

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9812 OF 2014

Shri Sanjay Vithoba Mane .. Petitioner
vs.
Mumbai Pradesh Arya Vidya Sabha .. Respondents

Mr. N.V. Bandiwadekar for Petitioner.
Ms. Anupama Shah for Respondent No.1 to 3.
Mr. A.R. Metkari, AGP for Respondent Nos. 5 & 6.

CORAM : M. S. SONAK, J.
DATE: 19th OCTOBER 2016

P.C :

- 1] Rule
- 2] With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] By notice dated 28th December, 2014 it was made clear that considering short issue involved, this petition will be disposed of finally at the stage of admission
- 4] The challenge in this petition is to the order dated 13.11.2012 made by the School Tribunal, Mumbai, dismissing the petitioner's appeal No.17/2012 questioning the termination of his services by the Respondent School.
- 5] Mr. Bandiwadekar, learned counsel for the petitioner submits that the School Tribunal has mis-construed the petitioner's appeal as being against his non-selection to the post of teacher. He

submits that the appeal was preferred against the written termination order dated 13.11.2013 in terms of Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977, (said Act). Such appeal was clearly competent and was required to be disposed of in accordance with law.

6] Ms. Shah, learned counsel for the Respondent No.1 to 3 submits that there was absolutely no legal infirmity in the action of the school and school Management. The petitioner, based on the impugned action even participated in the selection procedure and merely because the petitioner failed to get selected, the petitioner cannot maintain any appeal before the Tribunal. Ms. Shah, learned counsel for the Respondent Nos. 1 to 3 also points out that the nature of appointment of the petitioner was such as is entitle the petitioner to claim any rights for continuing in services.

7. Considered the rival submissions and perused the record.

8. At this stage, I am obviously not concerned with the issue of legality or otherwise of the termination. However, this appears to be a case where the School Tribunal has mis-construed the scope of the petitioner's appeal and on such basis, declined to exercise the jurisdiction vested in it.

9. The reasoning in the impugned order is restricted only to two paragraphs, which read thus.

“4. In this case only crucial point is that, whether the case of the appellant is within the purview of termination or not? Because, it is an admitted fact that, the appellant was appointed for a temporary period. He was appointed on terms and reasons mentioned in the appointment letter wherein, it is clearly disclosed that, his appointment is for a period of one year and subject to NOC from the Education Department. It seems from the record that, after sometime the Department issued a letter to the management for filling up the five posts including one post of Physical Education Teacher. The management has applied the procedure by making an advertisement and taking an interview for that post. The appellant has applied for the said post and interview he was not selected. Therefore, it is the grievance of the appellant that, as he worked there for more period even after completion of his period but for this purpose he has not produced any record. Further his grievance is that, as there was no memo against him and his service record was proper, therefore, he ought to have been selected for that post. This cannot be said to be a termination.

5. On the contrary management has given opportunity to the appellant to face the interview and show his ability in which the appellant failed. Therefore, the case of the appellant is out of the scope of terminology of the termination U/Sec. 9 of the M.E.P.S. Act 1977 and the appellant cannot file the present appeal. Therefore, there is no question of setting aside the termination order as alleged by the appellant. Hence, I answer to the point no. 1 in the negative and pass the following order.

ORDER

1. The appeal is hereby dismissed.
2. No order as to cost.

Presiding Officer
School Tribunal, Mumbai”

10. From the aforesaid, it is quite clear that the School Tribunal has recorded that the appeal is directed against the petitioner's non-selection to the post of teacher, and on the said basis, declined to exercise appellate jurisdiction. However, in this case, the services of the petitioner came to be terminated by written order which the petitioner states was served upon him on 31.01.2011. The School Management also claims that the services of the petitioner came to be terminated by order dated 23.12.2010, which was duly served upon the petitioner and bears the acknowledgement of the petitioner. The rival contentions, need not detain us at this juncture. These are matters which have to be looked into by the Tribunal. However, both the versions make it clear that the services of the petitioner were terminated by means of written order and the perusal of the memo of appeal makes it clear that the petitioner, aggrieved by such termination, had appealed against such termination.

11] Section 9 of the Said Act in terms, provides that notwithstanding anything contained in any 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 and who is aggrieved, shall have a right approach of appeal before

the Tribunal.

12] Although, in the appeal memo, the petitioner may have referred to the circumstances of his participation in the further selection process based on his termination and his non selection there at, this is not a case of appeal against the non-selection but rather this is a case of appeal against the termination which according to the petition is not in accordance with law. Ms. Shah learned counsel for Respondent Nos.1 to 3 submits that such termination is in accordance with law. Ms. Shah further submits that the nature of the petitioner's appointment was such as disentitles him to complain about his so-called termination.

13] The issue as to whether a termination of the petitioner's services was in accordance with law or not is really an issue to be decided by the Tribunal. In this case, the Tribunal has declined to entertain the appeal by misconstruing the petitioner's challenge, as being restricted to his non selection. As noted earlier, perusal of the appeal memo, makes it clear that the appeal was against the petitioner's termination. In these circumstances, the Tribunal was not justified in refusing to entertain the appeal. This is a case of failure to exercise jurisdiction which is vested in the Tribunal in terms of Section 9 of the said Act. On this short ground, the impugned order is liable to be set aside and the petitioner's appeal

is restored to the School Tribunal for adjudication in accordance with law.

14] Accordingly, the impugned order dated 13.11.2013 is hereby set aside. The petitioner's Appeal No.17/2012 is restored to file at School Tribunal, Mumbai. The School Tribunal is directed to dispose of the said appeal in accordance with law and on its own merits as expeditiously as possible.

15] It is made clear that this Court has not examined the merits of the matter and therefore all contentions of all parties are left open to be determined by the Tribunal.

16] The parties to appear before the School Tribunal on 21.11.2016 at 11 a.m. and to file an authenticated copy of this order.

17] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)