

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No. 4665 of 2017
[Motiram Sakharam Mohorle Vs. Mahatma Jyotiba Phule Shikshan Mandal & others]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. S. Zia Qazi, Adv., for the petitioner.
 Mr. S. R. Deshpande, Adv., for respondent no.2.
 Ms. H. Prabhu, AGP for respondent no.3.

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CORAM : A. S. CHANDURKAR, J.

DATE : 26th March, 2018

The petitioner is aggrieved by the order passed by the learned Presiding Officer, School Tribunal on the application for dismissal of the appeal that was filed by the petitioner herein.

The respondent no.2 has filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 challenging the order of termination dated 17th August, 2009. In this appeal, the respondent no.1 herein has been shown as the "President through the Public Trust."

In that appeal, the petitioner herein filed an application seeking permission to take part in the proceedings on the ground that the respondent no.1 herein was not concerned with the order of termination and that he was supporting the case of the respondent no.2. That application was allowed by the School Tribunal after which Written Statement-cum-Reply has been filed by the petitioner herein. Thereafter, the petitioner moved an application for dismissal of the appeal on the ground that he was managing the affairs of the Trust and was competent to defend the order of termination. As the necessary party was not impleaded, the appeal was liable to be dismissed. The learned Presiding Officer rejected that application, holding the same to be not maintainable at that stage.

The learned counsel for the petitioner submitted that in the light of adjudication in Second Appeal No. 550 of 2007, it was the petitioner who was competent to issue the order of termination and was, therefore, a necessary party to the appeal. The learned Presiding Officer, without considering this aspect of the matter, rejected the application filed by the petitioner only by observing that the same was not maintainable. He submitted that the respondent no.1 herein was not concerned with the management of the Trust or with the issuance of the order of termination.

The learned counsel for the respondent no.2

supported the impugned order. According to him, in the proceedings under the Maharashtra Public Trusts Act, 1950, he was found entitled to manage the affairs of the Trust and he referred to the extract of Schedule-I as maintained under the said Act to indicate the entitlement of the respondent no.2. He also placed reliance on the decision in Writ Petition No. 1078 of 2016 [**Azaz Kibriya Khan Maqsoodali Khan Vs. Tanvir Ahmed Khan Shabbir Khan & others**]; decided on 6th April, 2017 [Coram : Z. A. Haq, J.] to support the impugned order.

After hearing the learned counsel for the parties, it is not found necessary to record any finding on the correctness of the order impugned. I find that the petitioner has been permitted to participate in the proceedings pursuant to which he has filed his Written Statement. The question before the School Tribunal is the validity of the order of termination dated 17th August, 2009. In the light of defence taken by the respondent no.2 as well as the petitioner herein, the School Tribunal shall determine the validity of the order of termination. The orders passed in proceedings under the Maharashtra Public Trusts Act, 1950 can be referred to while substantiating the respective stands. The School Tribunal shall consider the stands of both parties and decide the appeal in accordance with law. The adjudication of the application as per order dated 29th April, 2017 shall not come in the way of either of the

parties when the appeal is finally heard.

Writ Petition is disposed of in aforesaid terms.
No costs.

Judge

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