

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

WRIT PETITION NO.4988 OF 2018

J.N. Petit Technical High School .. Petitioner
Vs.
Manisha Ray & Ors. .. Respondents

Mr.Ashish Kamat i/by Mr.Robin Fernandes for the petitioner.
Mr.Salil Ray for the respondent no.1.

***CORAM : R.D. DHANUKA, J.
DATE : 14th September 2018***

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 4th April 2017 and more particularly the observations made in paragraphs 7 and 8 thereof and has also impugned the order dated 26th March 2018 thereby rejecting the review application filed by the petitioner seeking recall of the order dated 4th April 2017.

2. The respondent no.1 has filed a suit bearing Civil Suit No.1493 of 2016 against the petitioner herein and others before the learned trial Judge inter alia praying for a declaration that the respondent no.1 was a trained graduate and special/language teacher in Hindi in

accordance with the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “the MEPS Act & Rules”) and for various other reliefs. The said suit was resisted by the petitioner by filing written statement. In reply to Exhibit-5 filed by the respondent no.1, the petitioner raised various issues including the issue of jurisdiction. In paragraph 3 of the said reply, it was specifically contended by the petitioner that the provisions of the MEPS Act and the Rules had been mis-quoted by the respondent no.1 (original plaintiff) in the suit which were not applicable to the pre-primary section wherein the respondent no.1 was rendering her services and pre-primary section of the said school did not come under the definition of school under the MEPS Act. It was further contended in the said paragraph 3 that the plaintiff all throughout wrongfully invoked the provisions of the MEPS Act and the Rules which were not applicable to the respondent no.1 and the petitioner herein.

3. In paragraph 2 of the said affidavit-in-reply, the petitioner had raised an issue that the suit is barred by various provisions of law as well as the Civil Court has no jurisdiction to try, entertain and decide the said suit pertaining to service conditions as barred by provisions of law.

4. Learned trial Judge framed an issue as to whether that Court had jurisdiction to try the said suit. In paragraph 7 of the impugned order, the learned trial Judge has recorded the submissions advanced by the petitioner herein that the plaintiff was the employee of the defendant nos.1 and 2 but she was serving with the pre-primary center therefore, the School Tribunal had exclusive jurisdiction to try the said suit. The learned trial Judge in the said order has held that considering the facts of the present suit and relief sought by the plaintiff, it clearly appeared that such relief did not come within the ambit of Clauses (a) and (b) of Sub-section (1) of Section 9 of the MEPS Act. It is held that the jurisdiction of the Civil Court was neither impliedly nor expressly barred by the said MEPS Act. The learned trial Judge has accordingly held that the trial Court had jurisdiction to entertain and try the suit filed by the respondent no.1. The petitioner herein filed a review application before the learned trial Judge which came to be rejected by an order dated 26th March 2018.

5. A perusal of paragraphs 6, 8 and 9 of the said order dated 26th March 2018 clearly indicates that the learned trial Judge has rejected the said review application on the ground that in the reply to the application at Exhibit-5 filed by the petitioner herein, it was not disputed

by the petitioner that the provisions of MEPS Act were applicable to the parties.

6. Mr.Kamat, learned counsel appearing for the petitioner invited my attention to the averments in the plaint and also the affidavit-in-reply filed by the petitioner and would submit that it was categorically submitted by the petitioner in paragraph 3 of the affidavit-in-reply that the provisions of MEPS Act and the Rules were not at all applicable to the facts of this case in view of the fact that the respondent no.1 was teaching in pre-primary section. He submits that the learned trial Judge, however, while rendering a finding that the trial Court has jurisdiction to entertain and try the suit has mis-quoted the petitioner that it was admitted by the petitioner that the provisions of the MEPS Act and the Rules were applicable to the parties. He further submits that his client has not challenged the order passed by the learned trial Judge on 4th April 2017 holding that the the trial Court has jurisdiction to entertain and try the said suit filed by the respondent no.1 on the ground that the provisions of the MEPS Act and the Rules were applicable. His only grievance is that the learned trial Judge has mis-quoted the petitioner in paragraph 7 of the order dated 4th April 2017 and paragraphs 6 to 9 of the order dated 26th March 2018.

7. A perusal of the affidavit-in-reply filed by the petitioner to the application at Exhibit-5 clearly indicates that it was the case of the petitioner that the MEPS Act was not applicable to the parties in view of the fact that the respondent no.1 was working in pre-primary section. In my view, in both the orders, the learned trial Judge has mis-quoted the petitioner and has taken a view contrary to the pleadings of the petitioner and more particularly to the effect that the provisions of the MEPS Act and the Rules were not applicable to the parties. Be that as it may, since the petitioner has not impugned the order dated 4th April 2017 holding that the trial Court has jurisdiction to entertain and try the present suit, I am inclined to accept the submission of the learned counsel for the petitioner that the conclusion drawn by the learned trial Judge that the trial Court has jurisdiction to entertain and try the suit was on a factual wrong premise that it was conceded by the petitioner that the provisions of the MEPS Act and the Rules were applicable to the facts on hand.

8. The conclusion thus made by the learned trial Judge in the orders dated 4th April 2017 and 26th March 2018 to the effect that it was the case of the petitioner that the provisions of the MEPS Act and the Rules were applicable are deleted. In view of the fact that the petitioner not having challenged the final order dated 4th April 2017 to

the effect that the trial Court had jurisdiction to entertain and try the suit , the said conclusion is not set aside.

9. Writ petition is disposed of in aforesaid terms. It is made clear that in so far as the issue of jurisdiction raised based on any other issues in the affidavit-in-reply to the application at Exhibit-5 or in the written statement is concerned, the petitioner would be permitted to agitate those issues before the learned trial Judge. It is made clear that in view of the petitioner not having challenged the order dated 4th April 2017 holding that the trial Court has jurisdiction to entertain and try the suit on the ground that the applicability of the MEPS Act and the Rules, the petitioner would not be allowed to agitate the said issue again in future. No order as to costs.

R.D. DHANUKA, J.