

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

WRIT PETITION NO. 2326 OF 1998

1 Adivasi Satpuda Shikshan Prasarak Mandal,
Dhadgaon, Tq.Akrani, District Dhule.
Through its President
Shri Janardhan Poharya Valvi,
R/o Dhadgaon, Tq.Akrani,
District Dhule.

2 Head Master,
J.N.Ashram Shala, Raisingpur,
Tq.Akkalkuwa, District Dhule.

...PETITIONERS

-VERSUS-

1 Rohini Shripat Patil,
Age Major,
R/o village Padalde,
Tq.Shahada, District Dhule.

2 Project Officer,
Deputy Collector,
Ekatomik Adivasi Vikas Prakalap,
Taloda, District Dhule.

...RESPONDENTS

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Advocate for Petitioners : Shri C.R.Deshpande.

Advocate for Respondent 1 : Shri Yogesh Bolkar h/f Shri R B
Raghuwanshi.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the judgment of the School

Tribunal dated 16.04.1998 by which Appeal No.3/1997 filed by Respondent No.1 has been allowed and she has been reinstated with back wages and continuity.

2 I have heard the strenuous submissions of the learned Advocates for the respective sides.

3 On the application made by Respondent No.1 dated 31.04.1993, the Petitioner appointed her for the academic years 1993-1994 and 1994-1995 purely on temporary basis. The Petitioner was operating the Ashram School upto the 7th standard. By another appointment order dated 28.08.1995, the Petitioner once again appointed Respondent No.1. The approval on year to year basis was granted.

4 However, Respondent No.2, by letter dated 29.02.1996, concluded that since Respondent No.1/ Employee was possessing the qualification of B.A., B.Ed., she is not entitled to be appointed for imparting education in the Ashram School for the 1st to 7th standards. Such qualification is available only to the candidates belonging to Scheduled Tribe category. Respondent No.1 needs to possess the qualification of HSC, D.Ed. only. She was hence terminated on 14.04.1996.

5 Notwithstanding the above, the Petitioner submits that the appeal before the School Tribunal was not maintainable in the light of the following judgments:-

- (a) Dagdu vs. President, Anandrao Naik Shikshan Prasarak Mandal, **2006 (9) SCC 782**.
- (b) Suryakant Sheshrao Panchal vs. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Prasarak Mandal, **2002 (3) Mh.L.J. 659 (Full Bench)**.
- (c) Gadge Maharaj Mission vs. Wasudeo Ramji Patil, **2002 (4) BCR 371**.

6 The Petitioner further submits that though the School Tribunal allowed the appeal of Respondent No.1, she has not reported for duties and has not been working with the Petitioner. This Court has not stayed the impugned judgment while admitting this petition.

7 The learned Advocate for Respondent No.1/ Employee submits that he has no instructions as to whether, she joined duties or as to whether, she continued in employment or not.

8 The learned AGP submits that the learned Full Bench of this Court, in the matter of Suryakant Panchal case (supra), has concluded that

since the Ashram School imparting education from 1st to 7th standards (being a primary school), is not recognized by the Director, Divisional Board or State Board, it would not amount to a private school covered by Section 2(20) of the MEPS Act, 1977. It is concluded that where the Ashram School is imparting education from 1st to 10th standards and it is recognized by the Divisional Board, the same would fall within the definition of the private school.

9 The Honourable Supreme Court, in the matter of Dagdu (supra), has concluded that the view taken by the Honourable Full Bench of this Court in Suryakant Panchal (supra) is the correct law.

10 In the matter of Gadage Maharaj Mission (supra), this Court has followed the law as is laid down and has concluded that the Ashram School imparting education from 1st to 7th standards would not fall within the definition of private school.

11 The learned Advocates appearing for the respective sides submit that the law laid down in the above referred judgments still holds the field and there is no other judgment taking a contrary view, inasmuch as, there is no amendment to the definition of “private school” under Section 2(20) so as to include even the primary Ashram School in the

definition of “private school”.

12 Considering the above, it is apparent that the School Tribunal has exercised the jurisdiction not vested in it by law. The appeal filed by Respondent No.1 was not maintainable before the School Tribunal.

13 In the light of the above, this Writ Petition is allowed. The impugned judgment dated 16.04.1998 is quashed and set aside and Appeal No.3/1997 stands dismissed for being untenable in law.

14 Needless to state, in order to ensure that the ends of justice are met, in the event Respondent No.1/ employee is still in employment, the Petitioner shall continue her on the same terms and she would be at liberty to approach the Divisional Social Welfare Department, which is said to be the competent authority to decide the grievance of the employees working in Ashram Schools imparting education from 1st to 7th standards, for challenging her termination.

15 Rule is made absolute in the above terms.