

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

WRIT PETITION NO.4474 OF 2022

**MOTIRAM VITTHALRAO PAWAR
VERSUS
NETAJI MALHARI JADHAV AND OTHERS**

...
Advocate for Petitioner : Mr. Santosh S. Jadhavar
AGP for Respondent: Mr. S.N. Morampalle
Advocate for Respondent No.1 : Mr. R.J. Godbole
...

CORAM : MANGESH S. PATIL, J.

DATE : 18.07.2022

PER COURT :

Learned advocate Mr. Godbole submits that he has instructions to appear on behalf of respondent No.1 in place of advocate Mr. P.R. Nangare. Learned advocate Mr. P.R. Nangare is discharged.

2. Heard the learned advocates Mr. Jadhavar for the petitioner and Mr. Godbole for the respondent No.1 finally.

3. The respondent No.1 had preferred an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (herein after 'the MEPS Act') for declaration that proposal sent by the respondent management for grant of selection grade to the respondent No.1 ignoring his claim and seniority was illegal. The School Tribunal by entertaining the appeal has allowed it and issued following directions.

- “ 1. The appeal is partly allowed with costs.*
- 2. The action of respondent Nos.1 and 2 of sending proposal of respondent No.4 for selection grade by denying seniority of appellant and action of respondent No.3 by issuing approval for the same is declared ab initio illegal, and cancelled.*
- 3. The Respondent Nos.1 to 3 are directed to issue selection grade to the appellant since he is senior than the respondent No.4.*
- 4. The respondent Nos.1 to 3 are directed to pay revised pay to the appellant from the date of promotion as per law. ”*

4. It was an appeal under Section 9 of the MEPS Act which reads as under :

9. Right of appeal to Tribunal to employees of private school.

(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school,-

(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(b) who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8:

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or

reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of Five hundred rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

5. The proposal or entitlement to have a selection grade cannot be said to be covered by the above provision, wherein the Tribunal has the jurisdiction to entertain an appeal only in case of dismissal, removal, termination, reduction in rank or supersession.

6. The order that was sought to be challenged by the respondent No.1 before the School Tribunal did not fit in any of these categories in as much as there was no question of any supersession and only it was a matter of grant of selection grade pay. The respondent No.1 may have his own remedies under the law to enforce his rights to have a selection grade. But the School Tribunal under Section 9 of the MEPS Act does not have jurisdiction to examine the aspect of entitlement of an employee to have a selection grade.

7. Ignoring such state of affairs and the position of law, the School Tribunal has exercised the jurisdiction which did not vest in it.

8. The impugned judgment and order is quashed and set aside. It is made clear that the respondent No.1 would be entitled to lay his claim which the authorities may consider on its own merits. The time spent by the respondent No.1 in resorting to a wrong remedy may be considered while entertaining his representation/petition/claim.

9. The Writ Petition is disposed of.

(MANGESH S. PATIL, J.)

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