



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

Writ Petition (WP) No. 1119 of 2024

Ku. Kiran D/o Ramkrushna Kamble

Versus

Dr. Babasaheb Ambedkar Education Society, through its President Sulbha Laxmanrao Ambhore (before Marriage), Sau. Sulbha Ashok Kamble (after Marriage) and others

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

Court's or Judge's Order

Shri P.R.Agrawal, Advocate for the petitioner.

Ms. Radhika Bajaj, Advocate for the respondent nos. 1 to 3.

Shri I.J.Damble, AGP for the respondent no.4.

CORAM : ANIL S. KILOR, J.

DATED : 27th FEBRUARY, 2024.

I have heard learned counsel for the respective parties.

2. The Order Below Exhibit 5 dated 9th February, 2024 passed by the learned School Tribunal, Amravati in Appeal No.1 of 2024, thereby rejecting the application filed by the petitioner for stay to the order dated 11th January, 2024 reverting the petitioner from

the post of Head Mistress to Assistant Teacher, is under challenge in this writ petition.

3. The learned Tribunal while rejecting the application for stay filed by the petitioner, refused to exercise the jurisdiction as provided under Section 10 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and Rules, 1981, (hereinafter referred as “Act, 1977”) on the ground that it would amount to grant of final relief which is not permitted in view of the judgment of this Court in the case of the *Zilla Parishad, Jalgaon through its Chief Executive Officer Vs. Smt. Maya Tukaram Sonawane*. The learned Tribunal has recorded the reasons in paragraphs 4 to 6 of the impugned order which read thus:

“4] Hon’ble Supreme Court in State of U.P. and other Vs. Sandip Kumar Balmiki and others, reported in 2009 (17) SCC 555 held that final relief cannot be granted at the interim stage and hence interim order staying the order of termination could not be passed. In State of Haryana Vs. Suman Datta, reported in 2000(10) SCC 311, the Hon’ble Supreme Court observed that High Court erred in law in staying the order of termination as interim measure in the pending writ petition. The Hon’ble Supreme Court further observed that by such interim order if any employee is allowed to continue in service and then ultimate then the writ petition is dismissed, then it would tantamount to usurpation of public office without any right to the same.

5] Again the Hon’ble Bombay High Court, Aurangabad Bench in the Zilla Parishad, Jalgaon through its Chief Executive Officer Vs. Smt. Maya Tukaram Sonawane

reported in MANU/MH/1222/2015 observed that “By way of interim order the order of suspension, termination, dismissal and transfer etc should not be stayed during the pendency of the proceeding in the Court”.

6] Considering the legal position laid down by the Hon’ble Supreme Court and the Hon’ble Bombay High Court in above case laws, I am not inclined to grant any stay as prayed by the appellant. Fate of the present application is going to decide on the basis of legal position as discussed above. Considering such legal position I am hereby restrained myself to make any observation on factual aspect of the present case. Accordingly, I have answered point No.1 in the negative and in answer to point 2, I proceed to pass the following order...”

4. It is pertinent to note that under Section 9 of the Act, 1977, the appeal is provided before the learned Tribunal against the dismissal or removal or otherwise termination or reduction in rank or against the supersession.

5. Section 10 of the Act, 1977 deals with the general powers and procedure of the Tribunal. Sub-section (1) of Section 10 of the Act, 1977 says that for the purposes of admission, hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in an Appellate Court under the Code of Civil Procedure, 1908, and shall also have the power to stay the operation of any order against which an appeal is made, on such conditions as it may think fit to impose

and such other powers as are conferred on it by or under the Act.

6. Thus, Sub-Section 1 of Section 10 of the Act, 1977 gives power to the Tribunal to grant stay to the operation of any order under challenge in the appeal which includes order of dismissal, removal, otherwise termination of service or reduction in rank or supersession. Despite of the specific power available with the Tribunal under Section 10(1) of the Act, 1977 without recording any reasons for not exercising said power, the Tribunal has refused to exercise such power relying the judgment of this Court which was not passed taking into consideration the specific power available under Section 10 of the Act, 1977 to the Tribunal.

7. In that view of the matter, learned tribunal has committed error in not exercising the jurisdiction which is available under the Act, 1977. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The Order Below Exhibit 5 dated 9th February, 2024 passed by the learned School Tribunal, Amravati in Appeal No.1 of 2024 is hereby quashed and set aside;

- iii. The matter is remanded back to the learned School Tribunal, Amravati to decide the said application Exhibit 5 afresh after hearing both the parties;
- iv. The learned School Tribunal, Amravati shall decide the application Exhibit 5 on or before **6th March, 2024**;
- v. The parties are directed to appear before the learned School Tribunal, Amravati on **29th February, 2024** at 11 a.m.

[ANIL S. KILOR, J.]