

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

WRIT PETITION NO.6044 OF 2020

Bhausahab Zarkar Secondary
Residential Ashram School, Mirajgaon,
Tq. Karjat, Dist. Ahmednagar,
Through In-charge Headmaster,
Shri. Vikas s/o. Marutirao Tanpure,
Age : 47 years, Occ. service,
r/o. Mirajgao, Tq. Karjat,
Dist. Ahmednagar

..Petitioner

Vs.

The State of Maharashtra,
Through Secretary,
Other Backward Bahujan
Welfare Department,
Mantralay, Mumbai – 32
and others

..Respondents

Mr.A.D.Pawar, Advocate for petitioner
Mr.S.N.Morampalle, AGP for respondent nos.1 to 5
Mr.G.K.Thigle, Advocate for respondent no.6

**CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 04, 2021
PRONOUNCED ON : JUNE 10, 2021**

ORDER :-

The challenge in this Writ Petition is to the order dated
21.07.2020 passed by respondent no.4 – Deputy Commissioner

of Labour, Nashik Division, Nashik, whereby the Industrial Dispute has been referred to the Labour Court, Ahmednagar, for adjudication.

2. Heard learned counsel appearing for the parties.

3. The Facts giving rise to the present petition are as under:-

The petitioner is a secondary residential Ashram school. The petition has been filed by its in-charge Headmaster. Respondent no.6 was appointed as a Hostel Superintendent with effect from 01.07.2002. On completion of probationary period of two years, he continued in service. Respondent no.6, however, voluntarily gave resignation of his post w.e.f. 14.04.2005. The management of the petitioner - school, therefore, by following due procedure, appointed one Shri. Gangurde on the post of Hostel Superintendent. Mr.Gangurde satisfactorily completed the probationary period of two years. He has been continued in service as Hostel Superintendent to date. Respondent no.6 gave a notice dated 27.12.2018, stating that the management of the petitioner –

school obtained his signature on a blank paper and forged the resignation letter. Respondent no.6, therefore, approached the Assistant Commissioner, Labour, with the said grievance. The Assistant Commissioner, Labour, referred the matter to respondent no.4 – Deputy Commissioner of Labour. The Deputy Commissioner, in turn, vide impugned order, referred the issue to the Labour Court, for decision. Hence, this petition.

4. Mr.Pawar, learned counsel for the petitioner, would submit that respondent no.6 had voluntarily given resignation of his post. After over thirteen years of submitting the resignation, respondent no.6 raked up the issue. The management of the petitioner – school filled up the vacancy way back in 2005 itself. The incumbent appointed in place of respondent no.6 has been continued in service on satisfactory completion of probationary period. The State of Maharashtra has passed Ashram School Code for secondary and higher secondary school for V.J.N.T., O.B.C. and S.B.C. As per Clause 2.5 of the Ashram School Code, such schools and its staff, teaching and non-teaching, are governed by the Maharashtra

Employees of Private Schools (Conditions of Service) Act, 1977 and Rules 1981. Respondent no.6 has, therefore, a remedy of appeal before the School Tribunal. Respondent no.4 – Deputy Commissioner of Labour did not have jurisdiction to pass the impugned order. Learned Counsel, therefore, urged for allowing the petition.

5. Mr.Morampalle, learned AGP for respondent nos.1 to 5, supported the impugned order.

6. Mr.Thigale, learned counsel for respondent no.6, would, on the other hand, submit that since no settlement was arrived at, respondent no.4 has rightly referred the industrial dispute for decision by the Labour Court. On the question of delay, Mr.Thigale has relied on a decision of this Court in the case of **Shafi Ahmed Sayyed Mohammed Guse Kadri Vs. Union of India (UOI) and ors., MANU/MH/0717/2001**. According to learned counsel, it would be the Labour Court that would decide the issue involved in this petition. The Labour Court has jurisdiction to decide the question of its own jurisdiction. Learned Counsel, therefore, urged for dismissal of the petition.

7. Admittedly, respondent no.6 was appointed as Superintendent of Ashram School in July, 2002. He completed the probation period of two years satisfactorily. Thereafter, he continued in service. Approval had also been granted to his appointment. He is, however, said to have resigned from his post w.e.f. 14.04.2005. The documents indicating him to have had submitted resignation and handed over the charge of his post, are on record. According to respondent no.6, his signature was obtained on a blank paper and the management, thus, forged his resignation. The record indicates that in 2005 itself, the management of the petitioner – school, after following due procedure, appointed one Shri. Gangurde in place of respondent no.6. Shri Gangurde has still been in service. It is true that respondent no.6 has raked up the issue of his resignation after thirteen years. The Division Bench of this Court in the case of **Shafi Ahmed** (supra) has observed thus:-

1.

2. *The ground on which the Government of India has refused to refer the dispute for adjudication, does not appear to be valid in view of the settled law. We only refer the*

judgment in the case of Gurmail Singh Vs. Principal, Government College of Education, reported in MANU/SC/1335/1999: (2000) IILJ 1080 SC which refers to the earlier authorities. It has been laid down that if the dispute persists despite passage of time, the dispute exists and, therefore, must be adjudicated upon. In case of delay, the only question would be, the manner in which the relief would be moulded particularly in so far as it relates to back wages for the period of delay.

3.

8. In view of the above, the petitioner – school cannot be heard on the question of delay. If respondent no.6 succeeds before the appropriate forum, delay would be considered for refusing to grant him back wages.

9. Admittedly, the State of Maharashtra has issued Ashram School Code for secondary and higher secondary Ashram schools for V.J.N.T., O.B.C. and S.B.C. As per clause 2.5 of said code, the teaching and non-teaching staff of the Ashram schools are directed to be governed by Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 and Rules 1981. The Full Bench of this Court in the case of

**Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati
Bhatakya Jamati Aadarsh Prasarak Mandal and ors., 2002(5)
Bom. C.R. 95, has observed thus:-**

"16. When it comes to an Ashram school which is only a primary school, it does not satisfy the definition of "private school" within the meaning of Section 2(20) of the Act. However, if an Ashram school is running classes from 1st to 10th standard obviously it would have recognition from the Divisional Board and thus, would fall within the ambit of the term "private school". On the other hand, Ashram school running classes from 1st to 7th standard or any intermediary level, would not require recognition from any of the authorities as specified in Section 2(21) of the M.E.P.S. Act and therefore, it would not be a "private school" within the meaning of the said Act. Resultantly, the employees working under the Ashram Schools which are only primary level cannot maintain an appeal under Section 9 of the M.E.P.S. Act. However, an employee working in an Ashram school which is a secondary and higher secondary Ashram school has a right to approach the School Tribunal by filing an appeal under Section 9 of the Act against an order of punishment/ termination of service or for redressal of grievances enlisted in the said section as they come within the ambit of the term employee as defined under Section 2(7) of the said Act."

10. The petitioner is a secondary Ashram School. Its name suggests the same. In view of the observations of Full Bench in the case of **Suryakant Sheshrao Panchal** (supra), respondent no.4 will not have jurisdiction to refer the issue to the Labour Court, for adjudication. The impugned order passed by respondent no.4 is non-est. The Writ Petition, therefore, succeeds.

11. The Writ Petition is allowed in terms of prayer clauses (B) and (D). Respondent no.6 may file an appeal before the School Tribunal, if so advised.

[R.G. AVACHAT, J.]

12. After pronouncement of the order, Mr.Thigale, learned counsel for respondent no.6, prays for stay of this order. At his request, this order shall not be implemented for a period of four weeks.

[R.G. AVACHAT, J.]