



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10813 OF 2022**

1. Shri Baliraja Shikshan Sanstha,
Someshwar, Tq. Palam, District-Parbhani,
Through: its Secretary.
2. Late Bhai Prabhakar Rao Patil
D.Ed. College, Palam, Tq. Palam,
District-Parbhani,
Through its I/c Principal. ..Petitioners

Versus

1. Daivashala d/o. Sadashiv Rao Matekar,
Age-43 years, Occu. Nil,
R/o Sai Golden City, Loha,
Tq. Loha, Dist. Nanded.
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad. ..Respondents

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Mr. C. K. Shinde, Advocate for Petitioners.

Mr. G. V. Mohekar h/f Mr. A. S. Shivpuje, Advocate for Respondent No.1.

Mr. S. N. Kendre, AGP for Respondent No-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 02nd AUGUST 2024.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioners impugn judgment and order dated 27.04.2022 passed by School Tribunal, Latur in Appeal Nos.16/2021.

3. The respondent no.1 approached School Tribunal at Latur assailing termination order dated 04.01.2016 invoking jurisdiction under Section 9 of MEPS Act, 1977. The respondent no.1 contends that she holds educational qualification as M.A., M.Ed. In pursuance to the advertisement of petitioners, she had responded

and was appointed on 27.07.2002 on temporary basis and on 30.09.2003 she was appointed as permanent Lecturer. Thereafter, her services have been terminated w.e.f. 04.01.2016 giving false reasons. The respondent no.1 made grievance with petitioner no.1, i.e. Secretary of Institution, however, he did not respond to the complaint. She had also raised grievance to the Director, Maharashtra State Educational Research and Training Council, Pune and finally approached School Tribunal assailing termination.

4. The petitioners filed reply below Exhibit-25 and denied contentions raised in Appeal. According to them, they have given break in service or dis-continuation in service. They have also taken plea that the appointment of respondent no.1 was not in accordance with Section 5 of the MEPS Act, 1977. Lastly they contend that College has been closed since June 2016, therefore, there is no question of seeking reinstatement.

5. The School Tribunal framed points for consideration in Appeal and after hearing parties, concluded that termination order dated 04.01.2016 is bad in law and respondent no.1 is entitled for relief of reinstatement with continuity of service with full back-wages. The aforesaid order is subject matter of challenge in present writ petition.

6. Mr. C. K. Shinde, learned Advocate appearing for the petitioners submits that petitioners had raised objection regarding maintainability of Appeal before School Tribunal under Section 9 of the MEPS Act, 1977, since D.Ed. College can not be termed as school within the meaning of MEPS Act, 1977. Such objection was turned down by the Tribunal. The petitioners had, therefore,

approached this Court in Writ Petition No.13250/2021, assailing order of Tribunal. This Court upheld the order of Tribunal while dismissing writ petition. Then petitioners approached Hon'ble Supreme Court by filing Special Leave Petition, however, SLP was dismissed. Thereafter, School Tribunal entertained the Appeal and allowed the same.

7. Mr C. K. Shinde further submits that meanwhile learned Single Judge of this Court doubting jurisdiction of School Tribunal to entertain appeal at behest of employees of B.Ed or D.Ed institutions made a Reference to Full Bench in case of ***Hashmiya Bahrul Faiz Social Welfare Association Vs. Abdullah M. Shukur Qureshi and Others*** vide order dated **24.11.2021** as under:

(i) Whether the decision of the Division Bench in Gururaj Vasant Kulkarni (supra) can be considered to have sub silentio overruled the view taken by the learned Single Judge in Ravindra s/o. Motiram Firake (supra) so as to hold that the employees of the D.Ed. and B.Ed. Colleges have a remedy of an appeal under Section 9 of the MEPS Act.

(ii) Considering the provisions of the MEPS Act and, more particularly, the definitions under Sections 2(20), 2(21) and 2(24) of the MEPS Act, can it be held that the D.Ed. and B.Ed. Institutions would fall within the purview of the MEPS Act so as to recognise to the employees of such institutions a right of appeal under Section 9 of the MEPS Act.

The Full Bench after hearing, answered the issues in following manner:

(i) The order passed by the Division Bench dated 28 February 2019 in Gururaj Vasantrao Kulkarni has not sub silentio overruled the view taken by the learned Single Judge in Ravindra Motiram Firake that the employees of the D.Ed. and B.Ed. Colleges, not recognised under the MEPS Act, cannot file an appeal under Section 9 of the MEPS Act.

(ii) The second issue already stands answered in Ravindra Motiram Firake that the employees of the D.Ed. and B.Ed. Colleges, not recognised under the MEPS Act, cannot file an appeal under Section 9 of the MEPS Act.

8. Mr. Shinde, learned Advocate appearing for the petitioners, therefore, submits that School Tribunal had no jurisdiction to entertain appeal filed by respondent employee. Consequently, same is liable to be dismissed and writ petition deserves to be allowed.

9. Per contra, Mr. Mohekar, learned Advocate appearing for respondent no.1 vehemently submits that issue as regards to the jurisdiction of School Tribunal to entertain the Appeal has been already settled in earlier round of litigation qua the parties. The petitioners had raised objection as regards to the maintainability of Appeal before the Tribunal. The said objection was turned down. This Court confirmed the order of Tribunal in Writ Petition filed by petitioners. Even SLP against such order is dismissed. Having suffered rejection of objection upto Hon'ble Supreme Court, the Appeal was contested by the petitioners before Tribunal on merits. The learned Tribunal after considering the merits of the matter, directed reinstatement of respondent no.1 with full back-wages and continuity in service. Therefore, on the basis of subsequent judgment of Full Bench in case of ***Hashmiya Bahrul Faiz Social Welfare Association Vs. Abdullah M. Shukur Qureshi and Others***¹, the petitioners cannot reiterate same objection in present writ petition.

10. Mr. Mohekar would further submit that since issue as regards to the jurisdiction has been raised and settled upto Hon'ble Supreme Court qua the parties, judicial propriety would require that such issue shall not be reopened in present writ petition. He

¹ 2023 (2) Mh.L.J. 763.

would submit that order passed by the Tribunal so far as the objection regarding jurisdiction has attained finality in earlier round of litigation. After suffering rejection of objection as regards to the jurisdiction, the petitioners have contested matter on merits before the Tribunal. Even, points for consideration in Appeal were only in respect of validity of termination. Therefore, petitioners are now estopped from raising issue of maintainability. He would further submit that judgment of Full Bench would apply prospectively and not proceeding already decided by Tribunal. In support of his contentions Mr. Mohekar relies upon following judgments:

1. ***Bhagwant Subhanrao Jagtap Vs. The State of Maharashtra, Writ Petition No.1483/2011*** with connected writ petitions.

2. ***Vishnu Deo Nagar Sahakari Griha Nirman Sanstha Maryadit Vs. The State of Maharashtra & ors.***²

3. ***Commissioner of Income Tax (Central)-I New Delhi Vs. Watika Township Pvt. Ltd***³.

4. ***Assistant Excise Commissioner, Kottayam & ors. Vs. Esthappan Cherian & Ors.***⁴

5. ***Kalyan Dombivali Corporation Vs. Sanjya Gajanan Gharat & Ors.***⁵

6. ***St. Ulai High School & Ors. Vs. Devendraprasad Jagannath Singh & Ors.***⁶

11. Mr. Mohekar would further submit that infact present matter was referred to mediator for settlement. However, after judgment of Full Bench, the petitioners have again raised same issue and trying to derive disadvantage of situation. He would

² 1995 CTJ 74.

³ 2015 (1) SCC 1.

⁴ 2021 (10) SCC 210.

⁵ 2022 AIR (SC) 1618.

⁶ 2007 (1) Mh.L.J. 597.

point out that respondent no.1 is litigating for her right since 2016, hence entertaining writ petition again on point of jurisdiction may cause serious prejudice to employee.

12. Having considered submissions advanced, it is admitted fact that petitioner no.2 is D.Ed. College run and administered by petitioner no.1-Institute. It is submitted before this Court that D.Ed. College is not school within the meaning of MEPS Act, therefore, remedy of Appeal under Section 9 is not available to the employees of D.Ed. College. The respondent no.1 invoked remedy under Section 9 of the MEPS Act to assail termination order dated 04.01.2016 before the Tribunal. The petitioner-Management had raised objection as regards to the maintainability of Appeal. The said objection was turned down by the Tribunal. Writ Petition filed against such order by the Management was dismissed and even, SLP was rejected at threshold. Pertinently, in earlier round of litigation, on preliminary issue as regards to the jurisdiction of the Tribunal, relying upon the stand of the State Government, this Court had arrived at conclusion that the Tribunal constituted under MEPS Act would have jurisdiction to entertain Appeal at the behest of the employees of D.Ed. College. This Court observed that as long as there is no separate Act or Rules, the staff in D.Ed. College cannot be left without formulation of any condition of service. It is also observed that NCTE Regulations, 2014 contemplates broader area of terms and conditions of service and remedy of Appeal is only one aspect of it and these benefits are left to the wisdom of State Government. As such, State Government has exercised powers conferred on it by NCTE Regulations, 2014, particularly Clause No.5.4 and decided to govern the staff of D.Ed. colleges by Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and Rules framed thereunder. Consequently, this Court held that remedy under Section 9 of the

MEPS Act is available to the employees of D.Ed. Colleges. The decision of this Court dated 24.02.2022 was subjected to challenge in SLP (Civil) Diary No.26183/2022. The Hon'ble Supreme Court observed that 'We are in complete agreement with the view taken by High Court. No interference of this Court is called for in exercise of powers under Article 136 of the Constitution of India. The Special Leave Petition stands dismissed.'

13. It appears that, after decision on preliminary issue the Tribunal decided Appeal on merits of the matter and quashed and set aside otherwise termination dated 04.01.2016 and directed reinstatement of respondent no.1 with continuity of service and full back-wages as well as consequential benefits.

14. Pertinently, in case of ***Hashmiya Association (supra)*** full bench of this Court in Reference made by learned Single Judge vide order dated 24.11.2021 was called upon to answer Reference as to whether the jurisdiction of School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 would be available to the employees of D.Ed. College, in light of observations of Division Bench in case of ***Gururaj Vasantrao Kulkarni*** and view taken by the learned Single Judge of this Court in case of ***Ravindra Motiram Firake***. This Court after referring to the provisions of NCTE Act, 1993 and particularly, Section 14 of the said Act observed that D.Ed. Colleges are recognized under NCTE Act. This Court further referred to the observations of Single Judge in case of ***Ravindra Motiram Firake*** and finally concurred with his decision holding that employees of D.Ed. and B.Ed. Colleges do not have remedy of filing Appeal under Section 9 of the MEPS Act.

15. In view of the aforesaid authoritative pronouncement of Full Bench of this Court, the legal position that stands as on today is that the School Tribunal has no jurisdiction to entertain Appeal under Section 9 of the MEPS Act at the behest of employees of D.Ed. and B.Ed. Colleges, which are not recognized under MEPS Act. Therefore, the order impugned in this Appeal cannot be sustained in law.

16. Although Mr. Mohekar, learned Advocate appearing for respondent no.1 strenuously submits that Full Bench judgment in case of ***Hashmiya Bahrul Faiz Social Welfare Association*** (supra) may not apply to the present case and it would have perspective application, the submissions cannot be accepted. It is trite that, the decision of higher Court on particular issue is in the nature of declaration of legal position and once such declaration is made, it would apply retrospectively from the inception of law in question. The only exception is when the Court for the reasons recorded, restricts application of legal position espoused for prospective application. However, from the judgment of Full Bench in case of ***Hashmiya Bahrul Faiz Social Welfare Association*** (supra) no such inference can be drawn. In fact, Full Bench has concurred the view taken by Honorable Single judge of this Court in case of ***Ravindra Motiram Firake***, i.e. judgment delivered by of this Court dated 15.06.2009 and further observed that Division Bench in case of ***Gururaj Vasantrao Kulkarni*** has not overruled legal position on the subject at hand as settled in case of ***Ravindra Motiram Firake***. It is, therefore, clear that Full Bench of this Court has merely reaffirmed subsisting legal position that employees of D.Ed. and B.Ed. Colleges cannot invoke jurisdiction of School Tribunal under Section 9 of the MEPS Act. So far as contention of petitioners that issue as to jurisdiction has been already settled qua parties at the stage of preliminary objection,

this court cannot countenance such submissions, when the final judgment of Tribunal is assailed before this court, any finding particularly as to jurisdiction of Tribunal would be open for consideration. This court cannot shut eyes to declaration of law by Full Bench to approve judgment rendered by Tribunal, which inherently lacks jurisdiction. It is true that view taken by Tribunal at preliminary stage was approved by Single Judge of this Court, SLP of management was also rejected by the Supreme Court, but rejection of SLP cannot be considered as judgment of Supreme Court or approval to the view expressed by this Court. The law declared by Full Bench of this Court would prevail in such cases.

17. So far as judgments relied by Mr. Mohekar, learned advocate for petitioners is concerned, it can be observed that the preposition of law espoused therein is that statutory provision would have prospective effect, no quarrel can be raised to said preposition, but in present case, petitioner management relied on Full Bench judgment of this Court, which declared/reaffirmed legal position on point of jurisdiction of Tribunal under Section 9 of MEPS Act and Rules. It is not the case of amendment of statutory provision or replacement of legislation governing field. Hence, none of judgment referred by Mr. Mohekar has application in facts of present case.

18. The result of aforesaid discussion is that the impugned order passed by the School Tribunal is without jurisdiction and liable to be quashed and set aside. The Full Bench of this Court has specifically expressed that employees of D.Ed. and B.Ed. Colleges do not have access to the specialized Tribunal and Legislatures are required to address this issue. Although this Court may have sympathy towards employees, in view of crystallized legal position,

the order of the School Tribunal cannot be sustained. Hence, the following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned judgment and order dated 27.04.2022 passed School Tribunal, Latur in Appeal No.16/2021, is hereby quashed and set aside, being without jurisdiction and Appeal stands dismissed.
- c. Writ Petition is disposed of.
- d. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024