

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10642 OF 2016

Deepa Jain ...Petitioner
Versus
Principal, The Cathedral & John Connon School ...Respondent

Mr Rahul Walia, with Asmita Pendharkar, for the Petitioner.
Mr Ziyad Madon, with Ishaan Mahimtura, i/b Mahimtura & Co, for
the Respondent.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 21st June 2023

PC:-

1. We are not satisfied that the Petition is maintainable.
2. The only Respondent to the Petition is the Cathedral and John Connon School. This is admittedly a minority institution. It is not an instrumentality of the State within the meaning of Article 12 of the Constitution.
3. Our attention is drawn to a previous order of 26th April 2016 of RD Dhanuka J (as he then was) sitting singly in an earlier Writ Petition No. 7007 of 2015 brought by the same Petitioner. An issue of maintainability was raised. Paragraphs 2 and 3 of that order at pages 71 and 72 read thus:

“2. Mr Dighe, learned counsel appearing for the petitioner on institutions states that in view of the issue of maintainability raised by the management of the appeal filed by the petitioner, the petitioner would file a writ petition impugning the order of termination letter dated 20th November 2012 issued by the management in this court. In view of the statement made by the learned counsel for the petitioner that the petitioner would file a writ petition for impugning the termination letter dated 20th November 2012 and for other consequential benefits, it is made clear that if the petitioner files any writ petition in this court for impugning the letter of termination and for other consequential benefits, the respondent management would not be entitled to raise any issue of maintainability of the writ petition.

3. **In my view since the school tribunal has rejected the appeal filed by the petitioner on the ground that the appeal is not maintainable against the minority school, the school tribunal could not have made adjudication on the merits of the challenge to the termination letter dated 20th November 2012 and other issues raised in the appeal filed before the school tribunal. *The order passed by the school tribunal insofar as the findings recorded by the school tribunal on merits of the matter is accordingly set aside.* It is made clear if that the petitioner files any writ petition in this court, the same can be considered by this court on its own merits without being influenced by the observations and conclusions drawn by the school tribunal in the impugned order.”**

(Emphasis added)

4. From this it is clear that in that round of litigation the School Tribunal rejected the Appeal filed by Petitioner on the ground of maintainability and yet proceeded to an adjudication on merits.

Dhanuka J found that both could not co-exist and both could not have been done. He therefore clarified that if the Petitioner filed any Writ Petition in Court that would be considered on its own merits.

5. There is no substance in the submission that the issue of jurisdiction of this Court under Article 226 of the Constitution and of the amenability of the Respondent School to our writ jurisdiction, that is to say whether or not the school is an instrumentality of the State, stands 'concluded' by the 26th April 2016 order. On a plain reading of that order this issue is not concluded but is left at large. Second, that decision is not a judgment with a ratio. It is at best a clarification leaving contentions open. Third, it is the view of a Single Judge and is not binding on a Division Bench of this Court.

6. It cannot simply be said that every school merely because it imparts education (or is supposed to impart education) is for that reason alone an instrumentality of the State.

7. The Writ Petition is rejected.

8. If the Petitioner has any other remedy that is available to her, whether in a Court of civil jurisdiction or otherwise, she is at liberty to pursue that remedy. We clarify that we have not expressed any opinion on the merits of the matter in view of the finding we have returned as to the maintainability of the Petition.

(Neela Gokhale, J)

(G. S. Patel, J)