

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 REVIEW APPLICATION (CIVIL) NO. 98 OF 2017
IN
WRIT PETITION NO. 1472 OF 2015

CHANDRASHEKHAR PRAKASH SHIMPI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Mr. V.J. Dixit, Senior Advocate i/b Mr. S.S. Dixit, Advocate for the
Petitioners.

Mrs. M.A. Deshpande, AGP for Respondent Nos. 1 to 4.
.....

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

DATED : 7th AUGUST, 2018

PER COURT:-

1. Heard learned senior counsel appearing for the petitioners and learned A.G.P. appearing for respondent Nos. 1 to 4.

2. Learned senior counsel appearing for the review petitioners invites our attention to para 37 of the judgment under review and submits that, while rejecting the writ petition filed by the review petitioners, it is observed in the said paragraph that in view of the conditions mentioned in the appointment letters of the petitioners that, their services shall be governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules of 1981 (hereinafter for the sake of brevity referred to as

“the M.E.P.S. Act” and “the M.E.P.S. Rules”, respectively), and therefore, if the petitioners are aggrieved by the order of termination, they can approach the School Tribunal for redressal of their grievance. However, he submits that, the alleged termination orders were not issued by the management. He further submits that the Head Master of the school in which the petitioners were rendering services, consequent upon the communication issued from the Director of Education thereby withdrawing the approval of unit in which the petitioners were appointed, communicated to the petitioners that they shall not attend the duties in the school henceforth and should contact the superiors. It is submitted that, it is only if the management terminates the services of the employee serving in the private school, the aggrieved employee has right of appeal to Tribunal as provided under Section 9 of the M.E.P.S. Act. Therefore, learned counsel submits that on the aforesaid ground alone, review petition deserves to be allowed.

3. On the other hand, learned A.G.P., appearing for the respondent State and its authorities, invites our attention to the letters written by the Head Master of Ekvira Secondary School, Veruli (Kd), Tq. Pachora, district Jalgaon, addressed to the petitioners and submits that the contents of the said letters would make it clear that, though the said communications are in the form of letters,

nevertheless the same can be treated as orders of termination since the Head Master has mentioned in the said letters that the petitioners shall not attend the duty henceforth i.e. w.e.f. 17.05.2014. Therefore, keeping in view the said letters written by the Head Master to the petitioners, which in substance are the orders of termination, it was open for the petitioners to challenge those letters before the School Tribunal, taking recourse to the provisions of Section 9 of the M.E.P.S. Act.

4. We have carefully considered the submissions of the learned senior counsel appearing for the petitioners and also the learned A.G.P. appearing for the respondent State and its authorities. With their able assistance, we have carefully perused the pleadings, averments made in review application, the grounds taken therein, reply filed by the respondents, the original record pertaining to writ petition No. 1472 of 2015, annexures thereto and the judgment under review.

5. At the outset, it would be apt to reproduce herein below the relevant observations from para 37 of the judgment under review:-

“37. In that view of the matter, in view of the conditions in clause Nos. 3 and 6 of the approval letters/orders mentioned herein-above, the relief claimed by the petitioners for declaring them surplus or for

absorbing them in some other aided school cannot be entertained. It is not possible for this Court to issue any mandatory directions to the respondent – State and State authorities, in view of the conditions enumerated in the approval letters/orders by the Deputy Director of Education. It is the entire responsibility of the concerned Institution to take care of the grievances of the petitioners. During the course of hearing, the learned counsel appearing for the petitioners have informed this Court that, the services of the petitioners have already been terminated. Upon perusal of the documents placed on record, and in particular appointment letters and the approval letters, it is mentioned that, the petitioners' services shall be governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules, 1981. In that view of the matter, if the petitioners are aggrieved by termination of services, the petitioners can avail remedy under the said Act, by filing appropriate proceedings before the School Tribunal. In that respect, we do not express any opinion. However, we make it clear that, in case the petitioners wish to approach the School Tribunal, in that case, the School Tribunal to consider their cases on merits, without being influenced by the observations made in this judgment, and not to reject it on the ground of limitation, since the petitioners were prosecuting the present writ petitions for considerable period.”

6. Sub-Section (1) of Section 9 of the M.E.P.S. Act reads thus:-

“9. (1) *Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school-*

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the management; or

(b) who is superseded by the Management while making an appointment to any post by promotion, and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under Section 8]:

Provided that no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the management at any time before the 1st July, 1976."

7. Upon careful perusal of the appointment orders issued to the petitioners, it is abundantly clear that those are issued by the Director of Nutan Sarvodaya Balvikas Sanstha, Pachora, Tq. Pachora, District Jalgaon, and the petitioners were appointed for one year in a particular pay scale. Upon careful perusal of the contents of the letters written by the Head Master of Ekvira Secondary School, Veruli (Kd), Tq. Pachora, district Jalgaon, it appears that it is a mere communication to the petitioners about withdrawal of approval to the unit by the State authorities, and consequent upon which the petitioners' services cannot be continued, and therefore, the petitioners shall not attend the school from the date of issuance of said letter. The said letters written by the concerned Head Master cannot be treated as an orders of termination of services of the petitioners.

8. In the light of the discussion in the foregoing paragraphs, in our opinion, the aforementioned observations/reasons in para No. 37 of the judgment under review are not keeping in view the provisions of sub-section (1) of Section 9 of the M.E.P.S. Act. Understood thus, it was not possible for the petitioners to challenge the letters issued by the Head Master before the School Tribunal by invoking the provisions of Section 9 of the M.E.P.S. Act, and therefore the petitioners were left remediless.

9. It is true that while deciding the writ petition, this Court has also considered the other aspects and contentions raised by the petitioners. However, as already observed, the observations made by this court in para 37 of the judgment under review that the remedy of appeal is available to the petitioners, go to the root of the matter. In the light of the discussion in foregoing paragraphs, we are of the view that an ends of justice would be met in case the review application is allowed and writ petition No. 1472 of 2015 is restored to its original file. Accordingly, the judgment and order dated 30.10.2015 passed in writ petition No. 1472 of 2015 is recalled. Review application is allowed to the above extent. The writ petition No. 1472 of 2015 is restored to its original file. Accordingly, review application stands disposed of.

10. Learned senior counsel appearing for the review petitioners prays for time till 16.08.2018 so as to enable him to take necessary steps to amend the writ petition in view of the subsequent developments. List the writ petition on 21.08.2018 before the appropriate Court.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

rlj/

Rangnath
Laxmanrao
Jadhav

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signed by
Rangnath
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Jadhav
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