

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

931 WRIT PETITION NO.5997 OF 2022

**RAJARSHI SHAHU VIDYALAYA THROUGH ITS HEAD MASTER
LAXMIKANT GANGADHAR KARADKHELE
VERSUS
RAYAPPA SIDHALINGAPPA HURDULE AND OTHERS**

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Advocate for Petitioner : Mr. Salunke V. D.
Advocate for Respondent No. 1 : Mr. Mr. Vikas G. Kodale.
A..G.P. for the Respondent No. 3 : Mr. K. B. Jadhavar.

CORAM : MANGESH S. PATIL, J.
DATE : 14.06.2022.

PER COURT :

Heard learned advocate Mr. Salunke for the petitioner as also the learned advocate Mr. Kodale for the respondent No. 1 and the learned A.G.P.

2. After having considered the rival submissions it transpires that the dispute essentially revolves around the point as to if any employee preferring an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Act, 1977 challenging his otherwise termination is entitled to prosecute the appeal only against the school without impleading the management running the school.

3. Though there are several other issues to be considered the fact remains that the dispute as to the legality or otherwise of the transfer of the school from one management to the other has reached finality in the

form of decision in the Writ Petition No. 12380/2016 and the connected matters. The respondent No. 1 is now precluded from raising any issue on that count. Such finality results in endorsement of the transfer of the school from one management to the other. The respondent No. 1 had preferred the appeal arraying the earlier management which had appointed him as a Junior Clerk but not impleading the management which is running the petitioner's school which alone was made respondent No. 2 in the appeal. There is *prima facie* record to demonstrate that with his consent as contemplated under Rule 41 of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, he was transferred to some other school. Even the approval was granted by the Education Officer to his such transfer. It is being alleged that he had not resumed the duties after some time and remained persistently absent.

4. The School Tribunal apparently does not precisely address this issue as to how the appeal could have been decided even in the absence of management which runs the petitioner school. On the contrary a perverse observation has been recorded showing that in spite of pendency of the appeal the management itself could have but had not turned up to participate in the appeal.

5. At this juncture learned advocate Mr. Kodale submits that the respondent No. 1 may now be permitted to cure the defect.

6. Mr. Salunke submits that the respondent No. 1 may be allowed to make such a request to the appellate authority and the petitioner may also be permitted to contest the request to be made by the respondent No. 1.

7. The impugned order is quashed and set aside.

8. The matter is remanded back to the School Tribunal for decision afresh. The respondent No. 1 is granted liberty to make appropriate application before the School Tribunal for arraying management as a party. The petitioner shall be entitled to contest the application. The School Tribunal shall decide that application on its own merits including the question of limitation.

(MANGESH S. PATIL, J.)

mkd/-