

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 491/2020

- 1] Sant Dhyaneshwar Bahu Uddeshiya Mandal, Dhaba,
through its President-Anil K.Patil (Dhabekar),
R/o At Dhaba, Tq. Barshitakli, Dist. Akola.
- 2] Shri Siddeshwar Primary Ashram School, Dhaba,
through its Head-master,
R/o.Dhaba, Tq. Barshitakli, Dist. Akola.

..... **PETITIONERS**

...VERSUS...

- 1] Regional Deputy Commissioner,
Social Welfare Department, Amravati.
Office at Behind Police Commissioner Office,
Camp, Amravati, Tq. and District Amravati.
- 2] Assistant Commissioner of Social Welfare, Akola,
Office at Collector Office Premises,
2nd floor, Administrative Building, Akola,
Tq. and District Akola.
- 3] Wasudeo Shrikrishna Kadu,
Age-48 years, Occ. Service,
R/o Dhaba, Tq. Barshitakli, District Akola.

..... **RESPONDENTS**

 Shri P.S.Patil, Advocate for petitioners.

Shri Amit Chutke, Assistant Government Pleader for respondent nos. 1 & 2.

Shri Anand Parchure, Advocate for respondent no.3.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.

DATED : 17th December, 2021.

ORAL JUDGMENT (PER A.S.CHANDURKAR, J.)

1. **Rule.** Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The respondent no.3 was engaged as 'Hostel Superintendent' at the petitioner no.2-Ashram School conducted by the petitioner no.1. It is the case of the petitioners that since the respondent no.3 did not discharge his duties in an appropriate manner, departmental enquiry was held against him and pursuant thereto on 04.02.2019 his services came to be terminated. The respondent no.3 being aggrieved by the order of termination preferred an appeal before the State Government. During the pendency of the said appeal, the respondent no.2-Assistant Commissioner of Social Welfare, Akola on 20.12.2019 issued a communication directing the petitioners to reinstate the respondent no.3 and grant him various benefits. This communication is the subject matter of challenge in the present writ petition.

3. Shri P.S.Patil, learned counsel for the petitioners submits that insofar as the grievance of the respondent no.3 with regard to termination of his services are concerned, it is the School Tribunal constituted under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the said Act') which has jurisdiction to entertain the appeal. Placing reliance on the judgment dated 21.09.2020 in Writ Petition No.3330/2019 (*Hansh Shikshan Krida and Vayam Prasarak Mandal and anr. Vs. Laxman Maroti Raut and anr.*) it is submitted that such view has been taken by the learned Single Judge after relying upon the

judgment in *Latika Rajaram Mane vs. State of Maharashtra and ors. 2013(4)Mh.L.J. 244*. He therefore submits that since the impugned communication dated 20.12.2019 pertains to relief that could be sought before the School Tribunal, the respondent no.2 has no jurisdiction to issue such direction.

4. Shri Anand Parchure, learned counsel for the respondent no.3 submits that the respondent no.3 being aggrieved by the order of termination dated 04.02.2019 had preferred an appeal before the Competent Authority as per the Special Code applicable for Ashram Schools. He submits that in view of the decision relied upon by the learned counsel for the petitioners, the respondent no.3 was willing to file an appeal before the School Tribunal under Section 9 of the said Act to challenge the order of termination dated 04.02.2019. He however submits that since the respondent no.3 had approached the Authority under the Special Code, the time spent for prosecuting that appeal may be taken into consideration.

5. Shri Amit Chutke, learned Assistant Government Pleader submits that since the respondent no.2 has considered the grievance raised by the respondent no.3, the communication dated 20.12.2019 came to be issued. He however does not dispute the adjudication in Writ Petition No.3330/2019 and the conclusion recorded therein.

6. Having heard the learned counsel for the parties, it is clear that an employee of Ashram School when aggrieved by an order of termination or like action, an appeal under Section 9 of the said Act can be preferred before the School Tribunal. In the present case, the respondent no.3 had approached the Authority under the Special Code seeking redressal of his grievances and the order of termination has been challenged in that appeal. Considering the decisions in *Latika Rajaram Mane* (supra) and *Shri Hansh Shikshan Krida and Vayam Prasarak Mandal (Writ Petition No.3330/2019)*, we find that the respondent no.3 is justified in seeking leave to approach the School Tribunal for challenging the order of termination. It has been held in the aforesaid decisions that the School Tribunal would be competent to entertain the appeal of such employee. It is further found that the impugned communication has been issued by the respondent no.2 while seeking to adjudicate the appeal that was preferred by the respondent no.3. Since the respondent no.3 now intends to approach the School Tribunal in that regard, various prayers made by him can be considered by the School Tribunal.

7. Shri Anand Parchure, learned counsel for the respondent no.3 in the aforesaid backdrop submits that since the School Tribunal would have jurisdiction to entertain the appeal and consider to grant of ancillary reliefs, the directions issued in the impugned communication dated 20.12.2019 by the respondent no. 2 would now cease to operate for want of jurisdiction.

8. Accordingly, the following order is passed :

(1) The order dated 20.12.2019 passed by the respondent no.2 is set aside.

(2) The respondent no.3 is at liberty to file appeal under Section 9 of the said Act before the School Tribunal for challenging the order of termination dated 04.02.2019. If such appeal is preferred within a period of three weeks from today, the same shall be entertained on merits without going into the question of delay. Shri P.S.Patil, learned counsel for the petitioners does not object to such course. If such appeal is filed by the respondent no.3, the same shall be considered on its own merits. All points raised in that regard are kept open.

The writ petition is allowed by making the Rule absolute in aforesaid terms with no order as to costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)

Andurkar..