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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3168 OF 2002

The Secretary, Amarjyoti Education Society & Anr. ...Petitioners
V/s.
Ramakant R. Dube & Anr. ...Respondents

Mr.Rajesh Datar for the Petitioners.
Mr.Sunil Dighe for the Respondent No.1.
Ms.Aparna Vhatkar, A.G.P. for the Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 13TH JUNE, 2016.

P.C. :-

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have impugned the order and judgment dated 18th April, 2002 passed by the Presiding Officer, New Mumbai allowing the appeal filed by the respondent no.1 under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "MEPS Act"). Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner no.1 society was running Amarjyoti Vidya Mandir High School situated at Bhayander. It is the case of the petitioners that on 13th July, 1993, the respondent no.1 made an application to the Secretary of the petitioner no.1 society for the appointment as driver in the petitioner no.1 society. On 7th October,

1993, the respondent no.1 was appointed as peon in the petitioner no.2 school for temporary period of seven months ending on April, 1994. It is the case of the petitioners that it was specifically mentioned in the appointment letter that the services of the respondent no.1 would be transferred to the petitioner no.1 society as a peon cum driver. On 30th March, 1994, the respondent no.1 was informed that the appointment as a peon in the school would stand terminated with effect from 30th April, 1994.

3. It is the case of the petitioners that on 13th June, 1994, the respondent no.1 was appointed as driver cum peon in the petitioner no.1 society and since then he started signing the muster maintained by the petitioner no.1 society. It is the case of the petitioners that the respondent no.1 paid salary from the office of the petitioner no.1 society. It is the case of the petitioners that on 12th June, 1995, the respondent no.1 was again appointed as driver cum peon in the petitioner no.1 society with effect from 30th June, 1995. The respondent no.1 however, repeatedly remained absent in the month of June and July, 1995. It is the case of the petitioners that on 25th June, 1995, the petitioner no.1 society warned the respondent no.1 about the alleged misconduct.

4. In the month of July, 1995, the respondent no.1 filed an appeal before the school tribunal *inter-alia* praying for reinstatement with full back wages and other benefits. In the appeal memo, filed before the school tribunal, the respondent no.1 alleged that there was oral termination effected by the school. In the written statement filed before the school tribunal, it was contended by the petitioner no.1 society that the respondent no.1 was never an employee of the

school but was in the employment of the petitioner no.1 society and thus the appeal filed by the respondent no.1 under the provisions of the MEPS Act was not maintainable. The respondent no.1 denied the contentions of maintainability of the said appeal on the ground that he was employed in the school and thus the provisions of the MEPS Act were applicable to him and the appeal was thus maintainable. The school tribunal allowed the said appeal on 11th September, 1996 with an order of reinstatement. The said order of the school tribunal was impugned by the petitioners by filing a Writ Petition No.5863 of 1996 in this Court.

5. By an order dated 2nd October, 1996, this Court allowed the said writ petition and remanded the matter back to the school tribunal with a direction to decide whether the respondent no.1 was an employee within the meaning of the provisions of the MEPS Act and whether the school tribunal had jurisdiction to entertain the said appeal. On 16th April, 1998, the school tribunal disposed of the said appeal without hearing the parties and directed reinstatement of the respondent no.1. The petitioners once again challenged the said order by filing a writ petition (2975 of 1998) in this Court on 31st July, 1998. This Court allowed the said writ petition and remanded the matter back to the school tribunal for deciding the matter afresh. On 20th November, 1998, the respondent no.2 tribunal dismissed the said appeal filed by the respondent no.1. The said order of the school tribunal dated 20th November, 1998 came to be impugned by the respondent no.1 by filing Writ Petition No.4904 of 1999. By an order dated 7th October, 1999, this Court allowed the said writ petition filed by the respondent no.1 and remanded the matter back to the school tribunal.

6. On 18th April, 2002, the school tribunal allowed the said appeal filed by the respondent no.1 holding that the respondent no.1 was an employee within the meaning of the provisions of the MEPS Act and directed reinstatement of the respondent no.1 with full back wages. This order of the school tribunal dated 18th April, 2002 is impugned by the petitioners management in this writ petition.

7. Mr.Datar, the learned counsel appearing for the petitioners invited my attention to some of the correspondence annexed to the petition and also to the vouchers alleged to have been signed by the respondent no.1. It is submitted by the learned counsel for the petitioners that though the letter addressed by the respondent no.1 dated 13th July, 1993 requesting for the appointment of the respondent no.1 to the post of driver in the society was produced by the petitioners before the school tribunal, the school tribunal has not considered the said letter. He submits that though by a letter dated 7th October, 1993, addressed by the society to the respondent no.1 thereby appointing him as a peon for a temporary period of seven months in the school Amarjyoti Education Society and a letter dated 30th March, 1994 addressed by the society to the respondent no.1 thereby terminating the services as a peon from the employment of the petitioner no.1 society, the school tribunal did not consider the said document.

8. It is submitted by the learned counsel that after termination of the services of the respondent no.1 as a peon in the school, which was for the temporary period, the respondent no.1 was re-appointed and was being paid the salary by the society and not by the school. In

support of this submission, the learned counsel invited my attention to the payment vouchers dated 12th April, 1995, 13th March, 1995 , 13th February, 1995, 13th January, 1995 and 13th December, 1994. He submits that the vouchers produced by the petitioners clearly indicated that the salary of the respondent no.1 was paid by the society and not the school.

9. It is submitted by the learned counsel for the petitioners that the school tribunal has made various unwarranted observations against the Headmaster of the school based on no evidence. It is submitted that in the facts and circumstances of the present case, the school tribunal in any event could not have passed the order for the entire back wages. He submits that the respondent no.1 has not proved before the school tribunal that he was not gainfully employed during the pendency of the appeal before the school tribunal.

10. Mr.Dighe, the learned counsel appearing for the respondent no.1 placed reliance on the findings rendered by the school tribunal. He submits that the petitioners did not produce any evidence before the school tribunal in support of the allegation that the respondent no.1 was gainfully employed during the pendency of the appeal before the school tribunal. He submits that the finding rendered by the school tribunal is not perverse and cannot be interfered with by this Court in this writ petition. He submits that during the pendency of the appeal before the school tribunal and even during the pendency of this writ petition, his client was not gainfully employed. On the issue of back wages, the learned counsel for the respondent no.1 fairly submits that that the order passed by the school tribunal granting 100% back wages be modified and the

back wages can be reduced to 50%.

11. A perusal of the letters annexed to the petition which were relied upon by the petitioners themselves before the school tribunal and more particularly the letter dated 7th October, 1993 and the purported letter of termination dated 30th March, 1994 clearly indicate that even according to the petitioners, the respondent no.1 was appointed in Amarjyoti Vidya Mandir school as peon cum driver. A perusal of the record indicates that the petitioners did not prove before the school tribunal that after purported termination of services of the respondent no.1 by a letter dated 30th March, 1994, the respondent no.1 who was admittedly working with the petitioners was transferred to the society from the school where he was working. In my view, the signatures of the respondent no.1 on few vouchers for the purpose of giving the salary would not indicate that he was transferred to the petitioner no.1 society.

12. Insofar as the issue of maintainability of the appeal filed by the respondent no.1 on the ground that the provisions of MEPS Act were not applicable to the respondent no.1 is concerned, I have perused the order and judgment rendered by the school tribunal. The school tribunal has framed the issues on the basis of pleadings filed by the parties and has rendered the finding in affirmative that the respondent no.1 was an employee within the meaning of provisions of the MEPS Act and the school tribunal had thus jurisdiction to entertain, try and dispose of the said appeal filed by the respondent no.1. While rendering such finding by the school tribunal, the school tribunal has dealt with various documents produced by both the parties. Admittedly, the respondent no.1 had produced identity card

issued by the said school, which was signed by the Headmaster of the school.

13. It was the case of the petitioners before the school tribunal that the said identity card was issued for some different purpose, which case was disbelieved by the school tribunal rightly. After considering the documentary evidence produced by the respondent no.1, including the muster roll, in my view the school tribunal has rendered a finding of fact that the respondent no.1 was appointed as peon cum driver in the school. Since the services of the respondent no.1 as peon cum driver was terminated orally, the respondent no.1 in my view had rightly filed an appeal under section 9 of the MEPS Act before the school tribunal. The provisions of the MEPS Act were applicable to the parties. I do not find any infirmity in the findings rendered by the school tribunal that the provisions of the MEPS Act were applicable and thus the appeal filed by the respondent no.1 under section 9 of the MEPS Act was maintainable.

14. Insofar as the submission of the learned counsel for the petitioners that the school tribunal had made certain observations about the conduct of the Headmaster Mr.B.B. Choube is concerned, Mr.Dighe, learned counsel for the respondent no.1 has no objection if those observations made by the school tribunal against the Headmaster are expunged. The statement made by the learned counsel for the respondent no.1 is accepted. The observations made by the school tribunal against said Mr.B.B. Choube personally are expunged.

15. Insofar as the submission made by the learned counsel for

the petitioners that the school tribunal ought not to have granted full back wages to the respondent no.1 is concerned on the ground that the respondent no.1 failed to prove before the school tribunal that he was not gainfully employed during the pendency of the appeal before the school tribunal is concerned, it is not in dispute that when the services of the respondent no.1 were terminated and the matter was pending before the school tribunal, the onus was on the management to prove that the employee was gainfully employed and was thus not entitled to full back wages. The petitioners however, failed to prove the same before the school tribunal. The statement made by Mr.Dighe, the learned counsel for the respondent no.1 that his client was not gainfully employed during the pendency of the appeal before the school tribunal and during the pendency of this writ petition is accepted. Since the learned counsel for the respondent no.1 has fairly suggested that the order of full back wages granted by the school tribunal be reduced to 50%, I am inclined to accept this submission made by the learned counsel for the respondent no.1 and to modify the order of back wages to that effect.

16. In my view, the findings rendered by the school tribunal are based on the documents produced by both the parties which findings are not perverse and thus this Court cannot interfere with such findings of fact in this writ petition filed under Articles 226 and 227 of the Constitution of India. I am thus not inclined to interfere with the impugned order passed by the school tribunal except to the extent stated aforesaid.

17. I therefore, pass the following order :-

- a). The observations made by the school tribunal against Mr.B.B. Choube personally are expunged. The petitioners are liable to make payment of back wages to the extent of 50% to the respondent no.1 with continuity of service and other consequential benefits.
- b). The petitioners shall implement this order within six weeks from today.
- c). Rest of the order passed by the school tribunal is upheld.
- d). Writ Petition is disposed of in aforesaid terms.
- f). No order as to costs.

(R.D. DHANUKA, J.)