

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTER PATENT APPEAL NO.41 OF 2011
IN
WRIT PETITION NO.9414 OF 2009**

Sai Jyot Shikshan Mandal & AnrAppellants
V/s.
Lalita Avasu Bendale & Ors. ...Respondents

**WITH
CIVIL APPLICATION NO.36 OF 2011
IN
LETTER PATENT APPEAL NO.41 OF 2011
WITH
WRIT PETITION NO.913 OF 2011
WITH
CIVIL APPLICATION ST NO.29905 OF 2018
IN
WRIT PETITION NO.913 OF 2011**

Mr. N. V. Bandiwadekar for Appellants
Mr. C. N. Chavan for Respondent No.1.
Nr, R. V. Dighe i/b Mr. A. S. Rao for Respondent No.2.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL JJ
DATED : 16th FEBRUARY 2023**

P.C. :

1 Appeal impugns an order dated 9th July 2010 passed in Writ Petition No.9414 of 2009. The operative part of the order dated 9th July 2010 reads as under:

- i. The impugned judgment and order dated 16th October 2009, passed by the School Tribunal, Navi Mumbai, in Appeal No.34 of 2008, is set aside.*
- ii. The enquiry held against the respondent no.1 in accordance with the MEPS Act & Rules is also set aside.*
- iii. The petitioners may, if they so desire, hold an enquiry in*

accordance with law and the principles of natural justice to substantiate their action against the respondent no.1.

Appellants are impugning only paragraph (ii) of the operative part of the order dated 9th July 2010.

2 Appellants had impugned an order and judgment dated 16th October 2009, that was passed by the School Tribunal, Navi Mumbai in Appeal No.34 of 2008. The Tribunal had quashed and set aside the order of termination of respondent no.1 and directed reinstatement. It was appellant's case in Writ Petition that the School Tribunal had no jurisdiction to entertain the appeal filed by respondent no.1 as the school was a primary school.

3 Appellants had relied upon a judgment of a Division Bench of this court in ***Rita T Verghese Vs. Head Mistress, Vidya Mandir English Primary School, Bombay and others***¹ to contend that unless the school is a private school recognised by an authority, as provided in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (the said Act), the Tribunal will not have jurisdiction to entertain the appeal. According to appellants, which Mr. Bandiwadekar also submitted today, the said Act would not apply to appellant no.1 because the School Tribunal had not been recognised by any of the authorities mentioned in Section 2(21) of the said Act.

4 It was the case of respondent no.1 before the Tribunal that if, according to appellants, the said Act was not applicable to the School, the

1. 2002(3) MhLJ 57

inquiry conducted under the said Act and Rules framed therein against respondent no.1 and relying on the report of the inquiry committee, the termination of respondent no.1 was also illegal. Therefore, the inquiry held as per the provisions of the said Act cannot be held as the Act itself was not applicable. Respondent No.1 had submitted consequently the inquiry held against respondent no.1 under the said Act and Rules framed therein has to be set aside.

5 Having heard the counsel and considering the impugned judgment and the pleadings, we are in agreement with the Learned Single Judge. What would happen when the order of reinstatement passed by the Tribunal is set aside and the inquiry also is set aside, has been factored in by paragraph (iii) of the operative part of the impugned order quoted earlier. The Learned Single Judge provided for appellants that if they so desired, hold an inquiry in accordance with law and follow the principles of natural justice to substantiate their action against respondent no.1.

6 We are informed by Mr. Bandiwadekar that no such inquiry was subsequently held and even the school itself has been closed since 2016. Mr. Chavan submitted that since no inquiry was subsequently conducted, prayer (a) in Writ Petition No.913 of 2011 that respondent has filed in this court which is tagged alongwith Letters Patent Appeal, should be granted. Mr. Bandiwadekar submitted that this court will not have jurisdiction to entertain the writ petition and it is for respondent no.1 to execute the order of reinstatement.

7 In our view, the question of executing the order of reinstatement will not arise because the order of termination itself has been quashed and set aside by the Learned Single Judge in Writ Petition No.9414 of 2009, when the Learned Single Judge has set aside the inquiry itself. Consequently, we direct appellants to reinstate respondent no.1 to her original post with full back wages and all consequential benefits. Mr. Bandiwadekar states there is no school in existence. How this order can be implemented, we leave it to Mr. Chavan to advise respondent no.1.

8 Letters patent appeal and writ petition accordingly disposed.

9 Consequently, interim applications also stand disposed.

(RAJESH S PATIL, J.)

(K.R. SHRIRAM, J.)