

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

WRIT PETITION NO. 4204 OF 2019

1. Tirumala Shikshan Sanstha,
Marlapur Road, Udgir, Tal. Udgir,
Dist. Latur.
2. Dhurpatmata Scheduled Caste Secondary
Ashram School, Yenki-Manki Road, Udgir,
Tal. Udgir, Dist. Latur. Through it's Headmaster
3. Dhurpatmata Scheduled Caste Secondary Ashram
School, Yenki-manki Road, Udgir, Tal. Udgir,
Dist. Latur, through it's Superintendent.

...Petitioners

Versus

1. Santosh s/o Baburao Gundre,
Age : 37 years, Occu. Nil,
R/o. Nalgir, Tal. Udgir, Dist. Latur.
2. District Social Welfare Officer,
Zilla Parishad, Latur.

...Respondents

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Shri. V. G. Kodale h/f Mr. V. D. Gunale, Advocate for the petitioners
Shri. R. R. Deshmukh h/f Mr. R. B. Deshmukh, Advocate for
respondent no. 1

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**CORAM : BHARATI H. DANGRE, J.
DATE : FEBRUARY 04TH, 2022**

ORAL JUDGMENT : -

1. The petitioner no. 1, an educational institution registered
under the Bombay Public Trust Act running petitioner no. 2

Secondary Ashram School for Scheduled Castes, recognized by the Government and receiving grand-in-aid, is aggrieved by an order passed by the Labour Court, Latur, rejecting the application preferred by it before the learned Judge, seeking dismissal of the complaint filed by the respondent as not maintainable before the said Court.

2. Heard Shri. V. G. Kodale, the learned Counsel for the petitioner and Shri R. R. Deshmukh, the learned Counsel for respondent no. 1.

. Rule. Rule is made returnable forthwith and the petition is taken up for final hearing by consent of parties.

3. The respondent no. 1 filed a Complaint (ULP) No. 38/2017 being aggrieved by termination of his services from the establishment of the petitioners before the Labour Court at Latur under Section 28(1) r/w Schedule IV, Item A, B, D, F and G of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as “MRTU & PULP Act”), in which he impleaded the present petitioners as Respondents.

4. On the notices being issued by the Labour Court, the petitioners appeared before the Court and submitted their written

statement to the effect that the complainant had remained absent unauthorizedly from duty for 37 months and 10 days, besides he was negligent in discharge of his duties and in his absence, the school, a residential one, with boarding facilities had to suffer great inconvenience.

. Apart from the stand on merit, the petitioners filed an application below Exh. C-3 questioning the maintainability of the complaint before the Labour Court. It was pleaded by the petitioner-management that the school in which the complainant is employed is governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (in short "MEPS Act") and the rules framed thereunder and also by the Ashram Shala Sanhita (Code) and the employees of the said Ashram School have a remedy available under Section 9 of the MEPS Act, in case of termination, supersession or reversion. It was pleaded that the complainant is not entitled to invoke the provisions of MRTU & PULP Act as the same can be invoked only in respect of an employee/workman in an industry and since the school do not fall within the category of industry, the present complaint is outside purview of the Labour Court. It was also pleaded that the respondent-school was running the classes from 5th std. to 10th std., which bring it in the category of "Secondary School" and the school

had received the recognition under Section 2(25) of the MEPS Act and, therefore, the specific remedy being available to the complainant, to approach the Tribunal, the complaint before the Labour Court should not be entertained.

5. The application of the above intent was opposed by the complainant and he placed reliance upon the decision of the learned Single Judge of this Court in the case of **Balasaheb Dagadu Yeole and Another Versus Sangamner Taluka Vikas Pratishthan Bhairavnath Madhyamik Vidyalaya** reported in 2017 (2) Bom.C.R. 557, to support his contention that a non-teaching employee will fall within the definition of 'workman' and hence the jurisdiction of the Labour Court is not ousted.

. Per contra, the petitioner-management place reliance upon the judgment of the Full bench in the case of **Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Prasarak Mandal and Ors.** reported in 2002 (3) Mh.L.J. 659.

6. In the wake of the rival contentions, the learned Judge of the Labour Court determined the maintainability of the complaint before him and rendered the following findings.

“5. In the present complaint complainant was non-teaching

staff and he has been removed from service. He has stated that, he was employee with the respondent and hence this Court has jurisdiction to try and entertain the complaint. On the contrary respondent has stated that, the complainant is not the employee and hence this court has no jurisdiction. On perusal of case cited supra by the complainant it has been held by Hon'ble Bombay High Court that non-teaching staff of the schools is included in definition of employee. Hence the cases cited by the respondent with due respect are not applicable to the facts of the present case.

6. Respondents have produced gazette of government stating that, this court has no jurisdiction. But any gazette can not oust the jurisdiction conferred by the act. Hence I hold that, this court has jurisdiction to try the present complaint. ..."

. Resultantly the application came to be rejected.

7. Certain facts are not in dispute. The petitioner no. 1 is an educational institution registered under the provisions of the Bombay Public Trust Act, 1950 as well as the provisions of the Societies Registration Act and the petitioner no. 1 is running the petitioner no.2 secondary ashram school, which is recognized by the Government, which is in receipt of grant-in-aid. As far as the ashram school is concerned, whether it would be governed by the provisions of MEPS Act, 1977, the issue is put to rest by a Full Bench decision of this Court in the case of Suryakant Panchal (supra). The said judgment when carefully perused, revolve around the definition of "Private School" as defined under Section 2(20) of the MEPS Act to

mean a recognized school established or administered by a management, other than the Government or the local authority. The employee under the MEPS Act as defined under Section 2(7) means any member of the teaching and non teaching staff of a recognized school and include Assistant Teacher.

. Section 9 of the MEPS Act provide a right of appeal to the employees of 'private school' before the Tribunal and Section 9 which begin with a *non obstante* clause, to the effect that notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school who is either dismissed or removed or whose services are otherwise terminated or who is refused in rank or is superseded by the management, and who is aggrieved, shall have a right of appeal to the Tribunal.

. Resolving the controversy made over to the Full Bench on noticing the cleavage of opinion on the said point, it has been categorically held that an Ashram School running classes from 1st to 10th std., obviously would have recognition from the Divisional Board and thus, would fall within the ambit of the term 'private school'. On the other hand, the Ashram School running classes from 1st to 7th std or any intermediary level, would not require recognition from any of the authorities specified in section 2(21) of the MEPS Act and, therefore, it could not be a "Private School" within the meaning of the

Act. Resultantly, the employees working under the Ashram Schools, which is only at primary level, cannot maintain an appeal under Section 9 of the MEPS Act, is the finding rendered by the Full Bench. However, an employee working in an Ashram School, which is a secondary and higher secondary Ashram School, has a remedy available to approach the School Tribunal by filing an appeal under Section 9 of the MEPS Act against an order of punishment of termination of service or for redressal of grievances enlisted in the said section as they fall within the ambit of the term 'employee' as defined under Section 2(7) of the MEPS Act.

. In the wake of the aforesaid decision by the Full Bench, an employee working in the Ashram School at secondary level and higher secondary level, has a remedy to approach the School Tribunal, being aggrieved by an order of termination and the issue stand crystallised as above.

8. The position of law, *qua* the Ashram School employees is no more *res integra*. The question that arise for consideration is, whether in the wake of the said remedy being available, whether the employee can still approach the Labour Court and whether merely because the remedy of School Tribunal is available to him, whether his remedy to approach the Labour Court is foreclosed.

. The learned Counsel for the respondent-employee has placed reliance on the decision of this Court (Justice Ravindra V. Ghuge) in the case of Balasaheb Dagadu Yeole (supra).

9. The learned Single Judge has delved in the issue as to whether a remedy being available under the MEPS Act and Rules, would necessarily oust the remedy available under the Industrial Disputes Act, 1947 and whether there is a complete embargo upon invoking this remedy being available, as a workman, under the Industrial Disputes Act.

. In the petitions before the learned Single Judge, the petitioners/workmen were aggrieved by the judgment and award by which the reference (IDA) has been answered in the negative on the ground that reference of the two cases before the Labour Court under Section 10 and 12 of the Industrial Disputes Act, 1947 is not maintainable, as the remedy under Section 9 of the MEPS Act, 1977 against the termination/dismissal is available. After referring to the full bench decision in the case of St. Ulai High School and another vs. Devendra Prasad Jagannath Singh and others reported in 2007 (1) Mh.L.J. 597, which answered the issue about maintainability of a suit in a Civil Court in respect of the matters falling within the purview of Section 9 of the MEPS Act, 1977, by holding that when the remedy is

specifically provided before the Tribunal in respect of the subjects spelt out in clause A and B of sub-section 1 of Section 9, in those cases the jurisdiction of the Civil Court is impliedly barred, however, the areas which are not covered by the clauses, the jurisdiction of civil court is not barred, the learned Full bench however clarified that whether the remedy under Industrial legislation would be available to a member of non-teaching staff had not fallen for their consideration and therefore it was not answered.

. The issue, whether the educational institution is an industry and its employees are workmen for the purpose of ID Act has been answered by seven Judges bench of this Court way back in the year 1978 in the case of **Bangalore Water-Supply & Sewerage Board, etc. Vs. R. Rajappa & Others** 1978 AIR 548, wherein it is held that an Educational Institution is an industry in terms of Section 2(j) of the Industrial Disputes Act, 1947 though not all its employees are workmen. The following observation in the Constitution Bench decision, need a reproduction :

"The premise relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise dispute under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant

number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In case of the university or an educational institution, the nature of the activity is, ex-hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may say so with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses. It may have karamcharis of various hues. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of University's multi-form operations."

10. In the case of **Ms. A. Sundarambal Vs. Government of Goa, Daman and Diu** [AIR 1988 SC 1700], the Hon'ble Apex Court in paragraph no. 6 has held as under : -

- "3. Two questions arise for consideration in this case; (1) whether the school, in which the appellant was working, was an industry, and (2) whether the appellant was a 'workman' employed in that industry. It is, however, not disputed that if the appellant was not a 'workman' no reference under Section 10(1)(c) of the Act could be sought.
4. The first question need not detain us long. In *University of Delhi and Anr. v. Ram Nath* : (1963) IILLJ335SC a bench consisting of three learned judges of this Court held that the University of Delhi, which was an educational institution and Miranda House, a college affiliated to the said University, also being an educational institution would not come within the definition of the expression 'industry' as defined in Section 2(j) of the Act. Section 2(j) of the Act states that 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service,

employment, handicraft, or industrial occupation or avocation of workmen. Gajendragadkar, J., (as he then was) who decided the said case, held that the educational institutions which were predominantly engaged in teaching could not be considered as industries within the meaning of the said expression in Section 2(j) of the Act and, therefore, a driver who was employed by the Miranda House could not be considered as a workman employed in an industry. The above decision came up for consideration in Bangalore Water Supply and Sewerage Board, etc. v. R. Rajappa and Ors. : (1978)ILLJ349SC before a larger bench of this Court. In that case the decision in University of Delhi and Anr. v. Ram Nath, (supra) was overruled. Krishna Iyer, J. who delivered the majority judgment observed at page 283 of the Report thus:

- (a) Where a complex of activities, some of which qualify for exemption, others not, involves, employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, will be true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

5. The learned Judge, however, observed that while an educational institution was an industry it was possible that some of the employees in that industry might not be workmen. At page 261 of the Report with reference to the case of University of Delhi and Anr. v. Ram Nath, (supra) the learned Judge observed thus:

The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not 'workmen' by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the University of Delhi, proceeded on that assumption

viz. That teachers are not workmen, which we will adopt to test the validity of the argument.

6. Thus it is seen that even though an educational institution has to be treated as an industry in view of the decision in the Bangalore Water Supply and Sewerage Board, etc. v. R. Rajappa and Ors. (supra) the question whether teachers in an educational institution can be considered as workmen still remains to be decided.”

11. The learned Single Judge in the case of Balasaheb Yeole (supra) has exhaustively referred to the scheme contained under the Industrial Disputes Act and by referring to the statement of objects and reasons of the said enactment in the wake of it's beneficial provisions and on exhaustively referring to the catena of decisions revolving around the said issue, arrived at a conclusion to the following effect : -

- “43. It is thus held in relation to the Universities Act, 1994 that the non-teaching employee could fall under the definition of “workman” and the jurisdiction of the Labour Court / Tribunal is not totally ousted. It was also held that in so far as proposed termination is concerned, the College Tribunal under Section 59 would not consider the case of threatened termination or dismissal and hence, the jurisdiction of the Labour Court was not ousted.
44. What is held about the proposed termination or threatened termination, would *pari materia* apply to actual termination / dismissal. The Labour Court can entertain a challenge to the termination since the non-teaching employee is a “workman” (excluding those who may be exercising supervisory / managerial functions) and the school / college is an “industry”. As held in the Peoples' Welfare Society case (supra), the jurisdiction of the Labour Court is not specifically ousted and as such, an ouster or exclusion of jurisdiction of the Labour Court cannot be introduced when there is no specific provision under the

1977 Act excluding the Labour Court's jurisdiction.

. On perusal of the said judgment, I am in complete agreement with the view expressed by the learned Single Judge in the case of Balasaheb Dagadu Yeole (supra).

12. Along with the petition, a Government Resolution issued on 03.10.2017 by the State Government is also placed on record, which has now specifically provided a remedy for redressal of grievances of the employees of the recognized and grant-in-aid ashram schools/residential schools for VJ, NT, OBC, SBC etc., and the said Government Resolution contemplate a full fledged independent mechanism in the form of an appeal being presented to the competent officer (Asst. Commissioner/Asst. Director, VJ/District Social Officer) on being aggrieved by any action adverse to them. A remedy of appeal is further provided with a power of revision being conferred on the Addl. Chief Secretary/Principal Secretary/Secretary of the Department in the form of second appeal. This mechanism has now created a straight cut remedy to the aggrieved employee and he need not approach either the School Tribunal or the Labour Court but follow the course made available to him by the government. However, the said available remedy cannot be said to oust to the jurisdiction of the Labour Court, if the employee fall within the

definition of workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 and if he is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and in the wake of the decision in the case of Bangalore Water-supply & Sewerage Board, etc. (supra). It is for the employee, to establish that he is a workman and on he establishing so, the forum provided under the Industrial Disputes Act is available to him for redressal of his grievance.

. It is ultimately for the workman/employee to choose the remedy available and on electing the remedy, the respondent had approached the Labour Court and upon a complaint being filed, the objection raised by the petitioner, as respondent in the complaint on the allegation of unfair labour practice, has been rejected by relying upon the decision in the case of Balasaheb Dagadu Yeole (supra). Since I am in agreement with the view expressed by the learned Single Judge, the impugned order, in my considered opinion, do not suffer from any flaw and since the complainant has chosen to avail the remedy available to him, which is not otherwise barred, the writ petition is dismissed by upholding the impugned order. Rule is discharged. No order as to costs.

[BHARATI H. DANGRE]
JUDGE