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

902 WRIT PETITION NO.975 OF 2019

**RATHOD BANDU PUNA AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Suvidh S. Kulkarni, Advocate for petitioners;
Mr. S.B. Pulkundwar, A.G.P. for respondent nos.1 to 3;
Mr. R.I. Wakade, Advocate for respondent nos.7 & 8

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 4th March, 2022

P.C.

1. We have heard the learned Advocates for the respective sides.
2. The learned Advocate representing respondent nos.7 and 8, submits on instructions that the management is supporting these petitioners. He submits that the learned Full Bench of this Court in **Suryakant Sheshrao Panchal vs. Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh Prasarak Mandal & ors., 2002 (3) Mh.L.J. 6590**, has laid down the law that Ashram schools running classes from 1st to 7th standard or any intermediary level would not be private schools within the meaning of the Act. Therefore, the remedy

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of preferring an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 is not available to an employee of such school. He points out paragraph 20 (b) and (c), which read as under:-

“(b) Secondary or Higher Secondary Ashram Schools or Blind Schools are "private schools" within the meaning of Section 2(20) of the M.E.P.S. Act and any employee of such a school has a remedy of an appeal under Section 9 of the said Act.

(c) The Ashram School Code providing for remedy of an appeal to the employees working in the basic/primary Ashram Schools is contrary to the provisions of Section 9 of the Act and to that extent same is hereby held to be invalid. It is declared that an employee working in a primary Ashram school or any other school which does not fall within the ambit of the term "private school" cannot approach the School Tribunal under Section 9 of the M.E.P.S. Act.”

3. The State of Maharashtra has introduced a Government Resolution dated 3.10.2017. The learned A.G.P. had sought a pass over on the last date to take instructions and today submits on specific instructions that the said Government Resolution applies to

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the primary as well as secondary Ashram schools and any grievance with regard to deprivation of any benefit including the benefit of the Assured Career Progress Scheme, can be looked into by the authorities which are set out in clause (1) to (5) of the said Government Resolution.

4. The learned Advocate for the petitioners places reliance upon a judgment delivered by the Honourable Supreme Court in **Durga Enterprises (P) Ltd. & anr. vs. Principal Secretary, Government of U.P. & ors., (2004) 13 SCC 665** contending that once a petition is filed in this Court and notices have been issued, the Government cannot take a stand that there is an alternate remedy available.

5. We find that the reliance placed upon Durga Enterprises (supra) by the learned Advocate for the petitioners is wholly misconceived and the submission is fallacious. The law is that if a petition is admitted by issuance of Rule Nisi and the matter is pending for decades, ready to be taken up for final hearing, at that stage, the ground of maintainability cannot be raised.

6. The Honourable Apex Court has recently concluded in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin**

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Educational Society, 2019 SCC Online SC 1292 (Civil Appeal No.7764/2019, decided on 03.10.2019) and **Genpact India Private Limited Vs. Deputy Commissioner of Income Tax & ors., (2019) 419 ITR 440 (SC)** (Civil Appeal No.8945/2019, decided on 22.11.2019) that if a statutory remedy is available, the litigating parties should be relegated to the said remedy.

7. We find that invariably, the argument at the Bar is that an alternate remedy should not be the reason for disposing off a writ petition. Actually, a statutory remedy prescribed by law is not an alternate remedy. It happens to be a statutory remedy. By-passing a statutory remedy and approaching the High Court would not render the statutory remedy as an alternate remedy.

8. In view of the above, this petition is disposed off with liberty to the petitioners to take recourse to the remedy as is available in view of the Government Resolution dated 3.10.2017.

9. All contentions of the litigating parties are kept open.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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