



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.2986 of 2022

Govardhan S/O Govindrao Waghmare Vs Shri. Sati Samat Bahuuddeshiya Shikshan
Sanstha, Ganeshpur Thr. President And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.D. Wakode, Advocate for the Petitioner/s
Shri D.P. Thakare, Addl.G.P. for the Respondent No.3/State
Shri R.D. Borawankar, Advocate for the respondent Nos.1 and 2

CORAM : ANIL S. KILOR, J.

DATED : 25.09.2023

1. Heard.
2. The judgment and order dated 31.01.2020 passed by the Presiding Officer, School Tribunal, Amravati in Appeal No.42 of 2015, dismissing the appeal preferred by the petitioner challenging his otherwise termination w.e.f. 26.06.2013, is under challenge in this petition.
3. The learned counsel for the petitioner has pointed out that in view of the judgment of the Division Bench of this Court in the case of *Anna Manikrao Vs. School Tribunal*¹, the learned Tribunal has framed preliminary issues and on observing that an appointment of the petitioner was not as per Section 5 of the *Maharashtra Employees of Private Schools (Conditions and Service) Regulation Act, 1977* (MEPS Act) dismissed the appeal without touching the merits of the matter.

1 [1997 (3) Mh.L.J. 697]

4. It is submitted that after the judgment of the Larger Bench of this Court in the case of *St. Ulai High School and another Vs. Devendraprasad Jagannath Singh*², such approach cannot be adopted by a Tribunal. For this purpose he has placed reliance on the judgment of the Division Bench of this Court in the case of *Sadhana Janardhan Jadhav Vs. Pratibha Patil Mahila Mahamandal & Ors.*³.

5. On the other hand, the learned counsel for the respondent Nos.1 and 2 opposed the present petition and submits that there will be no change in fate of the matter even if it is decided on merits. He accordingly, prays for dismissal of the present petition.

6. The Division Bench of this Court in the case of *Sadhana Janardhan Jadhav* (supra), has held thus:

"14. The decision in the case of Anna Pethe (cited supra) was considered by the larger Bench in the case of St. Ulai High School and Anr. Vs. Devendraprasad Jagannath Singh - 2007 (1) Mh.L.J. 597 : [2007 (2) ALL MR 1] following clause (iv) of para 13 of the Conclusions, relevant portion of which, we quote as under:

"13. CONCLUSIONS:

(i).....

(ii).....

(iii).....

(iv) The judgments of the Division Benches of this Court in Anna Manikrao Pethe Vs. Presiding Officer, and Shailaja Ashokrao Walse Vs. State of Maharashtra (supra) to the extent that they hold that an appeal is not maintainable before the Tribunal at the behest of an employee whose appointment has not been approved do not reflect the correct position in law and are overruled."

2 2007(1) Mh. L.J. 597

3 2013(1) ALL MR 497

15. *The issue regarding validity of appointment as per Section 5 of the MEPS Act and the Rules thereunder, was not thus touched by the Full Bench. Catching the said string from the said Para 15 of the judgment in the case of Anna Pethe, it is found by this Court that, old habit of the management to raise a preliminary issue and get the appeal decided only on the preliminary issue, has again surfaced, resulting into multiplicity of litigation.*

16. & 17. ...

18. *We thus find as revealed in the facts of this case that, the approach of the Tribunals in framing the preliminary issue as to whether appointment was as per Section 5 of the MEPS Act and the Rules and dismissing the same only on that ground by relying on Para 15 of the judgment in Anna Pethe's case, is unwarranted. The observations in Para 15 of the Judgment in Anna Pethe's case, therefore, will have to be read in the context of law laid down by the Apex Court right from the year 1975, which went unnoticed in the case of Anna Pethe. We, quote the following paragraphs from the judgment of the Hon'ble Apex Court in the case of National Council for Cement Vs. State of Haryana - (1996) 3 SCC 206, as under :*

"12. We, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till, the matter relating to the preliminary issue is finally disposed of.

13. This Court in Cooper Engineering Ltd. v. P.P.Mundhe - (1975)2 SCC 661) in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

14. Again in S.K.Verma v. Mahesh Chandra (1983)4 SCC 214) this Court strongly disapproved the practice of raising

frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits."

In D.P.Maheshwari v. Delhi Administration and Ors.- (1983) 4 SCC 293 the Supreme Court observed thus in the following extracted portion of para 1, -

"1...There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues..."

"....Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down."

19) We do not find any reason why the same tenet of law enunciated by the Supreme Court in case of labour disputes majority of which are 'service matters' should also not apply in relation to 'service-matters' of all employees of private schools who institute appeals before the specially created 'School Tribunal' under MEPS Act, 1977. We, therefore, hold in the light of the law laid down by the Apex Court that the preliminary issue as to whether the appointment of the appellant is made in accordance with Section 5 of the MEPS Act and the Rules there under, should not be framed mechanically in the first place and should be framed only if it arises and is properly substantiated in the pleadings of the parties to the appeal and further at that the School Tribunal should decide all the issues at the same time without trying any or some of them as preliminary issues."

7. Thus, in view of the findings recorded in paragraph 19 of the above referred judgment, I have no hesitation to hold that the

learned Tribunal has committed error in framing the preliminary issue in light of the judgment in the case of *Anna Manikrao* (supra) and dismissing the appeal preferred by the petitioner without touching the merits of the matter. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The judgment and order dated 31.01.2020 passed by School Tribunal, Amravati in Appeal 42 of 2015, is hereby quashed and set aside and the matter is remanded back to the learned School Tribunal, Amravati for deciding the same afresh on merits, after giving sufficient opportunity to the parties.
- (iii) All points are kept open.

8. Considering the fact that the petitioner is attaining the age of superannuation in this month, the learned School Tribunal, Amravati is directed to decide the appeal within four months from today.

9. Accordingly, the writ petition is **disposed** of in the above terms. No order as to costs.

[ANIL S. KILOR, J.]