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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4835 OF 2016

Upekshit Janata Seva Sangh & Ors.	...Petitioners
V/s.	
Eknath R. Waghmare & Ors.	...Respondents

Mr.Narendra Bandiwadekar for the Petitioners.

Mr.Eknath Waghmare - Respondent No.1 appears in person.

CORAM : R.D. DHANUKA, J.
DATE : 5TH JULY, 2016.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 18th March, 2016 passed by the learned Presiding Officer, School Tribunal, Navi Mumbai allowing the appeal filed by the respondent no.1 under section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and directing the petitioner nos.1 and 2 to promote the respondent no.1 to the post of Headmaster of the petitioner no.2 school with effect from 1st October, 2015 with consequential benefits to the post of Headmaster and to pay costs of Rs.20,000/-.

2. Being aggrieved by the said order dated 18th March, 2016,

the petitioners have impugned the said order on various grounds raised in the writ petition. The respondent no.1 appears in person and has filed affidavit in reply to the writ petition.

3. Mr.Bandiwadekar, learned counsel appearing for the petitioners invited my attention to the plea raised by the management before the school tribunal raising an issue of maintainability of the appeal filed by the respondent no.1 on the ground that the management had only given powers to sign to the petitioner no.3 as Headmistress of the school and to look after of the monetary transactions, which appointment was for a limited period, the school tribunal did not decide the said issue of maintainability of the appeal and has allowed the appeal filed by the respondent no.1 on various grounds. He submits that even on merits, the respondent no.1 being not senior to the petitioner no.3, the school tribunal thus could not have granted any relief in favour of the respondent no.1.

4. I have considered the affidavit in reply filed by the respondent no.1 and have rendered an opportunity to the respondent no.1 who appears in person. The respondent no.1 has been explained by this Court that since the issue of maintainability of appeal though was raised by the management under section 9, the said issue has not been decided by the school tribunal, the matter is required to be remanded back to the school tribunal. The respondent

no.1 who appears in person has understood the suggestion given by the Court and has no objection if the matter is remanded to the school tribunal for deciding the issue of maintainability of appeal and if it is held that the appeal is maintainable, then to decide the appeal on merits of the matter. The statement is accepted.

5. A perusal of the record clearly indicates that though all the petitioners herein had raised an issue of maintainability of the appeal filed under section 9 before the school tribunal on the ground that the petitioner no.3 was not promoted to the post of Headmaster but was only given a signing authority for a limited period, the school tribunal has not decided the issue of maintainability of appeal and has allowed the appeal filed by the respondent no.1. In my view, without deciding the issue of maintainability of appeal, the school tribunal could not have decided the appeal filed by the respondent no.1 on merits. I am therefore, inclined to set aside the order dated 18th March, 2016 passed by the school tribunal on this ground alone. I therefore, pass the following order :-

a). The impugned order dated 18th March, 2016 passed by the Presiding Officer, School Tribunal, Navi Mumbai is set aside. Appeal No.47 of 2015 is restored to file and to be heard by the school tribunal *de-novo*.

b). The school tribunal shall decide the issue of maintainability

of appeal raised by the petitioners in the written statement after hearing all the parties. If the school tribunal comes to the conclusion that the said appeal is maintainable, then in that event the school tribunal shall decide the other issues on merits.

c). It is made clear that this Court has not expressed any views on the merits of the matter whether the school tribunal had rightly allowed the appeal filed by the respondent no.1 on merits or not. All the contentions of both the parties are kept open.

d). The school tribunal shall make an endeavor to dispose of the appeal filed by the respondent no.1 expeditiously and not later than six months from the date of the first hearing.

e). Both the parties are directed to remain present before the school tribunal on 20th July, 2016 at 11:00 a.m.

6. The writ petition is accordingly disposed of in aforesaid terms. No order as to costs.

7. The parties as well as the school tribunal to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)