

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13059 OF 2016

Shri Manohar Yadu Deshmukh	]	Petitioner
Vs.		
Carlton Pereira, The President	]	
The Society of St. Peters School	]	
Pachgani, Tal. Mahabaleshwar,	]	
Dist. Satara & Ors.	]	Respondents

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Mr. Vaibhav R. Gaikwad, for petitioner.

Mr. Atul Damle, Sr. Advocate i/b Mr. Rajesh Kinnerkar and Mr. Rupesh R. Lanjekar, for respondents No.1 and 2.

Mr. A.R. Metkari, for respondent No.3.

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CORAM : R.G. KETKAR, J.

DATE : 1st AUGUST, 2017.

P.C.

Heard Mr. Gaikwad, learned Counsel for the petitioner, Mr. Damle, learned Senior Counsel for respondents No.1 and 2 and Mr. Metkari, learned Counsel for respondent No.3 at length.

2. On the motion made by Mr. Gaikwad, leave to delete respondent No.4-Education Officer [Primary], Zilla Parishad, Satara is granted. Amendment shall be carried out forthwith.

3. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgment

and order dated 4th July, 2016 passed by the learned Presiding Officer, School Tribunal, Kolhapur [for short 'Tribunal'] in Appeal No. 26 of 2015. By that order, the Tribunal dismissed the appeal preferred by the petitioner herein on the ground that Saint Peters School, Panchgani is not a recognized School and consequently is not a private School as per Section 2 (20) of Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977 [for short 'Act'].

4. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Petition is taken up for final hearing and Rule is made returnable forthwith.

4. A perusal of the impugned order shows that the Tribunal has considered provisions of the Act. However, it appears that no contention based on the provisions of the Right of Children to Free and Compulsory Education Act, 2009 [“for short “2009 Act”] as also the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 [for short “2011 Rules”] was advanced. Equally decision of this Court in the case of **Latika Mane Vs. State of Maharashtra 2013 (4) Mh. L. J, 244** was not cited before the Tribunal. This is more so, when it is not in dispute that Saint Peters School run 3rd to 10th standards.

5. In view thereof, it is necessary for the Tribunal to

consider whether provisions of 2009 Act as also 2011 Rules are applicable and if so, in view of Rule-20 of the 2011 Rules, the Tribunal has jurisdiction to entertain and try appeal u/s 9 of the Act. The Tribunal will also consider whether decision of this Court in case of **Latika Mane** [supra] is applicable or not.

6. In view thereof, impugned order is set aside. Appeal No. 26 of 2015 is restored to the file of the Tribunal. The Tribunal while deciding the appeal will consider applicability or otherwise of 2009 Act and 2011 Rules. All the contentions of the parties on merits are expressly kept open. Rule is made absolute accordingly with no order as to costs. The parties agree that they will appear before the Tribunal on 6th September, 2017 and for that purpose, no fresh notice to be issued to them. The Tribunal is requested to decide issue of maintainability within two months from the date of appearance of the parties.

[R.G. KETKAR, J.]