**IN THE HIGH COURT OF BOMBAY**

Letters Patent Appeal No. 153 of 2010 in Writ Petition No. 5024 of 2008

Decided On: 09.06.2011

Appellants: **Smt. Komal Rugwani**
**Vs.**
Respondent: **State of Maharashtra and Ors.**

**Hon'ble Judges/Coram:**
D.K. Deshmukh, Anoop V. Mohta, and K.K. Tated, JJ.

**JUDGMENT**

**D.K. Deshmukh, J.**

1. A Division Bench of this Court has referred following questions for consideration by a Larger Bench.

(I) Whether an employee employed in a private primary school recognized by a body or officer referred to in Sub-section (2) of Section 39 of the Bombay Primary Education Act, 1947 can approach the Tribunal under Section 9 of the MEPS Act, 1977, if he/she is aggrieved by any action of the management as stipulated in the said provision?

(II) In other words, whether the MEPS Act, 1977 applies to employees of a private primary school recognized by a body or officer referred to in Sub-section (2) of Section 39 of the Bombay Primary Education Act, 1947?

2. The Hon'ble the Chief Justice, therefore, constituted this Bench for consideration of the above quoted two questions.

3. The relevant facts are that the Appellant was in the service of Jhulelal Trust School as Asst. teacher. She was working in the primary school. By order dated 26-11-2007 her services were terminated by the management on the ground that she is surplus.

4. Feeling aggrieved by the termination of service, the Appellant filed an appeal under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (herein after referred to as "the MEPS Act") before the School Tribunal, New Mumbai. That appeal was registered as Appeal No. 10 of 2008. The School Tribunal disposed of that Appeal by order dated 2nd May, 2008 holding that as the Appellant was working in a primary school which was recognized by the Ulhasnagar Municipal School Board, it is not a private school within the meaning of MEPS Act, therefore the Appeal of the Appellant before the School Tribunal was not maintainable.

5. Feeling aggrieved by that order the Petitioner filed Writ Petition No. 5024 of 2008 in this Court. The learned single Judge of this Court rejected that Writ Petition by order dated 10th October, 2008. For rejecting that petition and upholding the view taken by the School Tribunal in relation to the maintainability of the Appeal under Section 9 of the MEPS Act, the learned single Judge relied on the judgment of the Division Bench of this Court in the case of Rita T. Verghese v. Headmistress, Vidya Mandir English Primary School,   : 2002 (3) Mh.L.J. 57.

6. Feeling aggrieved by the order of the learned single Judge rejecting writ petition filed by the Appellant, the Appellant preferred Letters Patent Appeal No. 153 of 2010. The Division Bench of this Court before whom the Letters Patent Appeal of the Appellant came for hearing found that it is unable to agree with the view taken by the Division Bench in Rita Verghese's case(supra). The Division Bench found that the provisions of the Bombay Primary Education Act need to be considered. In paragraph 15 the Division Bench has observed thus,

...Therefore, with great respect to the Division Bench, the status or position of the Authority giving recognition to the private school, by itself is not decisive. That may not determine and decide the coverage of the private school and its employees....

The Division Bench referred to the provisions of Sections 39 and 40 of the Bombay Primary Education Act and was of the view that a primary school run by private management which is recognized by Zilla Parishad School Board or by the State Government or by an officer authorized by the State Government or by a Municipal School Board in terms of the provisions of Sub-Section 2 of Section 39 of the Bombay Primary Education Act may be regarded as a private school within the meaning of the MEPS Act. The Division Bench, therefore, framed the above quoted two questions.

7. We have heard the learned Counsel appearing for both sides. We have also perused the record. We have also read the judgments that were pointed out to us by both sides.

8. MEPS Act was enacted by the Legislature of the State of Maharashtra in the year 1977 and it received assent of the President of India on 16th March, 1978 and it is first published in the Maharashtra Government Gazette on 20th March, 1978. The Act, however, did not come into effect on its publication in the official gazette. It came into force on 15th July, 1981 when a notification was published in the official gazette appointing 15th July, 1981 as the date on which that Act will come into force. It is on that very date that the Rules framed under the MEPS Act were also notified. In the year 1981 when the MEPS Act came into force, so far as primary schools in the State of Maharashtra are concerned, in the Mumbai City the primary schools were recognized by the Bombay Municipal Corporation under its Grant-in-Aid Code, which has statutory force. In the Western Maharashtra Region, in so far as recognition of the primary school is concerned, it was governed by the provisions of Bombay Primary Education Act, 1947 and in Vidharbh & Marathawada Region of the State of Maharashtra there was no statutory enactment governing and regulating the recognition of the primary school. Provincial Bombay Municipal Corporation Act, Maharashtra Municipalities Act and the Maharashtra Zilla Parishad and Panchayat Samittee Act, which were in force in the State of Maharashtra in the year 1981 cast on the Municipal Corporation, the Municipal Councils and the Zilla Parishad Primary duty to establish a primary school. Therefore, in all the region of the State of Maharashtra there were primary schools which were established by the Municipal Corporation, Municipal Councils and the Zilla Parishad. There were also private primary schools which were recognized, in the Bombay Region by the Bombay Municipal Corporation, in western Maharashtra Region by various Municipal Boards and Zilla Parishad and in Vidharbh and Maharathwada Region by officers of the State Government. There were also secondary schools in the State of Maharashtra, which were recognized by the Secondary & Higher Secondary Education Board, which was the statutory Board constituted under the Secondary and Higher Secondary Board Act. As also there were secondary schools which were recognized by the Director of Education.

9. In this background, in the year 1981 the MEPS Act came into force. The preamble of the MEPS Act states "WHEREAS, it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State." Thus, the intention of the Legislature was to regulate the recruitment and service condition of the employees in certain private schools and not all private schools in the State of Maharashtra. Sub-Section 1 of Section 3 lays down

The provisions of this Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.

Thus, the provisions of the Act apply to private schools. The term "Private School" is defined by Section 2(20) of the Act to mean "a recognized school established or administered by a Management, other than the Government or a local authority". Thus, the schools which are established and administered by the Government and Local authority are out of purview of the Act and from amongst the private schools it is only the recognized schools which are within the purview of the Act. The term "Recognized" is defined by Section 2(21) to mean "recognized by the Director, the Divisional Board or the State Board or by any officer authorized by him or by any of such Board". The term "Director" has been defined by Section 2(6) to mean "the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art, as the case may be, appointed as such by the State Government". The term "Divisional Board" has been defined by Section 2(6A) to mean "the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965", and the term "State Board" has been defined by Section 2(25) to mean "the Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965. The Board of Technical Examinations, Maharashtra State; The Maharashtra State Board of Vocational examinations or the Art Examination Committee."

10. Thus, only those schools which are recognized by the Director of Education etc. or an officer authorized by such Director or various Boards mentioned in Section 2(25) and Section 2(6A) or the officers authorized by them are recognized schools. Perusal of the definition of the term "school" shows that a primary school is covered by the definition of the term "school". Thus, it is only those primary schools which are recognized by the above referred Directors or the Boards which are covered by the provisions of the MEPS Act.

11. In the State of Maharashtra when the Act came into force, there were in existence Ashram Schools, which were established by private management and were fully aided primary schools. These schools were recognized by the Deputy Director of Social Welfare or Deputy Director of Tribal Development. A question arose as to whether the provisions of the MEPS Act will apply to employees working in these Ashram Schools. That question was considered by the Full Bench of this Court in its judgment in Suryakant Sheshrao Panchal v. Vasantrao Naik Vimukta Jati, Bhatkaya Jamati Aadarsh Prasarak Mandal and Ors.   : 2002 (3) Mh.L.J. 659. The Full Bench noted in paragraph 13 of its judgment types of Ashram Schools that were in existence. Paragraph 13 of that judgment reads as under:

13. It is well known that in the early fifties of the last century the State Government came out as a policy of encouraging Ashram Schools to be started by the private management as fully aided primary schools and they were mostly supposed to be residential schools. The permission to start such schools is given by the Deputy Director of Social Welfare or the Deputy Director of Tribal Development, as the case may be. Subsequently looking to the growing needs of education beyond primary level, the State Government revised its policy and allowed post-basic Ashram Schools to be started by the private managements as aided schools. A primary school is normally from 1st to VIIth standards. However, a primary school from 1st to IVth standards is called as Level-f and the primary school from Vth to VIIth standards is called as Level-TI. An Ashram school from 8th standard and onwards is called a post-basic Ashram school. If such a post-basic Ashram School has classes up to 10th standard, then obviously it needs recognition from the State Board as defined under Section 2(25) of the M.E.P.S. Act. On the other hand, primary Ashram schools are recognized only by the Director of Social Welfare or the Director of Tribal Development, as the case may be and there is no question of their being recognized within the meaning of Section 2(21) of the Act, though they are schools within the meaning of Section 2(24) of the M.E.P.S. Act.

So far as Primary Ashram Schools are concerned, in paragraph 16 the Full Bench observed thus:

16. When it comes to an Ashram school which is only a primary school, it does not satisfy the definition of "private school" within the meaning of Section 2(20) of the Act. However, if an Ashram school is running classes from 1st to 10th standard obviously it would have recognition from the Divisional Board and thus, would fall within the ambit of the term "private school". On the other hand, Ashram school running classes from 1st to 7th standard or any intermediary level, would not require recognition from any of the authorities as specified in Section 2(21) of the M.E.P.S. Act and therefore, it would not be a "private school'' within the meaning of the said Act. Resultantly, the employees working under the Ashram Schools which are only primary level cannot maintain an appeal under Section 9 of the M.E.P.S. Act. However, an employee working in an Ashram school which is a secondary and higher secondary Ashram school has a right to approach the School Tribunal by filing an appeal under Section 9 of the Act against an order of punishment/termination of service or for redressed of grievances enlisted in the said section as they come within the ambit of the term employee as defined under Section 2(7) of the said Act.

12. The Full Bench thus held that so far as Primary Ashram Schools are concerned, they are not covered by the provisions of the MEPS Act, because those schools are not recognized by the Directors or the Boards mentioned in the MEPS Act. It is held that so far as Ashram Schools which are secondary schools are concerned, because those schools are recognized by the Maharashtra Secondary & Higher Secondary Education Board, the employees working in the secondary Ashram schools are governed by the provisions of the MEPS Act. But that part of the judgment of the Full Bench is not relevant for our purpose. The only part of the judgment which is relevant for our purpose is that the condition of service of the employees of the primary Ashram schools are not governed and regulated by the MEPS Act. The conclusions that was recorded by the Full Bench are to be found in paragraph 20. They read as under:

20. To conclude, we answer the reference as under:

(a) There is no controversy between the views enunciated by the respective Division Benches in Writ Petition No. 2919 of 1991 and Letters Patent Appeal No. 293 of 1999.

(b) Secondary or Higher Secondary Ashram Schools or Blind Schools are "private schools" within the meaning of Section 2(20) of the M.E.P.S. Act and any employee of such a school has a remedy of an appeal under Section 9 of the said Act.

(c) The Ashram School Code providing for remedy of an appeal to the employees working in the basic/primary Ashram Schools is contrary to the provisions of Section 9 of the Act and to that extent same is hereby held to be invalid. It is declared that an employee working in a primary Ashram school or any other school which does not fall within the ambit of the term "private school" cannot approach the School Tribunal under Section 9 of the M.E.P.S. Act.

(emphasis supplied)

13. The judgment of the Full Bench in Suryakant Panchal's case, it appears was considered by the Supreme Court in its judgment in the case of Dagdu v. President, Anandrao Naik Shikshan Prasarak Mandal and Ors.   : (2006) 9 SCC 782. In that case, the services of a teacher working in a primary Ashram School were terminated. That order was challenged before the School Tribunal constituted under the MEPS Act. The School Tribunal set aside that order. The order of the School Tribunal was challenged before this Court. This Court relying on the judgment of the Full Bench in the case of Suryakant Panchal (supra) allowed that writ petition. That judgment of this Court was challenged before the Supreme Court in the case of Dagdu (supra). The observations made by the Supreme Court in paragraphs 6, 7, and 8 of that judgment in our opinion, are relevant. They read as under:

6. The Tribunal was set up for the purpose of deciding disputes under Section 8 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (referred to as "the Act"). Section 9 of the Act gives jurisdiction to the Tribunal to entertain appeals from employees in a private school. The words "private school" have been defined in Section 2(20) of the Act as meaning a recognized school established or administered by a management, other than the Government or a local authority. The word "recognized" has been defined in Section 2(21) as meaning recognition by the Director, the Divisional Board or the State Board or by any officer authorized by him or by any of such Boards. A Director has been defined in Section 2(6) as meaning:

2.(6) "Director" means the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art as the case may be, appointed as such by the State Government;

(6-A) "Divisional Board" means the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965

7. The Boards referred to in the definition of the word "recognized" mean Boards which deal with education at levels other than the level at which the ashram school of which the Appellant was the Headmaster operates.

8. The ashram school in question imparts only primary education from Standard I to Standard VII. It has not been recognized either by the Director or by the Boards as defined under the Act. Since it is not recognized, therefore, it is not a "private school" within the meaning of Section 2(20). Consequently, the Tribunal would not have the jurisdiction to entertain an appeal of the Appellant since he was not an employee of a private school. The decision in Surya Kant v. Vasantrao Naik Vimukta Jati Bhatakya Jamati Aadarsh Prasarak Mandal is, in our opinion, correct and the High Court rightly applied the principle thereof in the impugned decision.

14. The Supreme Court, thus, in substance approved the judgment of the Full Bench in the case of Suryakant(supra). It is, thus, clear from the judgment of the Full Bench in the case of Suryakant and the judgment of the Supreme Court in Dagdu's case that which authority has recognized the school is both decisive and determinative.

15. In the State of Maharashtra there were schools established and administered by Cantonment Board. The Cantonment Boards are established under the Cantonment Boards Act which is the Central Legislation. Following question was referred to Larger Bench for consideration.

Whether the School Tribunal constituted under Section 8 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977, could entertain the appeals under Section 9 of MEPS Act filed by the employees working in the schools which are established and administered by the Cantonment Board.

16. That question was considered by a Special Bench of this Court consisting of Five learned Judges. The judgment is reported as Shobha w/o Kailash Bonekar v. The Cantonment Executive Officer and Ors., 2007 (2) All M.R. 509. The Special Bench held that the employees working in the schools established and run by Cantonment Board are not governed by the provisions of the MEPS Act. The Special Bench also considered the provisions of the Bombay Primary Education Act. The observations of the Special Bench in paragraphs 17 to 20, in our opinion, are relevant. They read as under:

17. In this connection, we must note that as far as the primary schools are concerned, they are governed under the Bombay Primary Education Act, 1947. Section 2(11) of this Act defines "Municipal School Board" meaning a school board constituted for the area of an authorized municipality under Section 3 of that Act. It is also a Board but it is setup by a local authority and therefore, any school run or recognized by the local authority would get excluded from the definition of a private school since the definition itself specifically excludes the schools run by the Government or the local authority.

18. Similarly, under Section 2(26) of Maharashtra Zilla Parishads Act, there is a Divisional Board. However, the employees working in the schools recognized by such Board also get excluded because the Zilla Parishad is a local authority within the meaning of Section 2(11) of MEPS Act. A school run by a local authority is outside the coverage of a private school under Section 2(20) of the Act. On this background, we come to the schools run by the Cantonment Board.

19. The Cantonments Act, 2006 has recently come into force from 13-9-2006 and has repealed the earlier Cantonments Act, 1924. "Cantonment" is defined under Section 3 of new Act as a place or places along with boundaries in which any part of Armed Forces is quartered, which the Central Government may, by notification published in the Official Gazette, declares it as such. Under Section 10 of the Act, there shall be a Cantonment Board for every cantonment area. Under Section 10(2) of the Act itself, it is provided that every Board shall be a municipality under Clause (e) of Article 243-P of the Constitution for the purposes of receiving grants and allocations or for implementing the central Government schemes of social welfare, public health, hygiene, safety, water-supply, sanitation, urban renewal and education. It is a body corporate under Section 11 of the Act. The duties of the Cantonment Board are laid down in Section 62 and amongst others, Clause (xiv) lays down the duties of establishing and maintaining or assisting primary schools only. The Cantonment Board is not required to enter into the area of secondary education.

20. As laid down by the Apex Court in Dagdu's case (supra), to be a private school within the definition of Section 2(20) the school has to be recognized under Section 2(21) by a Board and the Board has to be a Board which deals with education at levels other than the primary level at which the ashram school was imparting education. Obviously, all such schools cannot be said to be covered under the concept of private schools.

17. Section 39 of the Bombay Primary Education Act reads as under:

39. (1) Every primary school of her school other than a primary school maintained by the (State) Government or by a Zilla Parishad or school board, or by an authorized municipality which fulfils the conditions prescribed in this behalf shall be entitled to recognition as approved School.

(2) Such recognition shall be given by the Zilla Parishad or school board or by the State Government or by an officer authorized by it in this behalf, and the manner in which grant-in-aid is to be given to such approved schools shall be as prescribed.

The question which we have to answer is when a private primary school is recognized by a body or officer referred to under Sub-Section 2 of Section 39, whether an appeal filed by an employee working in such school under Section 9 of the MEPS Act is maintainable. It is clear that under Sub-Section 1 of Section 39 recognition to a school is given by (1) Zilla Parishad; (2) School Board; (3) State Government and (4) by an officer authorized by the State Government.

18. Perusal of the provisions of the MEPS Act, to which we have made a reference, show that a school recognized by all these authorities will not be the recognized schools within the meaning of that Act. The Full Bench of this Court by its judgment in Suryakant's case(supra) which is approved by the Supreme Court in Dagdu's case(supra) held that employees working in primary ashram schools are not covered by MEPS Act, only because those schools were not recognized by any of the authorities mentioned in the MEPS Act. It means that the requirement of a school being recognized by those authorities which are mentioned in the MEPS Act is both decisive and determinative. In our opinion, in view of the judgment of the Full Bench in Suryakant Panchal's case and the judgment of the Supreme Court in Dagdu's case, it is not open to us to consider whether a private primary school which is not recognized by any of the authorities mentioned in the MEPS Act can be regarded as a private primary school within the meaning of the MEPS Act. So far as maintainability of an appeal under Section 9 of the MEPS Act is concerned, Sub-Section 1 of Section 9 is relevant for our purpose. It reads as under:

9.(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 of appeal and may appeal against any such order or super session to the Tribunal constituted under Section 8);

Provided 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.

19. Perusal of the above quoted provisions makes it clear that the right of appeal is given only to an employee in a private school. Therefore, appeal filed by only such person who is an employee in a private school is maintainable under Section 9. We have already pointed out above that in order to be a private school within the meaning of the Act, that school must be recognized by the Director, the Divisional Board or the State Board or the officers authorized by such Director or such Board. A private school which is recognized by any authority other than these authorities does not become a private school within the meaning of the Act.

20. So far as the judgment of the Division Bench in Rita Verghese's case is concerned, it does not consider the provisions of the Bombay Primary Education Act. Because the school with which the Division Bench was concerned in that case was the school recognized by the Bombay Municipal Corporation under its Grant-in-aid Code. The view that is taken by the Division Bench in Rita Verghese's case is in consonance with the view taken by the Full Bench in Suryakant Panchal's case, which is approved by the Supreme Court by its judgment in Dagdu's case. In our opinion, therefore, as the view taken by the Division Bench in Rita Verghese's case is in consonance with the view taken by the Full Bench, there is no room for us to disagree with that view. We also do not find any reason to disagree with that view.

21. Though that question has not been referred to us, on behalf of the learned Counsel appearing for the Appellant it was argued that if a primary school is recognized by the School Board of the Municipal Council under the Bombay Primary Education Act, but if that primary school is a part of a secondary school, which is recognized by the Director of Education or the Divisional Board, then the conditions of service of the employees working in such primary school will be governed by the provisions of the MEPS Act. In this connection it is to be noted that the provisions of the MEPS Act apply to a private school. Therefore, when one considers the question whether the provisions of the Act apply to a particular school, first inquiry is to be made whether that school is a private school within the meaning of the Act and to find out whether the school in question is a private school or not, one has to refer to the definition of the term "private school" and if on consideration of that provision one finds that it is a school established and administered by the management which is neither Government nor local authority, then the provisions of the Act will be applicable. In other words, in order that the school answers to the definition of the term "private school", firstly it must be a recognized school and secondly it must be established or administered by management other than the Government or local authority. Then secondly, an inquiry will have to be made whether it is a recognized school. For that purpose one will have to see the definition of the term "recognized" in Section 2(21). If answer to the question whether it is a recognized school is in the negative, no further inquiry will be necessary. Because if that school is not a recognized school, then it cannot be a private school within the meaning of the Act. Perusal of the judgment of the Full Bench in Suryakant Panchal's case shows that in that case the Full Bench was considering the ashram schools which are running classes from Standard I to Standard VII and the schools which were running classes from Standard I to Standard X or Standard XII and the Full Bench has held that in case such ashram school' employees working in the secondary and higher secondary section of such school will be governed by the provisions of the MEPS Act, whereas the employees working in the primary section would not be so governed. It is further to be seen that the submission of the learned Counsel is based on the definition of the term "primary school" found in Section 2(19), which defines the term "primary school" to mean "a recognized school or a part of such school in which a primary education is imparted". Therefore, the primary school has to be basically a recognized school or has to be a part of recognized school where primary education is imparted. Therefore, the evidence will have to be placed on record to show that the management treats the primary school and the secondary school as one unit. It also will have to be seen whether considering the provisions of the Act and the Rules, which lay down different qualifications for teachers working in primary and secondary school, whether it is possible for a management to treat secondary school and primary school as one unit. Thus, for two reasons, in our opinion, we cannot give any definite answer to this submission. First reason is, that question is not referred to us and second is factual basis which would be necessary for deciding that question is not before us.

22. In so far as the questions referred to us are concerned, in our opinion, answer to those questions has to be that in view of the judgment of the Full Bench in Suryakant Panchal's case and the judgment of the Supreme Court in Dagdu's case, if a private primary school is recognized by a body or officer referred to in Section 39(2) of the Bombay Primary Education Act, it will not be governed by the provisions of the MEPS Act and the employee working in such a school cannot file an appeal under Section 9 of the MEPS Act.

23. Office is directed to place the papers before the appropriate Division Bench for further orders.