

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 154 OF 2024

Benadikar Education Society And Anr ...Petitioner

Versus

The State Of Maharashtra And Ors. ...Respondents

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Mr. Narendra V. Bandiwakekar, Senior Advocate a/w. Mr. Rajendra Khaire i/b. A.N. Bandiwadekar, for Petitioner.

Mr. Prashant Bhavake, for Respondent No. 4.

Ms. Neha Bhide, 'B' Panel Counsel a/w. Ms. Rupali Shinde, AGP for Respondent Nos. 1 to 3.

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**CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.**

DATE : 31 JANUARY 2024

P.C.:

. Heard learned counsel for the Parties.

2. Petitioner No. 1 is the Educational Society and Petitioner No. 2 is a School. Petitioners have challenged order dated 4 October 2022 passed by the Deputy Director of Education, Kolhapur. The main ground of challenge is that the Deputy Director did not have any jurisdiction to pass the order.

3. According to the Petitioners, Respondent No. 4 was appointed as Shikshan Sevak for 3 years and thereafter, as Assistant Teacher.

According to the Petitioners, Respondent No. 4 remained absent from duty without prior intimation or application of leave made to the Petitioners. It is further the case of the Petitioners, that the Petitioners called upon Respondent No. 4 to resume the duty and inform the reason for unauthorized absence. According to Respondent No. 4, there was no such unauthorized absence.

4. In the impugned order, which is styled like a judgment and where parties are heard, the Deputy Director has entered into various disputed issues between the Petitioners and Respondent No. 4 and it has given a declaration that Respondent No. 4 was absent from 14 October 2017 to 9 August 2018 and this period should be extended for 10 months and 9 days and the Petitioners should accordingly submit the proposal to the Education Officer.

5. It is to be noted that even Respondent No. 4 is aggrieved by the finding that the period as above has been declared as her unauthorized absence. Respondent No. 4 has filed an Appeal before the School Tribunal. It is the case of Respondent No. 4 that before the School Tribunal, the Petitioners are also relying upon the impugned order passed by the Deputy Director.

6. We deferred the hearing of this Petition on 11 January 2024 till today, recording the question regarding the jurisdiction and power of the Deputy Director to decide such dispute between the Petitioner – Society and Respondent – Employee. Nothing is shown to us as to how the Deputy Director could enter into this dispute and

give declaration as regards certain service related disputes. Forum is provided under section 9 of the Maharashtra Employees of Private Schools Act, 1977 to the School Tribunal. The State Government has established a Grievance Committee. In the light thereof, the impugned order on the ground of jurisdiction is set aside.

7. As regards merits and contentions of the parties are concerned, we keep them open to be agitated by way of appropriate proceedings.

8. Writ Petition is accordingly disposed of.

9. We again make it clear that the impugned order is set aside only on the above ground and not on the merits of the dispute.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)