



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

Writ Petition (WP) No. 726 of 2019

President, Carmel Education Society, Chandrapur and others

Versus

Haridas G. Potdukhe and another

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

Court's or Judge's Order

Shri M.P.Khajanchi, Advocate for the petitioners.

Shri M.V.Rai, Advocate for the respondent No.1.

Shri U.R.Phasate, AGP for the respondent No.2/State.

CORAM : ANIL S. KILOR, J.

DATED : 23rd JANUARY, 2024.

1. Heard.
2. In this petition, the order dated 14.12.2018 passed by the School Tribunal, Chandrapur, allowing the application Exh.10 for condonation of delay in filing the appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (in short "MEPS Act"), is under challenge.
3. It is apparent on the face of the order that though the School Tribunal has observed that, the school is not a recognized school and therefore, it cannot be treated as private school as defined in section 2(20) of the MEPS Act, the learned Tribunal went further and

held that in view of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and Rules framed thereunder, as the right of the appeal is provided to the teachers of the primary school in respect of the decisions falling within the purview of Rule 20. Accordingly, the appeal has been held to be maintainable.

4. Contrary to the above referred observations, the learned counsel for the petitioners has pointed out that in the present case, the school is managed by the minority institution to which the provisions of the RTE Act would not apply. For this purpose, he has placed reliance upon the judgment of the Constitution Bench of this Court in the case of *Pramati Education & Cultural Trust v. Union of India*, reported in (2014) 8 SCC 1 and another judgment of the Hon'ble Supreme Court of India in the case of *Society for Unaided Private Schools of Rajasthan v. Union of India*, reported in (2012) 6 SCC 1. He accordingly, submits that the findings recorded by the learned Tribunal, are contrary to the findings recorded by the Hon'ble Supreme Court of India.

5. In reply, the learned counsel for the respondent No.1 submits that for affiliation of any

CBSE school, the pre condition is that, the school shall have recognition of the State Government and if there is a recognition of the State Government it would fall within the definition of the private school and also of the recognized school. He therefore, submits that the petitioner school cannot be treated as not covered by the MEPS Act.

6. However, nothing has been brought on record to show such recognition to the petitioner school by the State Government and it is further apparent on the face of the order that this point was not argued and therefore, the learned Tribunal had no occasion to consider the same.

7. The Hon'ble Supreme Court of India, in the cases of *Pramati Education & Cultural Trust* (supra) and *Society for Unaided Private Schools of Rajasthan* (supra), has categorically held that, the RTE Act will not apply to the minority institution. The learned Tribunal contrary to same has held in this case in paragraph 11 of the impugned order. In the circumstances, I have no hesitation to hold that the findings recorded by the learned Tribunal as regards the applicability of the RTE Act to the petitioners school, is erroneous.

8. However, to grant an opportunity to the respondent/employee to point out whether there is a recognition granted to the petitioner school by the State Government, which is the pre-condition for grant of affiliation by the CBSE Board, I am of the opinion that the matter needs to be remanded back to the learned School Tribunal. The fact whether the petitioner school received the recognition by the State Government or not goes to the root of the matter and it would decide the jurisdiction of School Tribunal in absence of applicability of the RTE Act, the remand of the matter is warranted to the School Tribunal to decide the application afresh after hearing both the parties. Accordingly, I pass the following order:

- (i) The writ petition is partly allowed.
- (ii) The order below Exh.10 dated 14.12.2018 passed by the School Tribunal, Chandrapur, in STC-13/2017, is hereby quashed and set aside.
- (iii) The matter is remanded back to the learned School Tribunal, Chandrapur for deciding the application Exh.10 afresh, after hearing both the parties.

(iv) The learned School Tribunal, Chandrapur shall decide the application within two months from the date of appearance of the parties.

(v) Parties shall appear before the Tribunal on **24.01.2024 at 11.00 a.m.**

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

[ANIL S. KILOR, J.]