "private school" cannot approach the School Tribunal under Section 9 of the M.E.P.S. Act.

21. The petitioner who was employed as an untrained teacher in an Ashram School and whose appointment was approved by the District Social Welfare Officer vide order dated 20-11-1995, was subsequently given fresh appointment orders. Those appointment orders were also approved by the same authority. He acquired D.Ed, qualification in 1998 and came to be employed as an

Assistant Teacher in the primary/basic Ashram school by name Vidyadhan Ashram School at Ghatangri. The said school has not been recognised by any authority specified under Section 2(21) of the Act and it has been recognised by the Director of Social Welfare. It is not in dispute that he was removed from service by an order dated 16-3-1998 and he challenged the said order in Appeal No. 57 of 1998 before the School Tribunal. By the impugned Judgment and order dated 11-2-1999 the appeal was dismissed by the learned Presiding Officer on the ground that it was not maintainable under Section 9 of the M.E.P.S. Act. This view taken by the Tribunal is in keeping with the legal position which we have clarified on the reference decided by us. The petition, therefore, must fail.”

7. It is thus settled that secondary and/or higher secondary Ashram Schools or Blind Schools are private schools within the meaning of Section 2(20) and the employees working in such schools have a remedy under Section 9 of the Act.

8. In the light of the above, since the petitioners are working in primary Ashram Schools, they have a remedy to approach Respondent No.4 by filing an appeal.

9. Therefore, both these petitions are disposed off with liberty to the petitioners to prefer a fresh appeal with regard to the cause of action of termination. The time spent by the petitioners in prosecuting the appeal before the School Tribunal under Section 9 and in this Court in these two petitions shall be a good ground for condonation of delay.

10. In the event the petitioners file their appeals within four weeks from today, the pendency of the appeals before the School Tribunal and these petitions shall be taken into account by Respondent No.4 while considering the application for condonation of delay. Respondent No.4 may consider the date of the cause of action and may endeavor to decide the appeals filed by these petitioners as expeditiously as possible.

(RAVINDRA V. GHUGE, J.)