

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1244 OF 2022

Mohamadan Education Society & Anr. ... Petitioners

V/s.

Nasim Gulam Samdani & Anr. ... Respondents

Dr. Uday P. Warunjikar for the petitioners.

Mr. Anant Vadgaonkar for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 29, 2024

P.C.:

1. The petitioner/Management is challenging judgment and order dated 23 September 2021 passed by the School Tribunal thereby allowing respondent No.1's appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1981 setting aside otherwise termination of the respondent No.1 and directed reinstatement as Assistant Teacher with full back wages from the date of termination till the date of reinstatement.

2. Respondent No.1 was initially appointed in June 1995 as Assistant Teacher. During her tenure as Assistant Teacher, a dispute in relation to her seniority arose which led to filing of appeal before the School Tribunal under Section 9 of the Act between

respondent and co-employee in relation to the post of Head of School. The School Tribunal by order dated 25 August 2009 accepted respondent No.1's claim and directed the petitioner to appoint respondent No.1 on the post of Headmistress as per her seniority along with back wages and consequential benefits.

3. The petitioner challenged the decision by filing Writ Petition No.9298 of 2009. This Court on 15 July 2020 issued rule and granted interim relief in terms of prayer clause (b). This Court directed deposit of back wages. The petitioner challenged the order in Letters Patent Appeal No.251 of 2010. This Court modified interim relief in terms of prayer clause (b), subject to condition that the petitioner shall file an undertaking that in case the petition is dismissed, within four weeks thereafter the petitioner shall made payment as per the order of the School Tribunal. Accordingly, the petitioner filed an undertaking on 8 February 2010.

4. Respondent No.1 thereafter filed an appeal under Section 9 of the Act before School Tribunal on 30 July 2010 contending that she was not allowed to sign the muster and it amounts to otherwise termination. The School Tribunal by the impugned order allowed the appeal and directed reinstatement along with back wages. The petitioner has, therefore, filed present writ petition challenging order of the School Tribunal.

5. Learned advocate for the petitioner submitted that the petitioner raised a defense that the respondent did not join her post after the decision of the Division Bench of this court. No

material was produced by respondent No.1 to indicate that the petitioner never allowed respondent No.1 to join services and, therefore, the findings recorded by the School Tribunal is based on no evidence.

6. Per contra, learned advocate for respondent No.1 submitted that the School Tribunal has rightly recorded a finding that in absence of action under Rule 16(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 taking action against respondent No.1 refusing to continue with her work as Assistant Teacher and the muster roll indicating that respondent No.1's name was not shown in the muster roll, the School Tribunal rightly drew inference that the respondent No.1 was not allowed to join the post of Assistant Teacher.

7. I have heard advocates for the parties and perused material placed on record by the parties.

8. On perusal of the impugned judgment, it appears that the School Tribunal accepted respondent No.1's claim of petitioner not allowing her to join services based on following two factors: (i) the Management did not take action under Rule 16(3) of the 1981 Rules; and (ii) the muster roll for the relevant period did not show respondent No.1 as employee of the Management.

9. The inference drawn by the School Tribunal based on aforesaid factors cannot be termed as perverse as the view adopted by the School Tribunal is a possible view. If the view adopted by the School Tribunal is possible view, this Court need not interfere in its writ jurisdiction merely because other view is possible.

Hence, the judgment of the School Tribunal does not suffer from any legal infirmity.

10. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)