

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.533 OF 2017

Fr. Ivon D'Almeida, Manager,
Father Agnel's Vidyankar School & Anr. ... Petitioners
vs.
Smt. Satyasheela Sunil Salve & Ors. ... Respondents

Mr. Arvind G. Kothari for the Petitioners.
None for the Respondents.

Coram : **A.A.Sayed, J.**
Date : 25 January 2017

P.C. :

1 On an Application by the Petitioner Management to frame and decide the preliminary issue, the School Tribunal after framing the issue has rejected the said Application vide the impugned order dated 24 November 2016. The School Tribunal has concluded in the impugned order as follows:

“10 ... Hence, taking into consideration the facts and circumstances of the case and documentary evidence produced by the parties I am of the view that since the appellant seems to have been allotted duty by the respondents to the classes of primary section so at this stage, she cannot be said to have served in pre-primary section only. The management cannot take undue advantage of its own wrong i.e. giving appointment in pre-primary section and allotting duty in primary section. So it is against very intention of legislature behind enactment of

MEPS Act 1977 and the Rules 1981. With these observations I find this application at this stage as devoid of any merit. Hence I pass following order.

ORDER

- “1. Application at Exh.12 is rejected.*
- 2. No order as to costs.”*

(emphasis supplied)

2 Having regard to the fact that the issue of maintainability of Appeal is rejected 'at this stage' as observed by the School Tribunal, it is apparent that this issue is not concluded by the School Tribunal. However, the apprehension of the Petitioners can be allayed by clarifying again that the issue of maintainability is kept open and the said issue will be decided at the time of final hearing after appreciating the documentary evidence on record. Needless to say that the School Tribunal shall not be influenced the impugned order while deciding the said issue finally. The Petition is dismissed in limine. No costs.

(A.A.Sayed, J.)