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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO 2885 OF 2019**

Mrs Sreedevi Nair

.... Petitioner.

V/s

Trustees of Chinmaya Vidyalaya
Chinmaya Mission Trust Mumbai
and Anr.

....Respondents.

Mr. B.S. Nayak for the Petitioner.

Mr. Suhas Inamdar for Respondent No.1.

Mr. R.P Kadam, AGP for Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATED : AUGUST 8, 2019

P.C.:

1] Petition can be finally disposed of by consent of parties at the stage of admission.

2] After appointment of the Petitioner as a primary teacher on May 26, 2004, upon acquiring qualification of trained graduate teacher, Petitioner was upgraded on April 1, 2013 to the post of trained graduate teacher, so as to teach in the Secondary School also.

3] A show cause notice dated June 27, 2018 which was replied by the Petitioner on July 9, 2018 is formed to be the basis for issuing the order of termination dated

September 28, 2018.

4] Feeling aggrieved, Petitioner preferred an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred to for the sake of brevity as “the MEPS Act”) questioning the said order of termination, which, by the impugned order dated January 23, 2019, came to be dismissed with an observation that School Tribunal has no jurisdiction to entertain the appeal. As such this Petition.

5] The submissions of the learned Counsel for the Petitioner are, initially, appointment of the Petitioner is that of primary teacher and even if her status is that of a trained graduate teacher, the fact remains that the Petitioner continued to teach students of 5th to 10th Standard. The learned Counsel for the Petitioner would urge that in view of the judgment of this Court in the matter of *Latika Rajaram Mane vs. State of Maharashtra and others*¹, it has to be held that the School Tribunal has jurisdiction to entertain the appeal. He would place reliance on the aforesaid judgment in the matter of *Latika Mane* cited supra. The learned Counsel, in addition to above, would urge that pursuant to the provisions

¹ 2013(4)Mh.L.J. 244

of the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 particularly Rule 20, the appeal preferred by the Petitioner is very much maintainable. He would draw support from the judgment in the aforesaid matter from paras 9 onwards to claim that the appeal is very much maintainable. The learned Counsel would also invite attention of this Court to other judgments which are delivered prior to bringing into effect the provisions of the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011.

6] While countering the aforesaid submissions, learned Counsel for the Respondent/Management would invite attention of this Court to the bye-laws, providing educational qualification for secondary teacher teaching in CBSE Secondary School by relying on clause 53 of the bye-laws, which prescribe qualification for trained graduate teacher and definition of the Secondary School as prescribed therein. The learned Counsel submits that the Petitioner cannot be termed as a primary teacher. In addition, while placing reliance on the judgment of this Court in the matter of *Shri Kamal Kant Singh vs. State of Maharashtra and Others* in Writ Petition No.1089 of 2017, the learned Counsel would urge that the appeal, at the behest of the Petitioner, who is an employee

of a School affiliated to CBSE Board, is not maintainable. As such, according to him, the view expressed by the Tribunal in the order impugned is just and proper and as such, Petition is liable to be dismissed.

7] Considered the rival submissions.

8] Some of the undisputed facts, which can be formed to be the basis for disposing of the present Petition are, the Petitioner came to be appointed as primary teacher on May 26, 2004 and was upgraded as trained graduate teacher from April 1, 2013. Her services came to be terminated on September 28, 2018 admittedly without holding an inquiry.

9] As regards the service book of the Petitioner is concerned, it reflects that on the date of termination, Petitioner was imparting lessons/ engaging classes of students who are taking education in Standard 5th to 10th of the same School.

10] Primary teachers are teachers who are supposed to teach students from 1st to 5th Standard and, admittedly, Petitioner was teaching to the students of 5th Standard in the School in question, as is reflected in service book of the

Petitioner. As such, in the aforesaid background, if Division Bench Judgment of this Court in the matter of *Latika Mane* cited supra is appreciated, in categorical terms it has been held in the same that primary teacher who is a teacher teaching in Primary School has every right to file an appeal under Section 9 of the MEPS Act.

11] Apart from above, the fact remains that reliance placed by the Respondents on the judgment of this Court in the matter of *Shri Kamal Kant Singh* cited supra will be hardly of any assistance as the said judgment is passed on factual matrix of the said case. In the said case, Petitioner-teacher was teaching to the students from Standard 11 to 12 on the date of termination, whereas, in the case in hand, it is an undisputed position on record that the Petitioner-teacher was teaching to the students from 5th to 10th Standard.

12] Even if it is presumed that the Petitioner was teaching to the students from Primary and Secondary School, however, that by itself will not act as an embargo on the right of the Petitioner qua remedy of appeal available under Section 9 of the MEPS Act.

13] This Court is required to appreciate the cause, which is

sought to be answered by Division Bench of this Court in the matter of *Latika Mane* cited supra. Keeping in mind the observations made therein in the backdrop of paras 9 onwards, the remedy which is sought to be prescribed to a cause to be answered, is making availability of a measure so as to redress the grievance which is made out of service conditions. Paras 9, 10 and 11 of the Judgment of Division Bench in the matter of *Latika Mane* cited supra, read thus:

“9. The Central Act defines duties of teachers, provides for disciplinary action being taken in the event of default and contemplates that the grievances of teachers would be redressed in such manner as may be prescribed by the rules. The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 were brought into force on 11 October 2011. Rule 11 provides for recognition of a school by the District Education Officer. Rule 15 provides that minimum qualifications of teachers for the purposes of Section 23(1) shall be laid down by the academic authority notified under the aforesaid statutory provision. Rule 18 stipulates the manner in which the Government or local authority, as the case may be, shall specify the terms and conditions of service and the salary and allowances of teachers. The duties to be performed by teachers are provided in Rule 19. Rule 20 provides for a grievance redressal mechanism for teachers. Rule 20 reads as follows:

“20. Grievance Redressal mechanism for teachers for purposes of section 24(3).-(1) A teacher or 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 or a teacher or an employee.-

(a) 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

(b) who is superseded by the management while making an appointment to any post by promotion shall have a right of appeal and may appeal against such order or supersession to the tribunal constituted under section 8 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Mah. III of 1978).

(2) The appeals so preferred shall be governed by the provisions of sections 8, 9, 10, 11, 12, 13 and 14 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Mah. III of 1978) and the Rules 39 and 43 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.”

“10. The field of elementary education comprising of education from the first to eighth standards has now been comprehensively regulated by the Central Act. The Right to

Education Act specifically contemplates that the grievances of teachers shall be redressed in such manner as may be prescribed by the rules. The rules which have been framed by the State of Maharashtra provide for a right to appeal to the Tribunal constituted under Section 8 of the MEPS Act in respect of the matters enunciated therein. Rule 20 is framed in broad terms. A right of appeal is conferred against the following orders: (i) An order of dismissal; (ii) An order of removal; (iii) An order otherwise terminating the services; (iv) An order of reduction in rank; and (v) An order of supersession by the management while making any appointment to a post by promotion. These categories correspond broadly to clauses (a) and (b) of Sub-section (1) of Section 9 of the MEPS Act. But significantly, the ambit of the remedy which is made available 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 of a teacher or employee by which any teacher or employee is aggrieved. As a result of the framing of Rule 20, in accordance with, and under the power conferred by the Central Act, a comprehensive remedy in the form of an appeal before the School Tribunal is provided to any teacher or employee who is aggrieved by any decision of the management regarding his or her service conditions, including those decisions which result in one of the consequences spelt out in clauses (a) and (b)."

"11. The object and purpose of making a comprehensive remedy available to primary school teachers across the State of Maharashtra against any decision of the

management with regard to their conditions of service, as well as decisions of the nature contemplated by clauses (a) and (b) of Rule 20 is to ensure that such teachers are protected against exploitation and unfair practices. The ability of a teacher to dedicate himself or herself to the cause of education of young children is contingent on a secure working environment and on conditions of work which provide certainty, transparency and objectivity in decision making by management. Leaving primary teachers to the whim and caprice of a private management was evidently a consequence which both the Central legislation and the rule making authority sought to obviate by providing a judicial remedy before the School Tribunal manned by a Judicial Officer. Access to judicial remedies is an integral part of any regime which provides just and stable conditions of work. This is also the ethos of the constitutional values in the Directive Principles of State Policy. Those values the Court has a duty to protect. It is necessary to emphasize this aspect because in determining as to whether the rules which have been framed under the Right to Education Act, would apply to a situation where a termination of services has taken place even prior to the enforcement of the rules, the object and purpose of the remedy is an important circumstance which must be taken into account. The essential object and purpose is to provide access to justice to primary school teachers. The constitutional guarantee of free and compulsory primary education is given practical content by the Act and the Rules. As judges give substance to them in deciding cases, the importance of the constitutional guarantee must be borne in mind."

14] In the aforesaid backdrop, the remedy which is already prescribed in the matter of *Latika Mane* cited supra can very much be made available to the Petitioner in case in hand, considering the fact that the Petitioner was teaching to 5th Standard students.

15] Even if there is overlapping of sections from Secondary School qua services rendered by the Petitioner, however, that by itself will not act as an embargo on the right of the Petitioner to claim remedy of availability of appeal under the MEPS Act.

16] In view of above, the order impugned dated January 23, 2019, in my opinion, is not sustainable and is accordingly quashed and set aside. The School Tribunal is directed to decide the appeal preferred by the Petitioner expeditiously.

17] Parties to the Petition agree that they shall appear before the School Tribunal on 10th February, 2020.

(NITIN W. SAMBRE, J.)