



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO FILE APPEAL BY PRIVATE PARTY NO. 13 OF 2024

Sau. Kalpana Abhaykumar Fursule,
Age 60 Years, Occu : Retired,
R/o. Parali Vajinath,
Taluka Parali Vajinath, District Beed,
Presently R/o C/o Pramod Neminath
Kondekar, Sangram Nagar,
Behind Adinath Jain Mandir,
Akluj, Taluka Malshiras, District Solapur,
413101.

... Applicant
[Ori. Complainant]

Versus

1. The President,
Shri. Shailya Malikarjun Shikshan Sanstha,
Siram @ Baburao Sakharam Shriram
Age : Major, Occu. : Agri.,
R/o Itkur, Taluka Georai, District Beed.
2. The Head Master,
Naveen Madhyamik Vidyalaya,
Vidya Nagar, Parali Vajinath,
Taluka Parali Vajinath, District Beed.
3. The Secretary,
Shri. Shailya Malikarjun Shikshan Sanstha,
Shri. Malikarjun M. Navande
Age : Major, Occu : Agri.,
R/o Shivaji Chowk, Near Sai Mandir,
Latur, Taluka and Dist. Latur.

4. The State of Maharashtra

... Respondents
[Resp. Nos. 1, 2 & 3 Ori.
Accused Nos. 1, 2 & 3]

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Mr. A. A. Nimbalkar, Advocate for the Applicant.
Mr. S. G. Rudrawar, Advocate for Respondent Nos. 1 to 3.
Mr. N. D. Batule, APP for Respondent No.4-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.06.2025

Pronounced on : 25.06.2025

ORDER :

1. Present application seeking leave to file appeal is at the instance of the original complainant who had instituted Summary Criminal Case No. 477 of 2006 before learned J.M.F.C., Parali Vajinath against the respondents for disobedience of order passed by the School Tribunal dated 15.09.1995.

2. According to learned counsel, present applicant was appointed as Assistant Teacher in the School by name "Navin Madhyamik Vidyalaya", at Vidyanagar, Parali Vajinath run by Shri Shailya Malikarjun Shikshan Sanstha, of which respondents nos. 1 and 2 are President and Head Master respectively. Learned counsel pointed out that respondent Head Master had terminated service of applicant on 16.11.1994, compelling her to approach the School Tribunal by way of appeal, and she also succeeded in obtaining order in her favour with directions to the respondents to allow her to join and to pay her arrears for the period during which she was terminated, i.e. by order dated 15.09.1995. It is further pointed out that, copy of the said order

was served upon the respondents, but in spite of the mandate of the tribunal, there is non-compliance within the stipulated period, attracting penal action under Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [for short, "MEPS Act"]. It is further pointed out that Summary Criminal Case No. 477 of 2006 was instituted in above backdrop, i.e. on account of non-compliance of the order of tribunal. However, learned J.M.F.C. failed to consider and appreciate the case advanced by the applicant and acquitted all the accused without assigning sufficient and legal reasons. Therefore, applicant intends to question the order of learned J.M.F.C. dated 02.11.2023 and hence, according to learned counsel, there being good case on merits, leave to file appeal deserves to be granted.

3. Learned counsel for the respondents accused contested and opposed the application on the ground that learned J.M.F.C. has correctly appreciated the evidence on record. That, no offence to attract the penalty under Section 13 of the MEPS Act was made out. That, on complete appreciation and by assigning sound reasons, on account of failure to make out a case, the summary case was dismissed, and consequently, according to learned counsel for the respondents, leave to file appeal also deserves to be refused.

4. After hearing both sides and on going through the papers, there is no dispute that the present applicant was working as Assistant Teacher. Position of accused nos. 1 and 2 to be the President and Head Master of the educational institution is not denied by the accused persons. Present applicant has led her evidence at Exhibit 92, wherein she has placed on record the order of her termination and the order of the School Tribunal, Aurangabad in Appeal No. 1 of 1995 date 15.09.1995 directing re-instatement and payment of salary and allowances for the period during which applicant was terminated. The learned J.M.F.C. was approached in view of action provided under Section 13 of the MEPS Act, and private complaint was lodged. After issuing notice to the present respondents-accused, proceedings were conducted by learned J.M.F.C. vide Summary Criminal Case No. 477 of 2006.

5. The documents to which attention is invited by learned counsel for the applicant also carries communication by very Education Officer dated 10.10.2006 directing the school authorities to pay salary from the grants. This communication is at Exhibit 98. However, learned J.M.F.C. appears to have held that the respondent authorities were not served with the order of the School Tribunal so as to expect its compliance from them. Surprisingly, in spite of holding that the

order of the School Tribunal carries directions to pay arrears of salary and allowances for the period during which applicant stood terminated, learned J.M.F.C. has observed that evidence adduced by the applicant does not inspire confidence, more particularly about the duration of period for which arrears are asserted. On mere inconsistency between the evidence of applicant and her witness PW2, case seems to have been primarily disbelieved and accused are acquitted. Therefore, there is point to be agitated in appeal which requires full fledged hearing and re-appreciation of entire evidence. Consequently, *prima facie* case being made out, the application deserves to be allowed. Hence, the following order :

ORDER

- I. The application is allowed.
- II. Leave to file appeal is granted.
- III. Registry to register the appeal.

[ABHAY S. WAGHWASE, J.]