

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

931 WRIT PETITION NO.4818 OF 2018

1. Sau.Parvatadevi Apang Shikshan
Va Prasarak Mandal, Khodi (Bk.),
Taluka and District Jalgaon,
Through its President,
Shri Shantaram Tukaram Patil
R/o. Khodi (Bk.), Taluka and
District Jalgaon.
2. Madhyamik Vidyalaya
Khodi (Bk.), Taluka and
District Jalgaon,
Through its Head Mistress ..Petitioners

VERSUS

1. Smt.Shobha Waman Chaudhari
Age: 42 years, Occu.: Nil,
R/o. C/o. Dnyaneshwar Ananda Patil
R/o.Mesco Mata Nagar, Old Asova Road,
Jalgaon, Taluka and District Jalgaon.
2. The Education Officer (Secondary),
Zilla Parishad, Jalgaon. ..Respondents

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Advocate for Petitioners : Shri Sachin S. Deshmukh
AGP for Respondent - State : Shri S.K.Tambe
Advocate for Respondent No.1 : Shri Ramesh I. Wakade

...
CORAM : P.R.BORA, J.
DATE: 4th June, 2019

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, the petition is taken up for final disposal at the admission stage.

2. Respondent No.1 has preferred Appeal bearing No.51 of 2013, before the School Tribunal at Nashik, alleging that the present petitioners have illegally terminated her services. On perusal of the Appeal filed by respondent No.1, it is revealed that she has come out with a case of otherwise termination of her services w.e.f 25.02.2013. It is her further contention that an enquiry was initiated against her and though the enquiry proceedings were concluded according to her version on 01.06.2013, no further order has been passed by the management. It seems to be the further contention of respondent No.1 that she, therefore, gave a letter dated 13.07.2013 to the management requiring certain information as about result of enquiry or punishment imposed, if any, upon her. It is the further contention of respondent No.1 that since she has not provided with any information, she has preferred Appeal before the School Tribunal.

3. After service of the notice of Appeal, the management appeared before the School Tribunal and filed an application on 21.03.2014, raising an objection that the Appeal was not preferred by respondent No.1 within the period of limitation and no application was filed by her for condonation of delay. It was contended that as per the averments in the Memo of Appeal

itself, when it was the case of the respondent employee that her services were otherwise terminated w.e.f. 25.02.2013, the Appeal must have been preferred by respondent No.1 on or before 24.03.2013 i.e. within 30 days of passing of such order. A request was also made by the petitioner management that issue as about the limitation be framed as preliminary issue and the same be decided first and thereafter, the proceeding may be carried further, if so required. The application so filed by the petitioners was opposed by respondent No.1. The learned School Tribunal, vide the impugned order, has rejected the said application.

4. Shri S.S.Deshmukh, learned Counsel appearing for the petitioners submitted that as provided under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred to as 'the MEPS Act'), the appeal has to be preferred within 30 days from the date of order of termination. The learned Counsel submitted that there is also provision for preferring appeal even beyond the period of limitation and in such circumstances, the employee concerned shall file an application making out a case for condoning the delay. The learned Counsel submitted that in present matter no such application has been admittedly filed by

respondent No.1. The learned Counsel taking me through the averments in the Appeal filed by respondent No.1, submitted that it is the case of respondent No.1 herself that her services were otherwise terminated w.e.f. 25.02.2013. The learned Counsel submitted that in such circumstances,, the Appeal filed by respondent No.1 on 13.08.2013, without any application for condonation of delay, was not liable to be entertained or taken cognizance of by the School Tribunal. The learned Counsel submitted that, in the circumstances, an application was preferred by the present petitioners for framing a preliminary issue as about the limitation and decide the same first. The learned Counsel submitted that the issue of limitation was going to the root of the powers of the Tribunal; whether to entertain an appeal which is noticed to have been filed beyond the period of limitation without filing any application for condonation of delay. The learned Counsel submitted that in the circumstances, the application must have been allowed by the School Tribunal and the issue of limitation was liable to be framed as the preliminary issue and the same should have been decided by the Tribunal first. According to the learned Counsel, the Tribunal has manifestly erred in rejecting the application filed by the petitioners.

5. Shri R.I.Wakade, learned Counsel appearing for respondent No.1 employee has resisted the contention raised on behalf of the petitioners. The learned Counsel submitted that the Tribunal has rightly rejected the request of the petitioners for framing preliminary issue. Inviting my attention to paragraph No.6 of the order, the learned Counsel submitted that perusal of the observations made by the Tribunal in the said paragraph, it can be impliedly inferred that the Tribunal was of the opinion that the issue of limitation can be decided alongwith the main Appeal. In the circumstances, the learned Counsel prayed for dismissal of the petition filed by the petitioners.

6. I have given due consideration to the submissions made by learned Counsel appearing for the respective parties. I have perused the impugned order as well as the other documents placed on record by the petitioners. There cannot be a dispute that any Appeal to be preferred against the order of termination by an employee of the School covered by the provisions of MEPS Act, has to be filed by the said employee within 30 days from the date of receipt of the said order. Section 9 of the MEPS Act further provides that the Tribunal may entertain Appeal filed after the expiry of the said period of 30 or 60 days as the case be, if it is satisfied that the appellant has sufficient cause for not

preferring the Appeal within that period. In the present matter, since the case is of termination, respondent No.1 was expected to file Appeal within 30 days from the date of receipt of the said order. After having perused the contents of the Appeal filed by respondent No.1, it is quite evident that respondent no.1 has not yet been served with any termination order. As is averred in the Appeal, respondent No.1 was prevented from signing muster roll w.e.f. 25.02.2013. In the said background, it is the contention raised in the Appeal by respondent No.1 that her services were otherwise terminated by the management w.e.f. the said date. It is also the case of the respondent employee that thereafter, enquiry was conducted against her and though the enquiry was concluded sometime in June 2013, no further orders have been passed and no punishment has been imposed upon her. It is her further contention that in the circumstances, she sent an application dated 13.07.2013 to the petitioners seeking clarification as about the punishment or the result of the enquiry conducted against her. It is her further contention that since she did not receive any response from the petitioners, she was constrained to file Appeal before the School Tribunal on 13.08.2013 assuming that her services are otherwise terminated.

7. If the averments in the Appeal are perused, both the dates

i.e. 25.02.2013 and 13.07.2013 are to be considered to be the dates of otherwise termination of respondent No.1 since there is no termination order on record. No much importance can be given to the date 25.02.2013 for the reason that it is the further case of respondent no.1 that after she was prevented from signing the muster roll w.e.f 25.02.2013, she was issued with a charge-sheet some times in March 2013 and the enquiry was thereafter conducted by the management till June 2013. Respondent No.1 has in fact referred to the date 25.02.2013 only in the context that from the said date she was restrained from signing muster roll, however, she herself in paragraph No. 11 of the Appeal has mentioned to the dates 25.02.2013 and 13.07.2013 as the dates providing cause of action to her for filing the Appeal. It is because of the said averment in paragraph No.11 of the Appeal that the petitioner management had filed an application raising preliminary objection as about the limitation and had prayed for deciding the said issue as preliminary issue and to dismiss the Appeal on that count alone.

8. The petitioner management admittedly has not filed its say / written statement or affidavit-in-reply to the Appeal filed by respondent No.1. The record reveals that though the Appeal is filed by respondent No.1 on 13.08.2013, the application

requesting for framing preliminary issue raising preliminary objection as about the limitation is filed on 21.03.2014. As has been observed by the learned Tribunal in paragraph No.6 of the impugned order, the said application has been belatedly filed by the petitioner management. It is evident that the averments in application filed by petitioner management on 21.03.2014 are based on pleadings in the Memo of Appeal. The objection of limitation has been therefore raised and a request is made for framing of preliminary issue. As noted above, the petitioner management has admittedly not filed its say/written statement to the Memo of Appeal. In the present petition, it seems to be the contention of the petitioner management that departmental enquiry has been conducted against respondent No.1 and services of respondent No.1 have been terminated vide order of dismissal dated 03.06.2013. In the petition though it is also mentioned that the copy of the said termination order is annexed with petition as Annexure-A, Annexure-A with the petition appears to be something different and not the termination order dated 03.06.2013 allegedly issued by the petitioner management against respondent No.1. It further appears to be the stand of the petitioner management that respondent no.1 has avoided to receive the communication i.e. the order of dismissal dated 03.06.2013 and has come out with a false case

that she has written a letter dated 13.07.2013 to the petitioner management as she has not been communicated the result of the enquiry conducted against her. As provided under Section 9 of the MEPS Act, the employee terminated from the services has to file the Appeal before the School Tribunal within 30 days from the receipt of the said order. In the present case, as noted earlier respondent No.1 has taken a plea that no termination order yet been served upon her, whereas it is the contention of the petitioner management that the services of respondent No.1 have been terminated w.e.f. 03.06.2013 but the said order could not be served upon respondent No.1 as she refused to accept the said communication.

9. After having considered the facts as aforesaid, it appears to me that unless the petitioner management files its written statement containing all necessary particulars alongwith documents as about the termination of services of respondent No.1, the Tribunal may not be able to decide whether the Appeal filed by respondent No.1 is within the period of limitation. I reiterate that in the present petition also the petitioner management has not placed on record the order of termination or any tangible proof showing that the said order was attempted to be served upon respondent no.1 but could not be served. In

the circumstances, it does not appear to me that the learned Tribunal has committed any error in rejecting the application filed by the petitioner management and has directed it to submit its detailed written statement and to proceed with the Appeal filed by respondent No.1. I, therefore, see no merit in the present petition, It therefore deserves to be dismissed and is accordingly dismissed. Rule is discharged.

(P.R.BORA)
JUDGE

SPT