

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

WRIT PETITION NO. 18125 OF 2024

Shankar Gopal Umrani

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Satyajeet Rajeshirke a/w Mr. Gautam Kulkarni, Advocate for the
Petitioner.

Mr. S.B. Kalel, AGP for the Respondent-State.

Ms. Manjiri Parasnis, Advocate for Respondent Nos.5 & 6.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

DATE : 13th DECEMBER, 2024

ORDER (PER : RAVIDNRA V. GHUGE, J.)

1. The Petitioner was appointed in 1992 as an Assistant Teacher in the City High School, Sangli, operated by Respondent No.5, a private Management. He was promoted to the post of Head Master in 1997. He has received around 22 Awards. A dispute arose in between two groups in the Management. The Petitioner was terminated from service after conducting a departmental enquiry under The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'the 'MEPS Rules'), vide order dated 13th October, 2014.

2. The Petitioner preferred an Appeal No.103 of 2014 before the School Tribunal, Kolhapur. By a Judgment dated 3rd May, 2017, the Tribunal observed that the Enquiry Committee was properly constituted and the procedure was properly followed. However, it was concluded that the MEPS Rules and the principles of natural justice were not adhered to. The enquiry was vitiated and the termination order was set aside. Liberty was granted to the Management to start the enquiry from the stage at which it was vitiated.

3. The Management approached this Court against the order of the Tribunal, in Writ Petition No.1851 of 2018. By Judgment dated 3rd April, 2013, the learned Single Judge concluded in Paragraph No.25 onwards, that the enquiry will have to be conducted from the stage at which it was vitiated and the Appellant would be notionally deemed to be reinstated, but will be under suspension and will be entitled to the subsistence allowance. However, in the interregnum, the Petitioner/Appellant superannuated on 31st March, 2021.

4. There are several disputed contentions amongst the

parties as to the manner in which the enquiry was taken forward from the stage at which it was vitiated, whether the enquiry was postponed for almost seven months, whether the Petitioner did not participate in the enquiry leading to an ex-parte enquiry, etc. By an order dated 21st August, 2023, the Management passed a resolution and by way of punishment, declared that the Petitioner would not be entitled for any retiral benefits. The report of the enquiry committee dated 19th August, 2023, was accepted by the Management.

5. We are not required to go into the above aspects since, this Petition is untenable before us. So also, the Management did not pass an order which could be assailed under Section 9 of the Maharashtra Employees of Private Schools (Conditions Of Service) Regulation Act, 1977 (for short 'MEPS Act'), in as much as, the Education Department or the State Government has no role to play in the final action initiated by a private Management, by which, it has imposed punishment on the Petitioner pursuant to the Departmental Enquiry. We will be discussing this aspect in the later portion of this order.

6. Rules 29 to 33 of the MEPS Rules, 1981 pertain to

awarding Penalties, Classification of Penalties and Procedure for inflicting Minor and Major Penalties. The Proviso below Rule 29 requires that an employee aggrieved with the imposition of a minor penalty can appeal to the Deputy Director of the region. Under Rule 33, if an Employer desires to suspend an Employee, the prior permission of the Education Officer has to be obtained. Sub-Rule (3), (4) and (5) of Rule 34, read thus:-

“34. Payment of subsistence allowance

(1)

(2)

(3) In case an employee under suspension attains the age of superannuation while under suspension he shall be deemed to have been retired on attaining the age of superannuation and any departmental or judicial proceedings pending against him shall be continued even after his retirement. A provisional pension not exceeding the maximum pension which would have been admissible on he basis of qualifying service upto the date of retirement of the employee or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension shall be paid to him. But no amount of Death-cum-Retirement Gratuity shall be paid till his case is finally decided. Where an employee is acquitted of the charges and he is not proceeded against by the Management under sub-rule (6) of rule 33 his case shall be regulated by sub-rule (5) if his suspension is held to have been wholly unjustified, and by sub-rule (6) if it is held to

have been wholly justified.

(4) When an employee who has been suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and

(b) regarding the said period being treated as a period spent on duty.

(5) Where the authority mentioned in sub-rule (4) is of the opinion that the employee has been fully exonerated or, in the case of suspension that it was wholly unjustified, the employee shall be given the full pay, allowances and pension to which he would have been entitled had he not been dismissed removed or suspended, as the case may be. The management shall bear expenditure on pay and allowance of substitute, if any, appointed in place of the employee under suspension and such expenditure shall not be held admissible for the Government grant.....”

[Emphasis supplied]

7. Sub-Rule (6) of Rule 37 pertains to the Procedure of the Enquiry. Grievances pertaining to minor punishments are to be carried to the education department at the regional level. When it comes to imposing major punishment, the School Tribunal has the

jurisdiction u/s 9. On receipt of the Enquiry Committee's report and upon completing the legal stages of calling for an explanation from the delinquent, the Management has to issue necessary orders within 7 days after receiving the decision of the Enquiry Committee. The copy of such an order is to be endorsed to the Education Officer or the Deputy Director, as the case may be.

8. The learned Advocate for the Petitioner desires to withdraw this Petition and approach the Civil Court for filing a Civil Suit in order to assail the resolution bearing No.7, dated 21st August, 2023 passed by the Management, and for the recovery of all retirement benefits on the ground that his service has not been terminated by way of punishment and the impugned order, which though amounts to a major punishment, is not prescribed in the list of major punishments.

9. While hearing the learned Advocate for the Petitioner, we noticed a grey area in so far as Section 9 of the MEPS Act, is concerned. His contention is that, though the private Management has issued the impugned order, which flows from the departmental enquiry, it is not of such a nature as could be covered by Section 9

of the MEPS Act, 1977. He submits that it would be cumbersome for the Petitioner to approach the Civil Court, though, as the law stands today, he may not have a choice.

10. Section 9 reads as under :

“ 9. Right of appeal to Tribunal to Employees of a private school.

(1) Notwithstanding anything contained in any law or contract for the time being in force,[any employee in a private school,-

(a) Who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management or

(b) Who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal constituted under Section 8]

Provident that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

- (3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.*
- (4) Every appeal shall be accompanied by a fee of [Five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.”*

11. A single glance at Section 9 would indicate that an Employee in a Private School can approach the Tribunal for challenging his dismissal/removal/otherwise termination/reduction in rank, by the order of the Management or if he is superseded by the Management while making an appointment to any post by promotion. An order of punishment in the nature of termination or dismissal from service, after conducting a full-fledged Departmental Enquiry permissible under the MEPS Rules, would enable an aggrieved Employee to approach the Tribunal. However, any other punishment, not in the nature of the causes of action defined u/s 9, would not be assailable before the Tribunal.

12. It goes without saying that when Section 9 was drafted,

no authority could have speculated or anticipated each and every cause of action. It is only when such provisions are brought into implementation, that a situation could arise or could be foreseen which may indicate a grey area, not being covered by the said provision. An Employee may find himself remediless in a particular situation. We find that such a situation has been brought before us by the present Petitioner in the light of the peculiar order passed by the Management.

13. The facts of this case are peculiar. The Petitioner was earlier terminated by an order dated 13th October, 2014. Due to the intervening events, he was notionally reinstated in service and was treated as being under suspension, under the order of the High Court. In these circumstances, he attained the age of superannuation on 31st May, 2021. Naturally, such order of the learned Single Judge would be operative until the date of superannuation of the Petitioner, which was 31st May, 2021.

14. In the above backdrop, the doctrine of relation back could have been pressed into service by the Management. What has been done by the Management is that, no final order of punishment,

either of deemed termination or deemed discharge or dismissal from service has been passed. The Management has, by way of punishment, passed a resolution concluding that all retirement benefits of the Petitioner, shall stand forfeited. This form of punishment is not prescribed in the list of major punishments.

15. No litigant can be rendered remediless. The Petitioner is aggrieved by this resolution dated 21st August, 2023, bearing no.7, which was communicated to the Petitioner by a covering letter dated 25th August, 2023. Now this peculiar order would not fall under Section 9(1)(a) of the MEPS Act. Hence, the Petitioner cannot approach the School Tribunal. Since such order was passed by a private Educational Institution, it would render this Petition untenable considering Article 12. There is no role to be played by the Education department in such a situation, in the light of Rule 37(6). It could not have exercised any authority in such a matter, since it had no say in either advising the Management, nor in interfering with the so called order of punishment. An issue of fundamental right is also not involved in this matter so as to expand the Writ jurisdiction of this Court under Article 226, in the light of *Magadh Sugar and Energy Limited V/s. The State of Bihar and*

others, 2021 SCC Online 801 and M/s. Godrej Sara LEE Ltd. V/s. The Excise and Taxation Officer-cum-Assessing Authority & Ors., (2023) ibclaw.in 11 SC.

16. In these peculiar circumstances, we have perused the Government Resolution dated 27th March, 2024, issued by the State Government, in the light of the Judgment delivered by this Court on 16th April, 2024 in Writ Petition No. 1182 of 2024 (*Ms. Anuja Sangram Kadam V/s. State of Maharashtra & Ors.*), along with connected matters, wherein a remedy to the Employees has been prescribed in the nature of 15 contingencies set out under Clause C(2). Sub-clause 15 reads as under :

"महाराष्ट्र खाजगी शाळांमधील कर्मचारी (सेवेच्या शर्ती) विनियमन अधिनियम, १९७७ मधील कलाम ९ अंतर्गत ज्या बाबी समाविष्ट होऊ शकत नाही असे क्षेत्रीय अधिकारी यांनी दिलेल्या निर्णयादिरुद्धची प्रकरणे."

17. However, as is rightly canvassed by the learned AGP Mr. Kalel, the above clause 15 would not include an act of a private Management in passing an order on the basis of a Departmental Enquiry proceeding. This clause covers only those causes of action, which may have arisen on account of the order passed by the authority of the education department. Considering Rule 29, the

decision of the concerned authority on the minor punishment, could be covered by clause 15 of the said GR.

18. This reminds us of a Judgment delivered by the Hon'ble Supreme Court in the case of *Hindustan Lever Ltd. V/s. Ashok Vishnu Kate and Ors.*, 1995 (6) SCC 326, wherein the issue of approaching the Labour Court before an order of termination/discharge/dismissal/removal from service, could be passed by a private Employer, was considered. Item-1 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('MRTU and PULP Act'), was interpreted. The Judgment delivered by the learned Division Bench of the Bombay High Court in *Ashok Vishnu Kate & Ors. V/s. M.R. Bhope & Anr.*, (1992) 1 CLR 531, was the subject matter of challenge. The Hon'ble Supreme Court concluded that if, at the penultimate stage, an Employee can anticipate an order of dismissal/discharge/termination/removal from service, etc. he can also approach the Labour Court before the order is actually passed. This law has now crystallized, thus permitting Employees to approach the Labour Court to challenge a second show cause notice of an Employer, proposing the punishment of

dismissal/discharge/termination/removal from service, before the actual order of punishment is issued.

19. The law on refusal of interim relief, has been crystallized in matters of dismissal from service pursuant to a full-fledged Departmental Enquiry, in catena of judgments, some of which are as follows :-

i) R. Thiruvirkolam V/s. Presiding Officer & Anr., (1997) 1 SCC 9.

ii) Mumbai Cricket Association V/s. Pramod G. Shinde, 2011 (3) Bom. C.R. 52.

20. As such, invariably, in Private Sectors Industries and Establishments, an employee is unable to get interim orders once the order of dismissal has been passed, even if the enquiry is vitiated or the findings of the Enquiry Officer are set aside and a *de novo* enquiry is directed to be conducted in the Labour Court or the before the Enquiry Committee (*Karnataka State Road Transport Corporation Vs. Laxmidevamma, 2001 II CLR 640*).

21. We find a similar situation in matters of Employees working in Private Schools, who are covered by the MEPS Act. Needless to state, Teachers would not be covered by the definition

of workman under Section 2(s) of the Industrial Disputes Act, 1947 and they cannot approach the Labour Court. In such a situation, the School Tribunal is their only hope as against a cause of action at the penultimate stage in the departmental enquiry proceedings. Causes of action, for illustration; an improperly constituted Enquiry Committee or a defective departmental enquiry under the MEPS Rules leading to the issuance of a second show cause notice, could be assailed at the penultimate stage. '*In pari materia*', the law as crystallised in ***Hindustan Lever*** (*supra*), would also be applicable to cases u/s 9 of the MEPS Act, 1977.

22. However, in the case in our hands today, that stage of approaching the Tribunal, is also over. Therefore, in the peculiar facts as like the case before us, wherein the Petitioner has not approached the Tribunal u/s 9 at the penultimate stage, and the Management has not passed an order of dismissal or termination and has only passed an order of forfeiture of the pensionary benefits of the Petitioner, such an Employee is likely to face grave hardships and manifest inconvenience, since he will have to approach the Civil Court for challenging such orders and for demanding retirement benefits or service benefits.

23. With the passage of 47 years of the introduction of the MEPS Act 1977, we deem it appropriate to recommend to the State Government to introduce an amendment to Section 9 of the MEPS Act, so as to cover and include all such causes of action, that would arise from the departmental enquiry proceedings in private schools, as like the one emerging from the case in hands and create a remedy for the non-teaching and the teaching staff of the private schools to approach the School Tribunal for assailing any such peculiar order, which is presently beyond the scope and ambit of section 9, as the provision stands today on the Statute book. The instance that we have discussed is only illustrative in nature since it is difficult to fathom or anticipate all causes of action.

24. **We, therefore, direct the learned Registrar Judicial-I, to place this order before the learned Advocate General of the State of Maharashtra for perusal and to recommend to the State Government to amendment Section 9 of the MEPS, Act 1977.**

25. In so far as the request of the learned Advocate for the Petitioner made on instructions, this **Writ Petition is disposed off** with liberty to the Petitioner to approach the Civil Court for

assailing the Resolution dated 21st August, 2023 and the communication dated 24th August, 2023.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)