

(2017) 04 BOM CK 0246
In the Bombay High Court
Case No : 1078 of 2016

Azaz Kibriya Khan s/o Maqsoodali Khan

APPELLANT

Vs

Tanvir Ahmed Khan Shabbir Khan

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

[Maharashtra Employees of Private Schools \(Conditions of Service\) Regulation Act, 1977](#), [Section 9](#), [Section 2\(12\)](#) - Right of appeal to Tribunal to employees of private schools. - Definitions

Citation : (2017) 04 BOM CK 0246

Hon'ble Judges : Z.A. Haq

Bench : SINGLE BENCH

Advocate : S.R. Deshpande, V.K. Paliwal, P.S. Girdekar, Bhagwan M. Lonare

Judgement

1. Heard Shri S.R. Deshpande, Advocate for the petitioner, Shri V.K. Paliwal, Advocate for the respondent No.1, Shri P.S. Girdekar, Advocate for the respondent Nos.2 and 3 and Shri Bhagwan M. Lonare, Assistant Government Pleader for the respondent No.4.

2. The respondent No.1 has filed appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the "Act of 1977") challenging the termination of his services and praying for consequential reliefs. In this appeal, the society through its President, the school through its Head Mistress and the Education Officer are impleaded as the respondents. In the appeal, the petitioner filed an application (Exhibit No.36) seeking permission to participate in the proceedings as respondent. This application (Exhibit No.36) is dismissed by the impugned order.

3. The contention of the petitioner is that there is a dispute regarding management of the school and two different groups are claiming the right to administer the school. According to the petitioner, the person who has issued the order of termination posing himself to be the Chief Executive Officer has no authority to issue the termination order. In paragraph No.3 of the application

(Exhibit No.36), the petitioner made a specific statement that he had filed Change Report No.252/2000 which is decided by the Assistant Charity Commissioner on 14052015 and against this order an appeal is pending. The statement is made on oath. The Advocate for the respondent No.1 has pointed out that Change Report No.252/2000 was filed on behalf of the society (Trust) through Rashidkha Yusufkha Jamadar and the present petitioner was nonapplicant No.1 in Change Report No.252/2000. The facts recorded in paragraph No.2 of the order passed in Change Report No.252/2000 on 14052015 show that according to the reporting trustee i.e. Rashidkha Yusufkha Jamadar, the trustees held election and a resolution was passed on 12042000 that Rashidkha Yusufkha Jamadar was elected as President of the Trust. The petitioner has not been able to show how the filing of Change Report No.252/2000 and the order passed on it is relevant for considering the application (Exhibit No.36) filed by the petitioner. Apart from this, the petitioner has not placed anything on record to substantiate his contention that he is concerned with the affairs of the Trust and administration of the school and he is a necessary or proper party to the appeal filed by the respondent No.1 before the School Tribunal.

4. Under the scheme of the Act of 1977 and the Rules framed under it, the School Tribunal is not required to delve into inter se disputes of the trustees. The trustees individually cannot be permitted to raise the issues regarding administration of the school. Under the scheme of the Act of 1977 and the Rules framed under it, the decisions regarding imposing/inflicting punishment on the employees is to be taken by the management of the school. The "management" is defined under Section 2(12) of the Act of 1977 as follows : "Management", in relation to a school, means, (a) In the case of a school administered by the State Government, the Department;

(b) in the case of a school administered by local authority, that local authority; and

(c) In any other case, the Person, or body of persons, whether incorporated or not and by whatever name called, administering such school: "

Thus the decision of terminating the services of the employees is required to be taken by the management i.e. the person, or body of persons administering the school. As per Rule 36(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as the "Rules of 1981"), in case of an employee other than the head of the school if the management decides to hold an enquiry, the Chief Executive Officer authorised by the management has to act as per the various provisions of Rule 36 of the Rules of 1981. The scheme of the Act of 1977 and the Rules framed under it do not recognise the right of individual trustee to seek audience before the Tribunal in appeal under Section 9 of the Act of 1977 and if it is permitted, the Tribunal will have to decide the inter se disputes amongst the trustees/office bearers of the society (Trust) which jurisdiction is not conferred on the Tribunal. The issue

as to who is in control of the affairs of the public Trust falls within the jurisdiction of the authorities under the Maharashtra Public Trusts Act, 1950. The Tribunal while considering the appeal filed by the employee under Section 9 of the Act of 1977 is required to only examine the legality of the termination order. The appellant before the School Tribunal will have to discharge the preliminary burden of asserting that the termination order challenged by him in appeal is illegal having not been issued by the competent authority and then the management which is impleaded as respondent in the appeal will have to discharge its burden of refuting the claim of the appellant (employee).

5. In view of the above, I find that the claim of the petitioner that he is necessary party or in any case proper party to the appeal is not only legally unsustainable but as recorded earlier on facts also the petitioner has not been able to show that the appeal filed by the respondent No.1 cannot be decided in the absence of the petitioner.

6. In view of the above, the petition is dismissed and the application (Exhibit No.36) is rejected. This application (Exhibit No.36) appears to have been filed in October 2015 and then after its rejection by the Tribunal this petition is filed and because of the interim order passed in this petition the proceedings of appeal filed by the respondent No.1 before the Tribunal are stayed. The effect is that the proceedings of appeal filed by the respondent No.1 before the Tribunal are protracted and hearing is delayed by 17 months. In view of the above and as it is found that the petitioner has not been able to justify his claim as made in the application (Exhibit No.36), the petitioner shall pay costs of Rs.25,000/by demand draft to the respondent No.1, within one month and file an affidavit alongwith receipt showing the payment of costs before the Assistant Charity Commissioner, Buldhana Region, Buldhana. If the receipt showing payment of costs as per this order is not produced by the petitioner before the Assistant Charity Commissioner within one month, the Assistant Charity Commissioner shall pass appropriate orders against the petitioner in the proceedings pending before him, treating it to be disobedience of the order passed by this Court.