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

WRIT PETITION NO.1089 OF 2017

Shri Kamal Kant Singh

.. Petitioner

V/s.

State of Maharashtra & Others

.. Respondents

.....

Mr. V. K. Bodhare i/b. Ashok M. Joshi for the petitioner.

Mr. Nitin A. Kulkarni a/w Avinash Belge for respondent nos.4 to 7.

Mr. J.A. Madane, AGP, for the State–respondent nos.1 to 3.

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CORAM : A. K. MENON, J.

RESERVED ON : 7TH MARCH, 2018.

PRONOUNCED ON : 3RD MAY, 2018.

JUDGMENT:–

1. By this writ petition, the petitioner challenges the judgment and order passed by the Tribunal, Kolhapur in Appeal no.13 of 2012 dated 28th September, 2016.

The facts in brief are as follows:–

2. The petitioner is an assistant teacher who was appointed in a school managed by the 4th respondent. Respondent no.1 is the State, respondent no.2 the Education Officer and respondent no.3 the Deputy Director of Education

who looks after the educational activities in the region. The petitioner was appointed after being interviewed in the school which is a non-grant in aid school. The petitioner has contended that the Sanjeevan Vidyalaya had a recognition by the State Board and not by the CBSE Board of (Secondary Education) and therefore it was covered by the provisions of the MEPS Act and Rules. The petitioner was teaching Standard V and VIII but since he had acquired higher qualifications, he was also attending to the some work during CBSE examinations because the respondent had acquired the recognition of the CBSE Board as well. The petitioner completed 18 years of service and was served with a charge sheet alleging that he had meted out corporal punishment to some students. An enquiry was conducted under the provisions of the MEPS Act and by an order dated 2nd December, 2012 the petitioner was dismissed from service. The petitioner then filed a Civil Suit no.532 of 2010 in the Court of Civil Judge, Junior Division, Mahabaleshwar, District Satara, challenging the termination. The Suit came to be rejected as not maintainable and thereafter an appeal came to be filed in the School Tribunal. The Tribunal came to the conclusion that it did not have jurisdiction in view of the fact that the petitioner was serving in a school which was recognized by the CBSE board. The petitioner then filed a writ petition in this Court wherein the finding given by the Tribunal on jurisdiction was challenged.

3. Meanwhile, in the case of Deepa Jain v/s. Principal, Cathedral and John

Paul School in Writ Petition no.4908 of 2014, this Court held that the teachers working in schools recognized under ICSE Board would also have the right of appeal before the School Tribunal by virtue of the RTE Act. The High Court sought to ascertain whether the petitioner was in fact serving under the CBSE Board. The respondent management appeared at the preliminary stage and contended that the preliminary issue whether the Tribunal had jurisdiction or not can be decided in view of the decision in Deepa Jain (supra). The petitioner sought production of documents from the management's custody which was allowed. It is the petitioners' contention that the documents produced were all computer generated and he therefore sought production of original documents. Later it was contended that the documents for the years 2005-06 and 2009-2010 only were available, whereas those for the years 1992 to 2004 and 2005 had been destroyed by the school. Likewise allotment charts for the year 1992 to 2004 and 2005 had been destroyed and the school had allotment charts only for 2005-06 and 2009-2010. The School Tribunal vide its judgment dated 28th September, 2016 held that the petitioner's appeal was not maintainable since he was a secondary teacher and not a primary teacher and hence the present petition.

4. Mr. Bodhare on behalf of the petitioner contended that the appointment order issued by the petitioner must necessarily be under the provisions of MEPS Act and his service would be governed by the said Act and

the rules prevailing at the time of his recruitment. He submitted that the respondents did not supply copies of rules and/or regulations applicable to the petitioner nor were they produced before the Tribunal. In the meanwhile, the petitioner continued in service from the date of his appointment. The school was recognized by the State Board when the petitioner was appointed and thereafter CBSE recognition has been received, but documentary evidence of such recognition had not been filed and therefore it is alleged that important evidence had been withheld from the Tribunal as well as this Court.

5. Mr. Bodhare further contended that the findings of the Tribunal as to whether the petitioner was serving as a primary teacher or a secondary teacher was not the only issue before it. According to the petitioner, the Tribunal lost sight of the fact that if a teacher serving in a primary section improves his qualification and duties in examination, it cannot be said that his status of employment had changed. He submitted that the bye-laws of the CBSE Board had no statutory value and the respondent had not issued any formal order appointing the petitioner as a supervisor or a TGT teacher. He therefore submitted that the impugned order is bad in law and liable to be set aside.

6. On behalf of the respondents Mr. Kulkarni the learned counsel relied on the affidavit in reply of one Ravindra Shankarrao Deshmukh in which it was contended that there was no error apparent on the face of the record committed

by the School Tribunal in coming to the conclusion that the Tribunal had no jurisdiction to try and entertain the appeal. The Tribunal has concluded that the petitioner was teaching Standard VIII to X. The majority of his classes were from Standard IX and X. The documents filed before the Tribunal were not in dispute and the Tribunal reached a conclusion on the basis of documents that the petitioner was primarily engaged in teaching Standard IX and X, save and except for an occasional periods only attended Xth Standard. Furthermore, the Tribunal contended that the petitioner had not produced any documents to establish that he had worked as a primary teacher and that the petitioner was in fact a post graduate teacher. Reference was made to the bye-laws of the CBSE Board which deal with the rights and obligations and that there was no dispute that the petitioner was a PGT teacher and not a TGT teacher who teaches from Standard VI to IX whereas a PGT teacher teaches from Standard XI to XII. It is submitted by Mr. Kulkarni that the Tribunal had correctly held that the petitioner was not teaching from Standard I to VIII and that the findings of the School Tribunal did not call for any interference.

7. Before dealing with the rival contentions and the impugned judgment, I may observe here that the petitioner was appointed vide letter dated 2nd January, 1992 which sets out the various aspects of the activities of the Vidyalaya. In the general terms and conditions of employment, the respondent was informed that formally his work would consist of duties and

responsibilities assigned to him in his capacity as assistant teacher. However, he could have been called upon to discharge any other duties assigned by the Board of Trustees and that he would be required to take on and discharge duties with due diligence and care. I have perused the impugned judgment of the Tribunal which appears at Exhibit M to the petition. The respondent management challenged the jurisdiction of the Tribunal to entertain the appeal on the ground that the respondent school viz. Sanjeevan Vidyalaya was an affiliated to the ICSE Board. The impugned judgment frames the following preliminary issue:-

“(1) Whether this Tribunal has jurisdiction in light of the observations in the case of Deepa Jain v/s. Principal, The Cathedral and John Cannon School in Writ Petition no.4908 of 2014 and upon the factual adjudication as to whether the petitioner was appointed as primary teacher or a secondary teacher?”

This question was answered in the negative. The impugned judgment records that the appeal was being heard upon remand pursuant to the order passed in writ petition no.723 of 2013. The observations in the order were adverted to and in the course of judgment the Tribunal observed that respondent no.5 had contended that the school was an unaided school and the petitioner was working in the CBSE department and that no approval was granted to his post. Furthermore, in the case of Deepa Jain, the school was not recognized under

the MEPS Act but was established under the auspices of the ICSE Board. In the present case, the school was recognized under the CBSE bye-laws and therefore the scope of enquiry on the issue of jurisdiction was only to the extent whether the petitioner was a primary school teacher or not? The appeal had been remanded with this limited scope.

8. The respondent management had relied upon numerous documents. Inter alia, it was found that there was no direct evidence on the point. These documents were not denied by the appellant and in fact the petitioner had been appointed as a Centre Superintendent to conduct examination of the CBSE Board for Standards X to XII in 2005, 2009 and 2010 at Sainik School, Satara. They relied upon the extracts of the bye-laws of CBSE Board and letters from the CBSE Regional Office, Sainik School, Satara and Navodya Vidyalaya confirming the fact that the petitioner did carry out similar work. The letters issued by the petitioner to the Sanjeevan Vidyalaya mentioned his designation as Supervisor (CBSE Secondary). The appellant contended that though he was working as a CBSE teacher he was allotted the work, as per RTE Act and this Court has jurisdiction to try and decide the present appeal. Although it is quite possible that earlier the petitioner may have been teaching junior or primary classes, after the PGT qualification he had started teaching senior and secondary students, but there was no evidence to that effect. The issue that came up for consideration is whether the appellant was a primary

teacher or secondary teacher? According to the Tribunal, the charts produced shows that the petitioner was teaching Standard VIII to X but had also taught class VII C and VIII C for the years 2010-11 and 2009-10 respectively. The Tribunal came to the conclusion that though he was holding PGT qualification he was not teaching for Standard XI or XII but the time tables for the said period had not been produced.

9. Furthermore, the evidence submitted by the management was found to be doubtful. Considering the pleadings of the petitioners to the effect that he had been teaching Standard V to VIII and mostly taking to 2/3 workloads of the primary section, the petitioner could not produce documents to show how the petitioner worked as primary teacher and this led to an inference that the petitioner was attached to senior classes. It was found that on many of the letters filed by the petitioner, the designation of the petitioner was shown as Supervisor and Assistant Teacher and it was necessary to be consider this admission. There was no mention of any primary CBSE school. The Tribunal found that as per affiliation of bye-laws Section 53 in Chapter IX defines “teachers” and “PGT teachers”. A PGT teacher is one who teaches to Standard XI and XII although it is possible that initially the petitioner may have been teaching junior or primary Standards but subsequently after obtaining the PGT qualification he started teaching students of senior secondary classes i.e. Standard XI and XII. The fact that the petitioner had

obtained PGT qualification was not seriously disputed. There are TGT teachers who teach to Standard VI to X whereas a primary teacher teaches from Standard I to V. The petitioner was found as PGT teacher and therefore he could not be considered to be a primary teacher within the meaning of the RTE Act.

10. The School Tribunal found after considering the ratio in the case of Deepa Jain and Latika Mane that the maximum posts as to primary teachers should be brought under the jurisdiction of the School Tribunal and in the light of those decisions, the petitioner could not be held to be a primary teacher and the decisions in the Deepa Jain and Latika Mane are of no assistance to the Petitioner. Hence the Tribunal concluded that it had no jurisdiction to try and entertain the appeal. The appeal came to be dismissed with liberty to the petitioner to approach the appropriate forum.

11. In the course of submissions, the learned counsel for the parties have taken me through the impugned judgment. The learned counsel for the respondent submitted that the challenge in this petition on the basis that the computerized records are produced does not have any merit since the respondent had made an application vide Exhibit 52 to rely upon the papers which were germane to the issue. The list of documents submitted by application dated 3rd November, 2012 included the judgment of this Court

dated 22nd July, 2010 in Writ petition no.1987 of 2004 and a certified copy showing the affiliation of Sanjeevan Vidyalaya to the CBSE Board and also the petitioner working as CBSE employee with effect from 1995 till his termination. These documents are also filed as part of the affidavit in reply to this petition. I have observed that on the basis of the application Exhibit 52, the petitioner has endorsed his say which reads as follows:-

“only production be allowed at this juncture, keeping open the point of relevancy.”

Thus, the petitioner's Advocate consented to production of these documents. Perusal of these documents reveal that the name of the petitioner appears in the service book extract. Apart from the extract from the service book, the respondents also relied upon a communication from the Central Board of Secondary Education, Affiliation Branch, dated 14th January, 1995 addressed to the Manager, Sanjeevan Vidyalaya wherein effective from 1st April, 1995 the Board granted provisional affiliation to the School upto 31st March, 1998 for a period of three years subject to the conditions held. Thus, prima facie there is evidence to show that the School was indeed affiliated to the CBSE. Furthermore, the extract from the service book for the period as on 9th April, 2010 shows that the petitioner was appointed as a temporary assistant teacher from 2nd June, 1992 and he joined on 2nd June, 1992. He was made permanent with effect from 1st June, 1994 in each of these entries in the service book the

petitioner has signed on the various dates so as to Principal of the Sanjeevan Vidyalaya, CBSE Secondary section. This has been taken into consideration in the impugned order.

12. Furthermore, by office order dated 1st March, 2010 the petitioner was instructed to proceed to J. Navodaya Vidyalaya, Palus, Tasgaon, District Sangli for the AISSE/AISSCE-2010 examination as Centre Superintendent. This order dated 1st March, 2010 relieved the petitioner from Sanjeevan Vidyalaya on 1st March, 2010 and directed him to report to the Principal J. Navodaya Vidyalaya, Sangli and recording the fact that the admissible TA/DA would be paid by the CBSE as per the rules. Furthermore, on 24th February, 2010 a “Relieving Order” is seen to be issued, relieving the petitioner from duties from 24th February, 2010 an order to enable him to join his duties as Centre Superintendent as aforesaid. The CBSE is also seen to have communicated directly to the petitioner vide letter dated 9th February, 2010 acknowledging his acceptance of the office duties as Centre Superintendent at J. Navodaya Vidyalaya. It was therefore contended that there is no substance in the contentions of the petitioner that he was a primary school teacher and unaffiliated to the CBSE Board.

13. Mr. Kulkarni also brought my attention to the fact that the petitioner is designated as PGT in the Hindi language subject and had been

listed at item 2 in the statement prescribed as *“Proforma to collect information for data bank of Principal/Teachers at Sec. and senior secondary level for the year 2010-11”* which was duly certified by the headmaster of Sanjeevan Vidyalaya as true and correct. Further, the proforma issued also shows the name of the petitioner which has been duly signed by him. Against his signature there is a column which seeks confirmation whether any relative was appearing in was taking in the ensuing examination of CBSE, to which he answered in the negative. None of these have been called into question. Furthermore, in a letter dated 6th September, 2005 addressed by the Sanjeevan Vidyalaya to the Secretary, CBSE, a revised list of teachers signed by each of the teachers has been provided. This was directed to be used as a list of examiners and the forwarding letter certified that none of the teachers' children were appearing in the classes for Standard X and XII board examination in March 2006. This is duly signed by him. All these and several other similar proforma are attached to the affidavit in reply.

14. In his affidavit in rejoinder, the petitioner contended that the High Court had not directed that upon remand the only issue to be considered was whether he was teaching from Standard V to VIII or otherwise but was also required to give a finding on submissions made on his behalf before the High Court. It is contended that this aspect of the matter had not been dealt with by the School Tribunal. He has dealt with the contents of the documents annexed

to the reply referring to the fresh affiliation communication dated 14th March, 1995. It is contended by the petitioner that the school was granted CBSE affiliation only in 1995 whereas he was appointed under the SSC Board since 1992 only the State Board of Maharashtra had recognized the school in the year 1992 to 1995. It is contended that the school management had failed to show how he had been rendering services from 1992-95. He contended that the appointment order does not make any reference to CBSE and therefore the School was recognized only by the SSC Board and only much later it was recognized by the CBSE Board and as on date the schools under both the Boards carry on their activities on the same premises. The deponent states that the factual position as to affiliation was not decided and the question is whether he was teaching in a CBSE affiliated school need not be gone into since no fresh order was issued by the CBSE Board.

15. It is contended by Mr. Bodhare on behalf of the petitioner that the documents relied upon did not reveal that the petitioner was teaching students of XI and XII and merely because he was assigned duties of an examiner of Standard IX and X examination and thus Standard XII would not conclusively established where he was serving. It was therefore submitted that the documents relied upon were not conclusive. In the circumstances, it was submitted that the impugned order was bad in law and liable to be set aside.

16. Having heard the learned counsel at length and having perused the impugned judgment, I am of the view that no interference is called for. The impugned order proceeds on the basis of numerous documents which are not called into question by the petitioner. Reliance has been placed on item 18 of the chart wherein the petitioner is shown as a teacher for Standard VIII to X. In these charts the only objection taken was that the chart was computerized and not signed by anybody. Copies not having been signed by the Principal of the CBSE Secondary School was not reason enough to discard such evidence. The impugned judgment clearly finds that all the documents filed along with Exhibit 52 are reliable and are not seriously disputed. The documents show that the petitioner was teaching Standard Xth and merely because of few periods of Standard Xth may have been allotted to him, it does not make him a primary teacher. The impugned order found against the petitioner to the effect that he cannot be termed as a primary teacher. The impugned judgment also holds that there is direct and reliable evidence brought on record by the management to clarify that the petitioner was not a primary teacher, leading to the inference that the petitioner was attached only to senior standards of CBSE since he was admittedly a qualified PGT teacher.

17. Adverting to the decisions in the case of Deepa Jain and Latika Mane, it is seen that in Latika Mane's case the Division Bench of this Court had

held that after the framing of the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 (RTE Rules, 2011), right of appeal is given to any teacher from any school. The definition of 'School' in Section 2(n) of Right to Education Act, 2009 includes any unaided school not receiving grants in aid. Rule 20 of the RTE Rules provide that a teacher or an employee of a school, other than a school run by Government or Local Authority who is aggrieved by any of the decisions of the management regarding his or her service conditions shall have a right of appeal to the Tribunal constituted under Section 8 of the MEPS Act. It was observed in *Deepa Jain (supra)* that RTE Act was enacted with the object of free and compulsory education to all children below 6 to 14 years of age and included unaided schools not receiving of any grant or aid which it expects from the appropriate authority. The Division Bench held that access to judicial remedies is an integral part of the regime which provides just and stable conditions of work and that it cannot be disputed that a school recognized by the ICSE board also falls within the ambit of the RTE Act. A teacher working as a primary teacher in a school will also have a right to file an appeal to the School Tribunal. This Court held that a primary teacher could not be deprived of the right to file an appeal on the ground that the school was recognized by the ICSE Board. It is observed in *Latika Mane* that the right to file an appeal will be available to teachers working in an ICSE school, if such school falls within the ambit of the RTE Act.

In that case, the Tribunal had apparently misdirected itself in appreciating the decision of the Division Bench in *Latika Mane*. The Division Bench in the case of *Latika Mane* held that by virtue of Rule 20 of the RTE Rules, the right to appeal in respect of the decisions falling within the purview of Rule 20 would apply to an appeal filed by a primary teacher and those which were pending as on date on which the Rules came into force. The Court held that the State Government as a delegate of the legislature by framing Rule 20 under the Right to Education Act provided a comprehensive remedy to teachers of primary schools as a matter of public policy to move a judicial forum in the interests of ensuring stable and secure conditions of service. The Division Bench considered the challenge to an order passed by the School Tribunal rejecting an appeal on the ground that the management of a primary school was governed by the provisions of the Bombay Primary Education Act and that the law which held the field until the formation of the Right to Education Act was that the employees of primary school had no remedy under Section 9 of the MEPS Act, 1977 against an order of dismissal, removal from service, termination, reduction in rank or supersession in the matter of promotions.

18. In *Komal Rugwani v/s. State of Maharashtra 2011 (4) Mh.L.J. 301(FB)*, a full bench of this Court considered the issue as to whether a person employed in a private primary school recognized by a body

or officer referred to in sub-section(2) of Section 39 of the Bombay Primary Education Act, 1947 can approach the Tribunal under Section 9 of the MEPS Act, if he or she was aggrieved by any action of the management. In other words, whether the MEPS Act would apply the employees of private primary school recognized by a body or officer referred to in sub-section (2) of Section 39 of the Bombay Primary Education Act, 1947. The full bench held that an employee in such a school could not file an appeal under section 9 of the MEPS Act. The Division Bench in Latika Mane made reference to Rule 20 of the RTE Rules which was brought into effect from 11th October, 2011. The Division Bench observed that the full bench in Komal Rugwani (supra) considered the position of law as it was prior to enactment of the RTE Act and under the MEPS Act, 1977 the right to appeal under Section 9(1) was provided to employees of private schools recognized by one of the authorities specified in Section 2(21) and that the framing of rules under the RTE by the State Government has fundamentally altered the situation. The forum of the school Tribunals is now provided to employees of primary schools in the State of Maharashtra who are aggrieved by any of the decision of the management regarding their conditions of service and in regard to matters referred to under Rule 20 and for those reasons the order of the School Tribunal assailed in Latika Mane was quashed and set aside.

19. Reference was also made to the decision of the Single Judge of this

Court in *Prabha Rajesh Singh v/s. Chairman/Secretary, Rural Educational and Medical Society India and others 2015 (1)Mh. L.J. 708* in which case the terms specified in Section 2(n) of the RTE Act does not merely mean any recognized school imparting elementary education, but also includes an unaided school not receiving grant in aid which following the decision in Latika Mane, set aside the order of the School Tribunal holding that it had no jurisdiction to entertain an appeal on the ground that it was made by teachers of unaided schools not receiving the grant.

20. Having considered the aforesaid legal position, in the facts of the present case, the issues is not as much as one dealing with the jurisdiction of the Tribunal to hear and decide the appeal against the order of termination issued by school which was aided or unaided but rather the question was whether the petitioner was a teacher in a primary school or not. In my view, the impugned order cannot be faulted. For the aforesaid reasons, the petition fails. I pass the following order;

- (i) Writ Petition is dismissed.
- (ii) No orders as to costs.

(A. K. MENON, J.)