

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10477 OF 2022

M/s. Navy Children School Secondary
through The Director
Navy Children School,
Block VII Area, New NavyNagar,
Colaba, Mumbai – 400 005.

....PETITIONER

V/S

1. State of Maharashtra

2 Ratan Omprakash Charan,
C/o. A.K.Singh, 003/D-2, Ravi Angan,
Gaurav Sankalp Phase – I,
Near G.C. Club, Mira Road (E),
Thane – 401 107.

....RESPONDENTS

...

WITH
INTERIM APPLICATION NO.93 OF 2023
IN
WRIT PETITION NO.10477 OF 2022

Ratan Omprakash Charan,
C/o. A.K.Singh, 003/D-2, Ravi Angan,
Gaurav Sankalp Phase – I,
Near G.C. Club, Mira Road (E),
Thane – 401 107.

....APPLICANT

IN THE MATTER BETWEEN:

M/s. Navy Children School Secondary
through The Director
Navy Children School,
Block VII Area, New NavyNagar,
Colaba, Mumbai – 400 005.

....PETITIONER

V/S

1. State of Maharashtra

2 Shri Ratan Omprakash Charan,
C/o. A.K.Singh, 003/D-2, Ravi Angan,
Gaurav Sankalp Phase – I,
Near G.C. Club, Mira Road (E),
Thane – 401 107.

....RESPONDENTS

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Ms. Carina S. Xavier for the Petitioner.

Ms. Rita K. Joshi a/w Mr. Swapnil P. Kamble for the Applicant in IA/
Respondent No.2 in WP.

Mr. P.P. Pujari, AGP for Respondent No.1/State.

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CORAM : SANDEEP V. MARNE, J.
RESERVE ON : DECEMBER 14 , 2023.
DECIDED ON ; DECEMBER 21, 2023.

JUDGMENT:

1 Petitioner-School has filed this Petition challenging the Award dated 18 January of 2020 passed by the 11th Labour Court, Mumbai, in Reference (IDA) No.283 of 2017. The Labour Court has answered the reference in the affirmative and directed the Petitioner-School to reinstate the Respondent with continuity of service and full backwages with effect from 18 May 2016.

2 The present Petition was admitted by this Court on 10 October 2022 and the order of the Labour Court has been stayed. However, this Court clarified that stay to the order of the Labour Court was not to preclude Respondent No.2 from filing an application for wages under

provisions of section 17B of the Industrial Disputes Act, 1947 (**the ID Act**). Accordingly, Respondent No.2 has filed Interim Application No.93 of 2023 for payment of last drawn wages of Rs.19,753/- from the date of award till the final disposal of the Petition. During the course of hearing of Interim Application No.93 of 2023, the counsel appearing for the parties agreed that the Petition itself can be taken for final hearing. Accordingly, with the consent of the learned Counsel appearing for the parties, the Writ Petition is taken up for hearing.

3 Briefly stated, facts of the case are that Petitioner is Private Unaided School established from the Welfare Fund of the Defence Personnel with the aim of providing quality education to their wards. It is the case of the Petitioner-School that Group-D staff is usually outsourced on contractual basis, without giving any commitment regarding permanency. By letter dated 4 October 2012 Respondent No.2 was appointed on contract basis for a period of three years with effect from 1 October 2002 and was placed in the pay-scale of Rs.2550-3200. His total salary at lowest level of the basic pay was fixed at Rs.3621/-. At the end of the tenure of two years, service of the Respondent N.2 was extended for a period of three years with effect from 9 October 2005 vide order dated 1 October 2005. In similar manner, further extensions were granted to the Respondent No.2 vide orders dated 17 April 2008, 2 April 2009, 31 March 2010, 31 March 2012, 1 April 2013, 1 April 2014 and 31 May 2015. By the last extension order dated 31 May 2015, the appointment was extended upto 31 March 2016 with a condition that his

present salary and original seniority would be protected. It is the case of the Petitioner-School that Respondent No.2 was absconding since 30 March 2016. That by way of afterthought, he sent leave application on 23 May 2016. After 31 March 2016 Petitioner-School did not extend appointment of Respondent No.2. He issued demand letter dated 11 August 2016 for reinstatement in service with effect from 18 May 2016 with all consequential benefits. In pursuance of the demand so made, a reference was made by the Deputy Commissioner of Labour to the 11th Labour Court at Mumbai. Respondent No.2 filed his statement of claim and Petitioner-School filed Written Statement. The Petitioner-School questioned the maintainability of the Reference. Both the parties led evidence in support of their respective contentions. The Labour Court thereafter proceeded to deliver Award dated 18 January 2020 answering the reference in affirmative and directing the Petitioner-School to reinstate the Respondent No.2 on his former post with continuity of service and full backwages with effect from 18 May 2016. Petitioner-School is aggrieved by the decision of the Labour Court and has filed present Petition.

4 Ms. Xavier, the learned counsel appearing for the Petitioner-School would submit that the Labour Court has erred in answering the reference in affirmative by ignoring the position that Respondent No.2 was merely a contractual employee having no right to see continuation of his contract. That there is cessation of his services on account of non-extension of his contract. That his services are not terminated in any

manner. She would take me through the terms and conditions of the original appointment order as well as the extension orders in support of her contention that Respondent No.2 has no right to seek continuity in service. That after expiry of the tenure of the contract, Respondent No.2 failed to attend the duties. That thereafter there is no question of termination of his services.

5 Ms. Xavier would further submit that the Labour Court had no jurisdiction to try or entertain the Reference as Petitioner is a School and therefore the services of the Respondent would be governed by the provisions of the special statute viz. the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1978 (**MEPS Act**). In support of her contention, she would rely upon the judgment of this Court in *Adarsha Shikshan Sanstha, Beed and others vs. Jaiprakash Ramvilas Lohia and another*, 2010 (2) Mh.L.J. 924. She would pray for setting aside the order passed by the Labour Court.

6 *Per contra*, Ms. Joshi, the learned counsel appearing for Respondent No.2 would oppose the Petition and support the order passed by the Labour Court. She would submit that the Labour Court has correctly exercised jurisdiction in setting aside the termination effected in violation of provisions of section 25F and 25G of the Industrial Disputes Act (**ID Act**). That the services of the Respondent No.2 are unceremoniously terminated without following due process of law. That

Respondent No.2 was in continuous employment of the Petitioner-School since 1 October 2002 and his services could not have been terminated without following the due process of law. That continuation of services for such a prolonged period of time would create a legitimate expectation in the mind of the employee. That he has acquired the status of permanent employee. That even though the benefit of permanency was not an issue before the Labour Court, termination was clearly demonstrated to be illegal. That the termination is founded on misconduct as Petitioner-School has relied upon several MEMOS issued to Respondent No.2. That since the termination is founded on misconduct, domestic enquiry ought to have been conducted against Respondent No.2 before terminating his services. Since no enquiry is conducted, the order of termination is rightly held to be invalid. That Respondent No. 2 had completed 240 days by service in each year and attained status of deemed permanency and his services could not have been terminated without following due process of law.

7 To counter the submission of jurisdiction of Labour Court in the light of the provisions of the MEPS Act, Ms. Joshi would rely upon the judgment of this Court in ***Balasaheb Dagadu Yeole and another vs. Sangamner Taluka Vikas Pratishthan Bhairavnath Madhyamik Vidyalaya***, 2017 (2) Bom. C.R. 557. She would pray for dismissal of the Petition.

8 Rival contentions of the parties now fall for my consideration.

9 In the present case there is no order issued by the Petitioner-School terminating the services of Respondent No.2. He was first appointed in the Petitioner-School with effect from 1 October 2002 vide order dated 4 October 2002 on contract basis for a period of three years. The appointment has been extended from time to time and continued till 31 March 2016. It is the case of the Petitioner-School that they did not desire to continue the contract appointment of Respondent No.2 beyond 31 March 2016 and accordingly no order was issued for extension of tenure of his appointment. On the contrary, it is the case of Respondent No.2 that non-issuance of order of continuation is a veiled termination.

10 The first issue raised by the Petitioner-School is about jurisdiction of the Labour Court to entertain and answer the Reference with regard to the termination of services of Respondent-employee. It is contended by the Petitioner-School that Respondent being a non-teaching employee of a School, the School Tribunal has jurisdiction to decide the service disputes relating to termination under provisions of the MEPS Act. Reliance is placed on judgment of Single Judge of this Court in ***Adarsha Shikshan Sanstha*** (supra). However, in subsequent judgment of this Court in ***Balasaheb Dagadu Yeole*** (supra), this Court has held that the judgment in ***Adarsh Shikshan Sanstha*** does not lay down good law. In ***Balasaheb Dagadu Yeole*** this Court has held that there is no specific provision under the MEPS Act for exclusion of jurisdiction of Labour Court. It has further held that 'School' is an industry within the meaning of section 2(j) of the ID Act and that non-teaching employee of a school is a 'workman' within

the meaning of section 2(s) of the ID Act. This Court further held that employee of a School has a more efficacious remedy before the Labour Court. This Court held in paragraph 41 to 46 as under:

"41. In this backdrop, if the remedy of approaching the Labour Court before the passing of the order of punishment is excluded, such an employee necessarily will have to wait till the final order of punishment is passed by the management. If the remedy before the Labour Court is not excluded, he may very well approach the Labour Court at the penultimate stage to make out a strong case of gross injustice and unfair labour practice at a prima facie stage and may succeed in obtaining prohibitory orders against the employer thereby preventing him from issuing the final order of punishment, of course keeping in view the note of caution expressed by the Honourable Apex Court in paragraph Nos. 53 and 54 of the Hindustan Lever judgment (supra), which read as under:-

"53. Reference made in paragraph VI to the Bombay High Court's judgments also cannot be of any avail as they were based on the view which was accepted by the learned Single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier view taken by the learned single Judges of the Bombay High Court cannot be said to be well sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking

the relevant Clauses 7 of item I of schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated."

42. The learned Single Judge of this Court (Coram: F.1. Rebello, J.), in the case of (People's Welfare Society and another Vs. Second Labour Court, Civil Lines, Nagpur and others), 1998 (2) All.M.R. 94, dealt with a similar controversy of a non-teaching employee of a college having approached the labour Court against his termination, which was entertained and the management/education society approached this Court alleging that the Labour Court was excluded from exercising its jurisdiction and the University Tribunal alone could decide the issue of proposed termination under section 59 of the Universities Act, 1994. This Court concluded in para- graph Nos. 8 and 9 as under :-

'8. The above authorities, however, do not answer the point raised in the present petition. What is in issue presently is whether the complaint of the Respondents Nos. 3 to 9 filed even before their services were terminated could have been heard and decided by the Tribunal constituted under section 59 of the Maharashtra Universities Act. None of the judgments cited in support under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act lay down such a proposition. Even in the case of Maharashtra Shikshan Sanstha (supra) the complaint was filed after the services were terminated. The issue involved was whether interim relief could be granted in an appeal pending before it. The Division Bench was not seized with the issue nor has answered the issue whether the School Tribunal could

entertain an appeal even before the services of an employee were terminated . The judgments cited, therefore, are of no assistance.

9. The employees involved in this petition are non-teaching employees. Such non-teaching employees could fall within the definition of workmen within the meaning of section 2(s) of the ID. Act. Even in respect of the LD. Act they could not have moved the courts under the said Act as section 59 of the Maharashtra Universities Act would then squarely cover the case of such individual employees in so far as termination of their services are concerned as set out in section 59 of the Maharashtra Universities Act. However what is to be borne in mind is that the M.R.T.U. & P.U.L.P. Act for the first time by virtue of section 30(2) has conferred power on the courts constituted under the Act to prevent an employer from terminating the services of employees falling within the definition of section 2(s) of the I.D. Act. Such a remedy is not provided for either in the Maharashtra Universities Act or in the Industrial Disputes Act, 1947. The scheme of the I.D. Act and the M.R.T.U. & P.U.L.P. Act has been considered by the Apex Court in the case of Hindustan Lever Ltd. Vs. Ashok Vishnu Kate, reported in (1996) 1 L.L.J. 899 S.C. wherein the Apex Court has held that (the M.R.T.U. & P.U.L.P. Act is supplemental Legislation to the I.D. Act. Section 30 of the M.R.T.U. & P.U.L.P. Act has for the first time given right in the form of remedy to a person who falls within the definition of section 2(s) of the Act to move the Court under the M.R.T.U. & P.U.L.P. Act to preempt his termination from service. Such a right is not traceable under section 59 of the Maharashtra Universities Act. On the contrary section 61 of the Maharashtra Universities Act it has been made clear that an appeal filed will have to be rejected if it does not come within the predicates of section 59 of the Maharashtra Universities Act. Thus clearly the Tribunal will have no jurisdiction to decide a case of threatened dismissal or termination. Even otherwise it can be seen that the jurisdiction under the M.R.T.U. & P.U.L.P. Act is not totally ousted. It is only in the matter of dismissal, removal or where services are otherwise terminated or where an employee reduced in rank would a remedy be available to an aggrieved employee. In other matters pertaining to his conditions of services the remedy is not available under section 59 of the Maharashtra Universities Act. Thus there is no total ouster of

jurisdiction in so far as Maharashtra Universities Act is concerned. If that be so it is not difficult to hold that even a case of threatened dismissal would not fall under section 59 of the Maharashtra Universities Act as the words used are "who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank". It is only after such an event has taken place as stated earlier that the right of Appeal is provided. In these circumstances I am of the opinion that the jurisdiction of the Labour Court is not ousted and to that extent the contention on behalf of the petitioners has to be rejected."

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.

45. Learned Advocate for the respondent Shri. Shinde has placed reliance upon the judgment delivered by this Court (Coram: P.R. Borkar, J.) in the matter of *Adarsh Shikshan Sanstha Vs. Jaiprakash Ramvilas Lohia* and another 2010(1) B.C.R. 810 : 2010(2) Mah.L.J. 924. It appears that this Court was of the view that there is a special legislation covering employees of private schools and hence the non-teaching employees have a remedy to approach the School Tribunal and not the Labour Court. It cannot be ignored that the view taken by the Hon'ble Apex

Court and this Court in the cases of Venubai Umap (supra), Ms. A. Sundarambal (supra), Christian Medical College (supra), Satyavadi Ganpatrao Pimple (supra), and Peoples' Welfare Society (supra), were not cited before the Court in Adarsh Shikshan case (supra).

46. Considering the above and the fact that the view taken by this Court in the above mentioned cases concluding that a non-teaching employee/workman of a school, college or University can approach the Labour Court against the proposed/threatened termination/dismissal or actual termination/dismissal, was not cited, the view taken by this Court (Coram : P.R. Borkar, J.) cannot be said to be a good law.”

11 Therefore, in the light of ratio of judgment of this court in ***Balasaheb Dagadu Yeole***, a non-teaching employee in a School can invoke the jurisdiction of Labour Court. Therefore, the objection of jurisdiction sought to be raised by the Petitioner-School require summary rejection.

12 Coming to the merits of the impugned Award, the Labour Court has proceeded to direct reinstatement of the Respondent with full backwages by holding that the termination is in contravention of section 25F and 25G of the ID Act. On the contrary, it is the contention of the Petitioner-School Management that it has not effected termination of services of Respondent and that the tenure of his contract appointment has not been extended. The issue for consideration is whether the unilateral act of the Petitioner-School in not extending the tenure of appointment beyond 31 March 2016 would amount to termination of services of the Respondent.

13 The Industrial Court has arrived at a finding that the Respondent was required to be given an opportunity to seek continuation of

employment. I am not in agreement with this finding of the Labour Court since continuation in the employment was not the right of the Respondent and that there was no necessity for the Petitioner-Management to seek an application from the Respondent for continuation of his services. Furthermore the Labour Court's finding that the appointment was treated as contractual with a view to ensure honest and efficient working by the Respondent also does not appeal to me.

14 In the present case, Respondent was first appointed on 1 October 2002 and remained in continuous service of the Petitioner-School till 31 March 2016. Neither Labour Court nor this Court is concerned with the issue as to whether the Respondent is entitled for regularization of his services or not. The short issue is whether failure to issue extension order would amount to termination or not and whether the Petitioner-Management is justified in not issuing an order extending services of the Respondent beyond 31 March 2016.

15 Though the services of the Respondent are branded as 'contractual' and though it is the stand of the Petitioner-Management in the Petition it outsources the housekeeping services, this is not a case where the engagement of the Respondent was made through any contractor. Petitioner-School used to pay salary and allowances to Respondent directly without involvement of any contractor. Furthermore, some of the covenants of the appointment and extension orders create a doubt as to whether these services were actually contractual or not. Upon his

appointment, the services of the Respondent were placed in pay scale of Rs.2550-55-2660-60-3200 plus other allowances. Thus Respondent was not engaged on any lumpsum of wages but was paid salary and allowances in a pay scale possibly meant for a Group-D employee. In the appointment order dated 4 October 2002, it was provided that '*in the event of your reappointment after the contract period, your original seniority and salary well be protected*'. This stipulation is to be found in almost all the extension orders which provided that '*your personal salary and original seniority will be protected*'. Thus with passage of each year, though extension orders were issued extending the tenure of the appointment of the Respondent, his increased (on account of grant of increments) before end of tenure of previous tenure was protected. He was thus not treated as a fresh appointee, but continuity was maintained in respect of his services. His name was also included in the seniority list and extension orders did not have any effect on his original seniority. Respondent was also granted leave in accordance with Leave Rules promulgated by the Petitioner-Management.

16 Considering the various stipulations in the appointment and extension letters, it is difficult to believe that the real nature of the appointment was purely contractual. However, this would not mean that the nature of appointment of the Respondent was permanent. Be that as it may. Petitioner-Management did not continue the services of the Respondent beyond 31 March 2016.

17 It is the case of the Petitioner-Management that the Respondent absconded from service from 30 March 2016. On the contrary, it is the case of the Respondent that he performed duties in the School on 16 and 17 May 2016, which assertion is categorically denied by the Petitioner-School. Without going to issue as to whether the Respondent attended School on 16 or 17 May 2016, it is seen that the Petitioner-School did not issue order extending the tenure of Respondent's appointment beyond 31 March 2016 possibly because he did not attend duties on 30 March 2016. This would mean that if the Respondent was to attend duties on 30 and 31 March 2016, Petitioner-School could have issued an order extending his services.

18 Reliance is placed on some of the Memos issued to Respondent to suggest that his services were not found satisfactory. However, the said Memos do not pertain to period immediately before discontinuation of Respondent's service. It appears that four Memos were issued during the period from 10 April 2012 to 21 August 2014. Despite the allegations in the said Memos, services of Respondent were continued. The last Memo was issued on 7 July 2015 which alleged minor misconduct of refusal to accept notice issued by the Maintenance Incharge of the School. Also some of the Memos issued to Respondent threatened initiation of disciplinary actions against him. Admittedly no disciplinary action was conducted. Therefore, it appears that the allegations levelled in the Memo is not the real cause for discontinuation of services of the Respondent. The services are discontinued essentially on account of Respondent not

attending duties after 30 March 2016. The discontinuation of Respondent-employee is thus improper.

19. The next issue is about nature of relief that can be granted in favour of Respondent-employee. It has come on record that the Petitioner-School has engaged services of some other person in place of Respondent and that the Petitioner-School has expressed inability to reinstate the Respondent. It must also be observed here that the Petitioner-School is run and managed by the Committee of Officers of the Armed Forces of the Union. Considering the nature of unsavory relationship that has developed between Respondent, who was the sweeper and the School Management consisting of hierarchal officials of the Indian Navy, it would otherwise not be appropriate to direct reinstatement of Respondent in the services of the Petitioner-School. The age of the Respondent now is around 52 years and it is not known whether he would be in a position to efficiently discharge the duties of a sweeper. Therefore, even though the discontinuation of the services of the Respondent is not found to be improper, the relief of reinstatement and backwages would not be a correct remedy in the facts and circumstances of the present case. Instead grant of lump sum compensation in lieu of reinstatement and Backwages, in my view, would meet the ends of justice.

20 It has come on record that Petitioner-School has paid gratuity of Rs.1,21,410/- and earned leave encashment of Rs.15,255/- to the

Respondent after discontinuation of his services. The last wages drawn by the Respondent at the time of his termination were Rs.19,753/-. Considering the last wages drawn, the total amount of backwages by now would be to the tune of approximately Rs.18,00,000/-. Respondent also has to share blame for remaining unauthorizedly absent on crucial days from 30 March 2016 onwards, resulting in non-continuation of his services. He took the risk of remaining unauthorizedly absent on the last date of his end of tenure. If he was to diligently attend duties on 30 March 2016 onwards, the Petitioner-School would have possibly extended his service. Therefore, some blame for discontinuation in services will have to be shared by Respondent as well. Considering this position lump sum compensation of Rs.10,00,000, in my view, would adequately remedy the breach committed by the Petitioner-School in discontinuing services of Respondent, who worked with them for 14 long years. The amount of lump sum compensation would be in addition to the amount of gratuity and leave encashment granted to him.

21 I accordingly proceed to pass the following order:

ORDER

- i) The judgment and award dated 18 January 2020 passed by the Labour Court at Mumbai in Reference (IDA) No.283 of 2017 shall stand modified to the extent that the Petitioner-School shall pay lump sum compensation of Rs.10,00,000/- to the Respondent in lieu of reinstatement and backwages.

- ii) Beyond the compensation so ordered to be paid, Respondent shall not be entitled to any further benefits from the Petitioner-School.
- iii) The amount of lumpsum compensation be paid to the Respondent within a period of two months from today.

22. With above directions, the Petition is disposed of. Rule is made partly absolute.

23 In view of the disposal of the Writ Petition, the Interim Application does not survive and the same is disposed of accordingly.

(SANDEEP V. MARNE, J.)

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