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

WRIT PETITION NO. 5100 OF 2016

Shri Sharad Shikshan Prasarak Mandal ... Petitioner

V/s.

State of Maharashtra and Ors. ... Respondents

Mr. Vinayak Kumbhar I/b. Mr. N.V. Bandiwadekar for the Petitioner.
Ms. Nisha Mehra, AGP for Respondents 1 & 2.
Mr. Prashant Bhavake for Respondent 3.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 15 JULY 2019.

P.C. :-

The Petitioner is an educational institute. It runs a secondary school Prithvi Madhyamik Vidyalay at Vadgaon in District Kolhapur. The Petitioner is challenging the direction issued by the Respondent No.2 - Education Officer (Secondary) Kolhapur to reinstate Respondent No.3, who was working as a Headmaster and was dismissed.

2. The school, Prithvi Madhyamik Vidyalay, is a recognized institution. It has classes from Standard 5 to 10. The classes from Standard 8 to 10 are receiving 100% grant in aid. The Respondent No.3 was working as a Headmaster in the school. According to the Petitioner, complaints were received against the Respondent No.3 and the letter was issued by the Petitioner to Respondent No.3 on 29 July 2015 calling upon him to reply to the allegations made against him therein. The Respondent No.3 did not submit any explanation. On 22 August 2015, the Petitioner constituted an Enquiry Committee. On 24 August 2015, the Petitioner informed the names of the two members of the Enquiry Committee to Respondent No.3 and called upon him to nominate his representative, which the Petitioner did not do. A charge-sheet was served on the Respondent No.3 on 8 September 2015. An enquiry was conducted. The Enquiry Committee submitted its report on 8 September 2015. On 10 December 2015, accepting the enquiry report, the Petitioner passed an order dismissing the Respondent No.3 from service w.e.f. 14 December 2015. Accordingly, the Respondent No.3 was dismissed from service from 14 December 2015.

3. Since the Respondent No.3, working as a Headmaster, was dismissed from service, the Petitioner passed a resolution to appoint a teacher, Mrs. Suvarna Patil, as an incharge Headmistress.

The Petitioner submitted proposal to Respondent No. 2 – Education Officer to grant approval to Mrs. Suvarna Patil as an incharge Headmistress. The Respondent No.2 issued an order granting signing authority to Mrs. Suvarna Patil as incharge Headmistress for period of six months upto 31 May 2016.

4. The Respondent No.3 instead of filing any appeal to the School Tribunal approached the Respondent No.2 – Education Officer. The Respondent No.2 deputed acting Education Officer to visit the school and make an enquiry. The acting Education Officer submitted report to Respondent No.2 that Respondent No.3 will have to file an appeal in the School Tribunal. The Respondent No.2 sought an opinion from the District Government Pleader, Kolhapur. The District Government Pleader, Kolhapur on 22 March 2016 opined that whether the dismissal of the Respondent No.3 was valid and whether the Enquiry Committee was validly constituted will have to be decided by the appropriate Court. In spite of these opinions, the Respondent No.2 – Education Officer passed the impugned order on 23 March 2016 directing that the Respondent No.3 be taken back in service since there are change reports pending in respect of the management of the Petitioner before the Charity Commissioner.

5. We have heard Mr. Vinayak Kumbhar, the learned

Counsel for the Petitioner, Ms. Nisha Mehra, AGP for Respondent Nos. 1 and 2 and Mr. Prashant Bhavake, the learned Counsel for Respondent No.3.

6. The central issue that arises for consideration, which is the main contention of the Petitioner, is whether the Respondent No.2 – Education Officer had an authority to issue a direction to the Petitioner to take the Respondent No.3 back in service. Section 9 of the Maharashtra Employees of Private Schools Act, 1977 provides a statutory appeal to an employee of a private school against the order of dismissal by the management. Admittedly, the Respondent No.3 was working as a Headmaster in the Petitioner – school. Rightly or wrongly, an order was passed dismissing the Respondent No.3 from service. The Respondent No.3 has filed a reply taking various contentions regarding the legality of the dismissal. The primary contention being that the present management of the Petitioner is not validly constituted neither it can represent the Petitioner.

7. As regards the management of the Petitioner is concerned under the provisions of the Bombay Public Trust Act, it is the Charity Authorities having jurisdiction to decide the change reports. As far as the employer-employee relationship is concerned, as regards dismissal, under the provisions of the Act of 1977, it is the School Tribunal which can decide this issue. The Respondent No.3

has not stated in the affidavit that he had approached the School Tribunal and the School Tribunal has granted reinstatement in his favour. We have not been shown any statutory provision which empowers the Respondent No.2 – Education Officer to issue an order which amounts to the reinstatement of a dismissed employee. In spite of the report of the acting Education Officer and legal advice not to pass such order, the Respondent No.2 has gone ahead and directed reinstatement. The impugned order passed by the Respondent No.2 is illegal and is quashed and set aside. Petition is allowed.

N.M. JAMDAR, J.

CHIEF JUSTICE