

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CIVIL APPELLATE JURISDICTION***  
**WRIT PETITION NO. 2190 OF 2015**

**Gramonnati Mandal & Anr.**

**..... Petitioners**

**VERSUS**

**Pandurang Soma Kadale & Ors.**

**..... Respondents**

Mr.Subhash Langote, i/b. Mr.V.A.Madane for the Petitioners.

Mr.Satish M.Vakhare, i/b. Mr.Ravi Shinde for Respondent No.1.

Mr.Janardhan Madane for Respondent No.2.

Mr.A.D.Kango, A.G.P. for Respondent No.3/State.

**CORAM : R.D. DHANUKA, J.**

**DATED : 14<sup>th</sup> MARCH, 2016**

**P.C.**

By this petition filed under Article 226 of the Constitution of India, the petitioner (original respondent) seeks to impugn the order passed by the learned Presiding Officer, School Tribunal, Pune on 2<sup>nd</sup> June, 2015 rejecting the application of the petitioner to frame the preliminary issue about maintainability of the appeal filed by the respondent no.1 (original appellant).

2. There is no dispute that the respondent no.1 had filed an appeal under section 9 of the Maharashtra Employees' of Private School (Condition of Service) Regulation Act, 1977 and also had filed an application for condonation of delay. When the application for condonation of delay was substantially heard by the learned Presiding Officer of the School Tribunal, at that stage the petitioner herein raised an issue of jurisdiction and prayed for framing a preliminary issue of maintainability of the appeal filed by the respondent no.1 and to decide the same

before deciding the said application for condonation of delay.

3. By an order dated 2<sup>nd</sup> June, 2015 passed by the Presiding Officer, School Tribunal, the said application of the petitioner herein to frame the preliminary issue before deciding the application for condonation of delay is rejected.

4. Mr.Langote, learned counsel appearing for the petitioner submits that the learned Presiding Officer of the School Tribunal ought to have framed the preliminary issue of maintainability of appeal under section 9 first even before deciding the application for condonation of delay. He submits that there was no supersession of the respondent no.1 as alleged by him in the appeal filed before the School Tribunal and thus the said appeal itself was not maintainable under section 9 of the MEPS Act, 1977. He submits that if the Tribunal would have come to the conclusion that the respondent no.1 was not superseded, the tribunal would have dismissed the appeal filed by the respondent no.1 as not maintainable under section 9 of MEPS Act, 1977.

5. Learned counsel placed reliance on the order passed by the School Tribunal Pune in Appeal No.44 of 2014 dated 18<sup>th</sup> September, 2015. He submits that in the similar facts, the Presiding Officer of School Tribunal Pune had framed the preliminary issue on the maintainability of appeal under section 9 and has dismissed the appeal for want of jurisdiction.

6. Learned counsel for the respondent no.1 on the other hand submits that the application made by the petitioner herein for framing a preliminary issue at a belated stage itself was with a view of somehow delay the outcome of the appeal filed by the respondent no.1 before the School Tribunal, Pune. He submits that it is averred by the respondent no.1 in the appeal filed before the School Tribunal

that the respondent no.1 was superseded appointing respondent no.2 by the petitioner. He submits that if an employee in a private school is superseded by the management while making any post, appeal is maintainable under section 9(1) (b) of the MEPS Act, 1977. He submits that in any event the tribunal has to decide the matter in accordance with the averments made in the appeal memo filed under section 9 which according to him clearly indicates that the respondent no.1 was superseded by respondent no.2 by making her appointment by the petitioner. He submits that the issue of jurisdiction can be decided by the tribunal alongwith other issues and not at the threshold when the tribunal was hearing the application for condonation of delay in filing appeal filed by the respondent no.1.

7. Learned counsel placed reliance on the judgment of this court in case of ***Sadhana J.Jadhav vs. Pratibha Patil Mahila Mahamandal***, 2013(1) Bom.C.R.269 and in particular paragraph 12. It is submitted that the question as to whether the respondent no.1 has been superseded by the petitioner is a mixed question of fact and law and thus cannot be decided as a preliminary issue.

8. There is no dispute that the respondent no.1 has averred in the appeal filed under section 9 of the MEPS Act, 1977 before the School Tribunal that the respondent no.1 has been superseded by the petitioner no.1 by making an appointment of respondent no.2. In my view, the issue of jurisdiction has to be decided on the basis of the averments made in the appeal and not on the basis what is averred in the written statement.

9. A perusal of the order passed by the Presiding Officer of the School Tribunal Pune on 2<sup>nd</sup> June, 2015 indicates that the learned Presiding Officer has rejected the application of the petitioner herein for framing the preliminary issue of

maintainability of the appeal before deciding the application for condonation of delay filed by the respondent no.1. The learned School Tribunal has held that the matter was substantially heard on the application for condonation of delay and thereafter the petitioner herein made a request for framing a preliminary issue of jurisdiction. The learned Presiding Officer of the School Tribunal has rendered various reasons while rejecting the application.

10. In my view, the Presiding Officer has rightly not entertained the application of the petitioner for deciding the issue of framing preliminary issue of jurisdiction at the stage of hearing of the application for condonation of delay. The matter was subsequently argued by the parties before the Presiding Officer, School Tribunal, Pune on application for condonation of delay. The School Tribunal has recorded reasons while dismissing the said application which reasons in my view do not suffer from any infirmity.

11. It is however made clear that after disposal of the application for condonation of delay, if any application is made by the petitioner raising an issue of maintainability of the appeal under section 9 of the MEPS Act, it would be for the School Tribunal to decide whether such issue should be framed as a preliminary issue or not. If the School Tribunal comes to the conclusion that in the facts of this case, the issue as to whether the respondent no.1 was superseded by the petitioner or not would require evidence and such issue is a mixed question of fact and law, it would be for the School Tribunal to take a view whether such issue can be decided alongwith other issues.

12. Insofar as judgment of this court in case of **Sadhana J.Jadhav** (supra) relied upon by the learned counsel for the respondent no.1 is concerned, in my view the

said judgment of this court would assist the case of the respondent no.1.

13. Insofar as reliance placed on the order dated 18<sup>th</sup> September, 2015 passed by the School Tribunal in Appeal No.44 of 2014 by the learned counsel for the petitioner is concerned, the said order passed by the School Tribunal is neither binding on this court nor the said order discloses any reasons as to why the preliminary issues on the maintainability of the appeal under section 9 was framed by the School Tribunal. Reliance thus placed on the said order passed by the School Tribunal by the learned counsel for the petitioner is misplaced.

14. School Tribunal shall make an endeavour to decide the matter expeditiously. None of the parties shall take any unnecessary adjournments before the School Tribunal. Writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

**[R.D. DHANUKA, J.]**