

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

WRIT PETITION NO.1918 OF 2018

1. Anuja Amarsen Sawant

R/o Digas, Tal. Kudal,

Dist. Sindhudurg 416 521 ..

2. Kalika Prasadik Shishan Prasarak Mandal

Digas, Tal. Kudal,

Dist. Sindhudurg 416 521,

through its Secretary ..

3. Digas Madhyamik Vidyalay

Digas, Tal. Kudal,

Dist. Sindhudurg 416 521

through its Head Master ..

.. Petitioners

Vs.

1. Tejashri Arun Sawant

(Miss Manisha Shrikrushna Rane)

R/at Digas, Tal. Kudal

Dist. Sindhudurg 416 521 ..

2. The Education Officer

(Secondary) Zilla Parishad,

Sindhudurg ..

.. Respondents

Mr.N.V. Bandiwadekar with Mr.Vinayak Kumbhar i/b Ms.Ashwini N. Bandiwadekar and Ms.Neha N. Bandiwadekar for the petitioners.

Mr.Prashant Bhavake for the respondent no.1.

Ms.Vaishali Nimbalkar AGP for the State.

CORAM : A.K. MENON, J.

RESERVED ON : 18TH APRIL, 2018

PRONOUNCED ON : 1ST AUGUST, 2018

JUDGMENT .

1. Heard. Rule. Rule returnable forthwith. Respondents waive service. By consent of parties taken up for final hearing.

2. The controversy in this petition arises from the impugned order dated 30th January, 2018 passed by the School Tribunal, Kolhapur, Exhibit-6, 9 and 17 an appeal filed before the School Tribunal by respondent no.1. Exhibit-6 was filed by respondent no.1 for grant of interim stay against an order declaring her surplus. Exhibit-9 and Exhibit-17 were applications filed by the petitioners for framing a preliminary issue regarding jurisdiction of the Tribunal under Section 9(A) of the Code of Civil Procedure.

3. The Petitioner No.1 is a teacher working in Petitioner no.3 – School which is a Government recognised aided school, managed by petitioner no.2. The petitioner no.1 challenged the impugned order dated 30th January, 2018 passed by the School Tribunal rejecting the petitioner no.1's application for framing a preliminary issue of jurisdiction to entertain and try the appeal and in the meanwhile granted interim stay to the impugned order dated 24th November, 2017 declaring respondent no.1 as surplus in petitioner no.3 – school.

4. Respondent No.2 is the Education Officer and the Competent Authority to sanction teaching and non-teaching posts in the Government

recognised Secondary Schools within the Sindhudurg district to grant approval to the appointments made in such sanctioned posts and to release grant-in-aid. Respondent No.1 was born on 14th May, 1975 and came to be appointed as Assistant Teacher in the petitioner no.3 - School in the unaided divisions of 5th to 7th standard with effect from 12th June, 2000. When the appointment was made, respondent no.1 had qualified with S.S.C. D.Ed and therefore she was placed in the pay scale of Rs.4500-7000/-. Respondent No.2 granted approval to the aforesaid appointment of respondent no.1 for the period of one year. Thereafter vide resolution No.4A dated 1st July, 2001 passed by the School Committee, respondent No.1 came to be re-appointed from 1st June, 2001 in the same pay scale to which respondent no.2 granted approval vide order dated 20th February, 2003. According to the petitioner no.1, this is fresh appointment granted to respondent no.1 is without continuity of service and benefits of the service rendered in previous academic year. She improved upon her qualifications and obtained a B.A. degree in 2008.

5. As against this petitioner no.1 (Respondent No.4 before the Tribunal) joined the same school on 11th June, 2001 with qualifications of S.S.C. D.Ed. She improved upon her qualifications and obtained a B.A. degree in 2010 and B.Ed degree on 1st June 2012. The appellant acquired the status of trained graduate teacher on completion of ten years from her

appointment as having qualified with D.Ed and entered "C" category on 12th June, 2010 prior to the petitioner no.1. It was urged that the appellant could not be declared surplus since she is senior to other respondents.

6. The Petitioner No.1 was born on 30th September, 1974 and vide order dated 1st June, 2001 the petitioner no.1 came to be appointed as an Assistant Teacher in petitioner no.3 school from 11th June, 2001 in unaided division. The Petitioner No.1 satisfactorily completed the probation the period and became deemed permanent in the post of Assistant Teacher. Petitioner No.1 acquired B.A. qualification on 6th July, 2010 and thereafter B.Ed qualification on 1st June, 2012. The petitioner no.1 became a trained graduate teacher and entered category "C" of Schedule-F to the MEPS Rules. It is contended by the petitioner no.1 that as per the sanctioned Staff Schedule of the petitioner no.3 for the years 2013-14, 2014-15 and 2015-16, three posts of Graduate Teachers for standard 6th to 8th were sanctioned and two teachers were working. According to the petitioner no.1, she became eligible and entitled to be upgraded to the post of Trained Graduate teacher which was vacant and as Petitioner No.1 possessed B.A. and B.Ed qualifications. Petitioner No.2-Management passed a resolution in 2012 and decided to upgrade and appoint petitioner no.1 on the said post of Trained Graduate scale and an appointment order came to be issued to petitioner no.1 as an Assistant Teacher in the pay scale of Rs.9,300-34,800

+ G.P. Rs.4300/- with effect from 1st June, 2012 and a proposal to that effect came to be submitted to respondent no.2 for aforesaid appointment. The approval was granted on 1st June, 2012. At that stage respondent no.1 did not challenge the appointment of the petitioner no.1 or approval granted to that appointment in the post and pay scale of Trained Graduate teacher.

7. In 2014-15 due to reduction in the number of students one post of teacher also stood reduced as a result one Shri Aniket Ramchandra Vetrekar was rendered surplus. Based on his complaint, a hearing was fixed at which petitioner nos.1 to 3 and respondent no.1 were present. Even though the hearing was in respect of the complainant, the respondent no.2 contended that it was petitioner no.1 who has been rendered surplus, as a result the petitioner no.1 made an application in writing requesting respondent no.2 to grant time to file her say and take legal advice but the respondent no.2 declined to grant time. According to the petitioner no.1 since her initial appointment was in D.Ed scale and no approval was granted till she reached B.Ed scale, she was declared surplus.

8. Petitioner No.1 made an application dated 11th November, 2014 requesting petitioner no.2 to obtain approval for her as a Graduate teacher. On the same day petitioner no.1 made a detailed representation to

respondent no.2 setting out how she could not be declared surplus. Thereafter, no action was taken by respondent no.2 to declare the petitioner no.1 as surplus and therefore she continued to work as a teacher in the School on B.Ed pay scale. During the academic year 2016-17 there was a further reduction of teaching post and only seven teaching posts were sanctioned comprising one Head Master and six teachers. The petitioner no.3 - School informed respondent no.1 and one Shri Sushant Dattatraya Parab that the Management had declared them surplus pursuant to information submitted to respondent no.2. The said persons were notified that if they had any objections about their being declared surplus, they should convey the same to respondent no.2.

9. On 28th April, 2017 respondent no.1 submitted her objections. Thereafter vide order dated 18th November, 2017 respondent no.2 informed the petitioner nos.2 and 3 that he had considered objections of respondent no.1 and that respondent no.1 was being rendered surplus. Her objections came to be rejected. Respondent No.1 was directed to approach the Deputy Director of Education, Kolhapur Region, Kolhapur. Respondent No.1 then appealed to the Deputy Director of Education, who heard the appeal on 21st November, 2017. Petitioner nos.2 and 3 were also present. The Deputy Director of Education also came to conclusion that respondent no.1 had become surplus. In view of the aforesaid development, respondent no.1 was

absorbed in another school and respondent no.3 was directed to relieve respondent no.1. Respondent No.1, however, avoided complying with the order dated 21st November, 2017. As a result petitioner no.2 directed, petitioner no.3 to relieve her from the school effective from 29th November, 2017. Although, respondent no.1 was working in the school on 29th November, 2017 and in order to avoid service of the order, she submitted a leave application along with a medical certificate. As a result petitioner no.3 had no alternative but to relieve respondent no.1 from the School on 30th November, 2017.

10. Meanwhile on 5th December, 2017, the respondent no.1 is believed to have made a representation to the Deputy Director of Education, Kolhapur Region, Kolhapur complaining that respondent no.1 had been wrongly declared surplus. She filed an appeal to the Deputy Director of Education but by an order dated 22nd November, 2017, the appeal was rejected and the order passed by respondent no.2 was confirmed. There is no challenge to this order. On 20th December, 2017, the respondent no.1 filed an appeal before the School Tribunal, Kolhapur under section 9 of the Act seeking to challenge the order dated 24th November, 2017 whereby respondent no.1 was declared surplus in the school. Respondent No.1 made grievance that she was wrongly declared surplus in collusion with respondent no.2 and had promoted petitioner no.1, after getting approval

from the Education department.

11. In the appeal, an application for interim stay was filed and on 20th December, 2017 the Tribunal issued a notice to show cause as to “why ad-interim stay or injunction should not be granted”. After receipt of the notice, the petitioner no.1 opposed the application for stay inter alia contending that the order passed by the Education Officer could not be subjected to an appeal under Section 9 of the said Act and, therefore, raised a preliminary issue of maintainability and jurisdiction. The petitioner no.1 filed the affidavit in support of the said written statement and respondent nos.1 and 2 also filed written arguments.

12. The petitioner no.1 thereafter filed a separate application seeking framing of issue regarding maintainability of the appeal. After hearing both sides the Tribunal rejected the prayer seeking framing of preliminary issue and granted interim stay thereby the operation of the order dated 24th November, 2017 issued by respondent no.3 declaring the respondent no.1-appellant as surplus teacher was stayed till final disposal of the appeal. The petitioner being aggrieved by the order dated 30th January, 2018 challenged it on the ground that the order impugned cannot be made subject of appeal under Section 9(1) of the MEPS Act.

13. Mr.Bandiwadekar, learned counsel for the Petitioner submitted that the Tribunal was required to frame a preliminary issue which it failed to do.

Surprisingly, the Tribunal rejected the application to frame a preliminary issue under Section 9(A) of the Code of Civil Procedure. It is submitted that the order passed by the respondent no.2 only declared the respondent no.1 surplus in the school with further direction that she should be absorbed in another secondary school and thus services of respondent no.1 was not terminated or discontinued and therefore no appeal could have been filed before the School Tribunal. It is contended that the Tribunal did not appreciate the fact that an appeal could be filed by an employee of the private schools against the order passed by the Management and not against the order passed by the Education Officer. Mr.Bandiwadkar therefore submitted that the impugned order is liable to be set aside.

14. An affidavit in reply has been filed by respondent no.1 supporting the impugned order on the ground that it is merely an interlocutory order. It is contended that the Tribunal prima facie found that the respondent no.1 was senior to the petitioner and that she could not have been declared surplus. The rest of the affidavit pertains to merits of the matter and as canvassed by Mr.Bhavake, learned counsel for respondent no.1, the order need not be interfered with since the Tribunal had passed the order after hearing all parties. It was contended that during the hearing before the Education Officer it was nobody's contention that trained graduate scale was conferred upon petitioner no.1. Moreover, the petitioner had not contended

in her letter dated 11th November, 2014 that the petitioner nos.2 and 3 had granted her trained graduate scale with effect from 1st June, 2012. This was relied to buttress the argument that the resolution granting trained graduate scale to the petitioner no.1 was false and the order passed was based on fabricated documents.

15. Mr.Bhavake thereafter submitted that no interference is called for in the facts and circumstances of the case. It was further submitted that since the respondent no.1 was senior to the petitioner no.1, respondent no.1 was not liable to be declared surplus and the Deputy Director of Education, Kolhapur Region, confirmed vide their order dated 21st November, 2017 and that petitioner nos.2 and 3 had illegally declared respondent no.1 as surplus, as a result of which respondent no.2 issued order absorbing respondent no.1 in different school.

16. Mr.Bhavake further contended that the impugned order was bad for want of jurisdiction is devoid of merit and respondent no.1 to challenge the order passed by the Education Officer absorbing respondent no.1 in another school on the basis of illegal action on behalf of the management declaring her surplus. It is contended that it was not necessary to specifically challenge the order declaring respondent no.1 surplus. Reliance was sought to be placed on Rule 20 of the Maharashtra Right of Children to Free and

Compulsory Education Rules, 2011 which empowered the School Tribunal to entertain the appeal. Mr.Bhavake submitted that the contention of the petitioner no.1 is merely technical and therefore ought not to be entertained. He reiterated that petitioner no.1 was found to be surplus and therefore was liable to be retrenched.

17. On behalf of the petitioner, an affidavit in rejoinder has been filed in which the petitioner no.1 had contended that respondent no.1 had accepted the appointment order dated 1st June, 2001 appointing her with effect from 11th June, 2001 and she had not made grievance at that stage. It is reiterated that respondent no.1 held a B.Ed degree which was mandatory for the post of Trained Graduate teachers in the secondary school and therefore she was not eligible as prescribed under Rule 3 and Schedule "F" of the MEPS Rules, 1981 for promotion to the post of Head of a Secondary School. On the other hand petitioner no.1 possessed a B.A. and B.Ed qualification and was appointed to teach classes of Standard VIth to VIIIth. It is submitted that reliance placed on the notification dated 23rd August, 2010 issued by the National Council for Teacher Education, New Delhi is misconceived and misplaced since that would apply prospectively. The petitioner no.1 contends that she not only qualifies for the post of Trained Graduate Teacher but is also entitled to the post of the Head of the Secondary school. The petitioner no.3 is a Secondary School and not a Primary School but the respondent no.1 has relied upon the

provisions of MEPS Rules, 1981 with regard to the seniority of the Teachers in a Primary School. Furthermore, in the appeal before the School Tribunal respondent no.1 had not taken up a plea that petitioner no.3 – school was a Primary School and that the provisions of MEPS Act and Rules would apply. It is reiterated that challenge to the order of the Education Officer may not be made before the School Tribunal. As regards Rule 20 the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 it is contended that reference to the said Rule is misplaced inasmuch as an employee of school could file an appeal before the Tribunal only if he or she is aggrieved by the decision of the Management regarding changing service conditions. In the present case that challenge is undoubtedly pursuant to the order passed by the Education Officer and that Rule 20 is of no avail to respondent no.1.

18. The order passed by the Education Officer has not been challenged and no appeal can be filed against the decision of the Education Officer before the School Tribunal. It was submitted by Mr.Bandiwadekar that the provisions of Code of Civil Procedure are very much applicable in the facts of the case and that RTE Rules are not applicable since the challenge to the order in the appeal was passed by the Education Officer.

19. In support of the case of respondent no.1 Mr.Bhavake relied upon judgment of this Court in the case of *Latika Rajaram Mane vs. State of*

Maharashtra and Others 2014(3) Bom.C.R. 439 in which Mr.Bhavake relied upon interpretation of Rule 20 of the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011. The writ petition had raised point of jurisdiction challenging dismissal of appeal by the School Tribunal for want of jurisdiction. In the facts of that case the petitioner no.1 was appointed as an Assistant Teacher and she was promoted as Head Mistress of the Primary section and in August 2004 the Management issued a notice to show cause. A formal charge-sheet came to be issued and after conducting disciplinary proceedings, the charges were proved and her services were terminated in August 2005. In September 2005 the petitioner in that case filed an appeal before the School Tribunal. The Tribunal dismissed the appeal on the ground that the Tribunal has no jurisdiction to entertain the appeal on the order passed by the Management of a Primary School. The question that arose for consideration was whether an appeal is filed before the School Tribunal prior to enactment of the Central Act and enforcement of the Rules framed by the State Government would be maintainable. The Tribunal was justified in dismissing the appeal for want of jurisdiction. The Court conceded that the School Tribunal had erred in applying the provisions of RTE Rules while deciding the issue of jurisdiction and whether RTE Rules would apply to an appeal that was filed before the Tribunal prior to enforcement of the Central Act. The Full Bench of this Court in Komal Rugwani V/s S/o Maharashtra held that if a private primary school is

recognised by a body contemplated under Section 39(2) of the Bombay Primary Education Act, 1947 it will not be governed by provisions of the MEPS Act and an employee working in that school cannot file an appeal under Section 9 of the MEPS Act. Rule 20 provides a grievance redressal mechanism for a teacher or employee of a school other than a school run by any Government or Local Authority, a person who is aggrieved by any decision of the management regarding his or her conditions of service, the Court held that the ambit of the remedy provided under Act to primary school teachers by Rule 20 is not only confined to these orders but has been widened to include any decision of the management regarding the service conditions. I do not find how this decision is of assistance to Mr. Bhavake in view of the fact that principal ground of challenge is that the order impugned in this petition was not passed in an appeal challenging action of the Education Officer and not by the management of any school.

20. Mr. Bandiwadekar relied upon the decision of a Single Judge of this Court in *Mohan Bapurao Shinde vs. Terana Charitable Trust and Others* 2010 (5) Mh.L.J. 348 which held that the School Tribunal would be entitled to hear appeal on the aspect of supersession of an employee for an appeal to be maintainable. It holds that the supersession has to be by promotion and only if there is replacement of one person by another by resorting to promotion. The judgment upheld the decision of the Tribunal rejecting an

appeal on the ground of maintainability. This leads me to consider the order impugned before the School Tribunal. Appeal No.82 of 2017 contained the following prayers :

“(A) Decide and declare that the order of surplus superseding the Legal claim of the Appellant by its letter dated 24-11-2017 under the appeal is illegal, improper and unjustified and be quashed and set aside.

(B) Direct the Respondents to withdraw the said order of supersession.

(C) Direct the Respondents to reinstate the Appellant with continuity of service on her original post with full back wages.

(D) Such other relief for the ends of justice may be granted.

(E) Award cost.”

21. The challenge is essentially to the order of declaring respondent no.1 surplus by “superseding” the claim of respondent no.1 vide letter dated 24th November, 2017 and directing the respondents in appeal, namely, petitioner no.1 and respondent no.2 herein to withdraw the order of “supersession” and to reinstate the appellant with continuity of service. In the interim the Respondent No.1 sought stay operation of the order of

declaring her surplus till final disposal of the appeal. It is this prayer that has been granted by the impugned order. On 30th January, 2018 wherein the Tribunal framed four points for determination which are as follows :

<u>Points for determination</u>		
<i>Sr. No.</i>	<i>Points</i>	<i>Findings</i>
1.	<i>Whether this Tribunal is having jurisdiction to entertain and adjudicate the present application ?</i>	<i>Yes</i>
2.	<i>Whether the appellant had established that the prima facie case for grant of stay ?</i>	<i>Yes</i>
3.	<i>Whether the appellant had established that balance of convenience is in her favour ?</i>	<i>Yes</i>
4.	<i>Whether the Appellant had established that the irreparable loss would cause in the event of refusal of stay ?</i>	<i>Yes</i>
5.	<i>What order</i>	<i>As per final order</i>

22. All these points were answered in the affirmative, as a result the School Tribunal granted interim stay on (Exhibit-6). The application for hearing a preliminary issue of jurisdiction under Section 9A of the Code of Civil Procedure was rejected and the order dated 24th November, 2017 declaring respondent no.1 surplus was stayed till disposal of the appeal. The appeal is still pending disposal before the School Tribunal. Perusal of the

order dated 24th November, 2017 in respect of which stay was sought considers absorption of teachers rendered surplus in school under private management and records that respondent no.1 was rendered surplus and was moved from petitioner no.3 – school to Anant Krishna Kelkar High School. Wada, Taluka Devgad, District Sindhudurg while directing petitioner no.3 – school to relieve respondent no.1 to join school to which she was to be absorbed and accordingly the Head Master of the New School had been requested to immediately absorb respondent no.1. Respondent No.1 was also directed to immediately join duties at the school failing which her services would be deemed to have been terminated.

23. Vide letter dated 18th November, 2017 the Education Officer – respondent no.2 informed the petitioner nos.2 and 3 regarding the objections received to absorb surplus teachers as per staff schedule of the year 2017-18 and on 17th November, 2017 the name of the teachers declared surplus, respondent no.1 was declared surplus and she objected on the ground that she is not rendered surplus as per Schedule “F”. The objections taken by respondent no.1 were decided by the Education Officer which reveals that considering seniority the objections of respondent no.1 were to be rejected. This led to the further decision dated 21st November, 2017 as consequence of rejection of objections of teachers rendered surplus. This is to be found at Exhibit “L” to the petition and perusal of the same reveals that the Education

Officer – respondent no.2 vide letter dated 18th November, 2017 had declared respondent no.1 as surplus in petitioner no.3 – school. The Management and Head Master of the school had raised objections to the process of absorption. This resulted in a hearing held on 21st November, 2017 under the Chairmanship of Deputy Director of Education, Kolhapur where the Deputy Director of Education, Deputy Education Inspector, Head Master of respondent no.3, Secretary of management and respondent no.1 were present.

24. The proceedings revealed that respondent no.1 submitted that she had been in the school since the academic year 2000-2001 and the petitioner no.1 had joined after respondent no.1 joined, whereas the petitioner no.1 is continuing to work in the school and respondent no.1 has been incorrectly declared surplus. After hearing parties and after perusing the documents, the Education Officer concluded that the petitioner no.1 had been working in school from June 2012 as Graduate Teacher with approval of the Education Officer in the school and the school has been sanctioned six posts and eight teachers were found to be working. The strength of students in Standard V were only eight and therefore, the post of two Under Graduate Teachers were rendered surplus. Out of them Shri Sushant Parab was an Art Teacher and he has been absorbed for Standard VIth to VIIIth. One Under Graduate Teacher in the school i.e. respondent no.1, was rendered surplus being employed in the Under Graduate pay scale. The decision taken by the

Education Officer, Zilla Parishad, Solapur was thus confirmed by Deputy Director of Education, Kolhapur Region, Kolhapur. It is in this background that the facts have to be considered.

25. Having heard learned counsel for the parties and having considered their submissions, in my view the impugned order cannot be sustained. Pending appeal, it was not open for the School Tribunal to shut out petitioner's plea on aspect of maintainability since on first principle the order under challenge in the appeal was passed on the basis that respondent no.1 had been superseded by the petitioner, however, factually the issue of supersession did not arise at all since the genesis of respondent no.1 being rendered surplus is the report dated 18th November, 2017 whereby it was proposed to declare respondent no.1 and Shri Sushant Parab surplus. The Education department had sought responses from them since according to respondent no.1, petitioner no.1 was junior to her. This, however, does not appear to be true on a proper interpretation of facts. However, we are not concerned with this aspect of the matter at this stage. The limited scope of this petition is to test validity of the order dated 30th January, 2018. The respondent no.1 was clearly aggrieved by the order passed by the Education Officer and as confirmed by the Deputy Director of Education in his order dated 21st November, 2017 which resulted in issuance of the order dated 24th November, 2017 having rendered respondent no.1 as surplus.

26. There is no challenge to the order of the Education Officer dated 18th November, 2017. and the order dated 21st November, 2017 of the Deputy Director of Education. The order dated 24th November, 2017 was to carry out the effect of respondent no.1 being declared surplus. It is in this context that the facts of the matter have to be appreciated. Even assuming, the order dated 24th November, 2017 was to be set aside, Respondent No.1 would still have to deal with the effect of order dated 18th November, 2017 and 21st November, 2017 passed by the Education department and Deputy Director of Education.

27. In these circumstances on perusal of the impugned order it has proceeded to hold that the Tribunal had jurisdiction without having framed a preliminary issue. In paragraph 9 of the impugned order, the Tribunal while considering point no.1 dealt with sub-section (1) of Section 9 of MEPS Act, in support of its view that a person 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 who is superseded by the management while making an appointment to any post by promotion and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal. In the instant case it is evident that the order was given effect by the management and school as a result of order dated

18th November 2017, 21st November, 2017 and which culminated in the order dated 24th November, 2017. None of the orders ex-facie are orders which reduces the respondent no.1's rank or terminates her services nor can they be considered the order superseding respondent no.1 in post. Respondent No.1 continues to be employed but is posted in different school as correctly pointed out would involve replacement of one person by another by using promotional route.

28. In the instant case there is no question of respondent no.1 being promoted. In this behalf the decision of this Court in the case of Head Master, Amar High School vs. Lata Gajanan Suryawanshi 2004(1) Mh.L.J. 1150 is relevant. It has been held that removal of teacher on account of surplus declaration by the management could result in challenge before the School Tribunal and in such situation the Tribunal could be justified in examining the genuineness of such declaration made by the Tribunal. In the instant case, does not relate by a question of "removal" of the respondent no.1 by the management. On the other hand upon being declared surplus, she has been relieved to take charge in different school at Sindhudurg.

29. The order of the Education Officer which is given effect by the management did not result in removal or termination of services by petitioner no.3-school, despite which would attract provisions of Section 9(1)

(a) of the MEPS Act and as such it was case for the School Tribunal to entertain. The impugned order, however, cannot be sustained in view of the fact that it stays the operation of the order passed by the Education Officer and not by the management of the school. The impugned order will therefore have to be set aside and the appeal dismissed. Accordingly I pass the following order :

- (i) The impugned order dated 30th January, 2018 passed by the School Tribunal at Exhibit-6, 9 and 17 in Appeal No.82 of 2017 is hereby set aside.
- (ii) Appeal No.82 of 2017 stands dismissed. It will be open to the respondent to adopt such proceedings against the respondent no.2 as she may be advised
- (iii) Rule made absolute in the above terms.

30. After this order was pronounced Mr.Bhavake, learned counsel submitted that by virtue of Maharashtra Ordinance XVIII of 2018 whereby Section 9A stood deleted from the Code of Civil Procedure in its application to the State of Maharashtra, an appropriate clarificatory order be passed. In my view, the question of any clarification does not arise since the impugned order did not frame a preliminary issue and as a result the application under Section 9A was dismissed.

(A.K. MENON.J.)