

(2023) 03 BOM CK 0089

In the Bombay High Court

Case No : Writ Petition No. 12548 Of 2019

Hashmiya Bahrul Faiz Social Welfare Association Vs Abdullah M. Shukur Qureshi ?And Others

Date of Decision : 24-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 — Rule 16
Maharashtra Employees Of Private Schools (Conditions Of Services) Regulation Act, 1977 — Section 2, 2(C), 2(6), 2(7), 2(10), 2(20), 2(21), 2(24), 2(25), 3, 3(1), 3(2), 4, 4(1), 8, 9, 10, 11, 14
National Council For Teacher Education Act, 1993 — Section 12(d), 12(g), 31, 31(2), 32, 320, 320(1), 322, 322(a)

Citation : (2023) 03 BOM CK 0089

Hon'ble Judges : Nitin Jamdar, J; Nitin W. Sambre, J Abhay Ahuja, J

Bench : Full Bench

Advocate : Narendra V. Bandiwadkar, Yogesh G. Thorat, Sagar Mane, Vinayak Kumbhar, Ashok B. Tajane, I.M.Khairdi, Pooja Bendkule, Sachin Patil, Dr.Birendra Saraf, Shruti D. Vyas, ?B

Final Decision : Disposed Of

Judgement

Nitin Jamdar, J

1. The Full Bench is called upon to answer the reference made by the learned Single Judge by order dated 24 November 2021 concerning the jurisdiction of the School Tribunal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977.

2. Following events led to the reference. The Petitioner-Hashmiya Bahrul Faiz Social Welfare Association conducts D.Ed. College for girls at Solapur. Abdullah M. Shukur Qureshi, Respondent No.1, was appointed as an Assistant Teacher in the D.Ed College. Respondent No.1 filed an Appeal No.21/2013, under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (MEPS Act) in the School Tribunal at Pune, claiming that he was being harassed by the Petitioner- Management who was not allowing him to

perform his duties, which resulted in his illegal termination. The Petitioner and its Principal- Respondent No.2, filed a reply opposing the appeal, arguing that Respondent No.1 was not qualified to hold the post and was habitually absent. They sought dismissal of the appeal on these grounds. After considering the evidence on record, the School Tribunal concluded that there was no merit in the Petitioner's opposition and that Respondent No.1 was illegally terminated. The School Tribunal allowed the appeal of Respondent No.1 by the order dated 21 April 2015 and directed the Petitioner to reinstate Respondent No.1 with continuity of service from the date of his termination and full back wages. The Petitioner challenged the Tribunal's order by filing the present writ petition on 29 November 2018.

3. During the hearing of the Petition on 24 November 2021, the Petitioner argued that the School Tribunal lacked jurisdiction to entertain Respondent No.1's appeal. The Petitioner contended that since the D.Ed college conducted by it was not a 'Recognised Private School' under the MEPS Act, the appeal would not fall within the scope of section 9 of the MEPS Act. The Petitioner relied on the decision of a Single Judge of this Court (V.R.Kingaonkar J) in the case of Ravindra s/o. Motiram Firake Versus Janata Shikshan Mandal, District Jalgaon & Ors. 2009 (4) ALL MR 504 The learned Single Judge, in that case, had held that the employees of D.Ed. and B.Ed. Colleges do not have a remedy of appeal under Section 9 of the MEPS Act as these colleges recognised under the National Council of Teachers Education Act, 1993 (NCTE Act), cannot be considered recognised under the MEPS Act. Respondent No.1, on the other hand, placed reliance on the order passed by the Division Bench of this Court (S.C.Dharmadhikari and M.S.Karnik, JJ.) dated 28 February 2019 disposing of three petitions i.e. Writ Petition Nos.9808/2013, 9807/2013 and 9809/2013 (This order is referred to as the case of Gururaj Vasantrao Kulkarni Versus The State of Maharashtra. Writ Petition No.9808 of 2013, dated 28 February 2019.). Respondent No.1 contended that the Division Bench had concluded that Section 9 of the MEPS Act would apply to employees in D.Ed and B.Ed colleges until separate service conditions were prescribed for them under the NCTE Act.

4. After considering the rival contentions, learned Single Judge(G.S.Kulkarni J) thought it appropriate that the question as to whether the decision of the Division Bench in Gururaj Vasantrao Kulkarni (supra) can be considered to have sub silentio overruled the view taken by the learned Single Judge in Ravindra Motiram Firake, needs to be decided by the larger Bench. G.S. Kulkarni, J, accordingly, framed issues for consideration and directed that the proceedings be placed before the learned Chief Justice for appropriate directions. Thereafter the reference is placed before us for consideration.

5. G.S. Kulkarni, J, has referred the following issues for consideration of the larger Bench:

(i) Whether the decision of the Division Bench in Gururaj Vasant Kulkarni (supra) can be considered to have sub silentio overruled the view taken by the learned

Single Judge in Ravindra s/o. Motiram Firake (supra) so as to hold that the employees of the D.Ed. and B.Ed. Colleges have a remedy of an appeal under Section 9 of the MEPS Act.

(ii) Considering the provisions of the MEPS Act and, more particularly, the definitions under Sections 2(20), 2(21) and 2(24) of the MEPS Act, can it be held that the D.Ed. and B.Ed. Institutions would fall within the purview of the MEPS Act so as to recognise to the employees of such institutions a right of appeal under Section 9 of the MEPS Act?

6. At the outset, Mr. Khairadi, for Respondent No.1, argued that the reference on the issue of jurisdiction should not have been made in this Petition as the Petitioner is deemed to have waived its right to raise this objection. He submitted that Respondent No.1 filed the appeal in the School Tribunal in 2013, and the Petitioner did not object to the jurisdiction of the School Tribunal during the entire proceedings. Mr. Khairadi submitted that the Petitioner never challenged the jurisdiction of the School Tribunal from 2013, either in the School Tribunal or in this court, and no cognizance of an oral argument made for the first time in 2021 should have been taken. He argued that, therefore, since the Petitioner participated in the proceedings without raising the issue of jurisdiction and only challenged it when the result went against them, this was not a case where the Petitioner's argument on jurisdiction should be considered for reference to the larger Bench. On the other hand, Mr. Bandiwadekar, for the Petitioner, argued that the issue of jurisdiction of the School Tribunal goes to the root of the case and can be raised at any stage of the proceeding. He contended that even if the Petitioner had not objected earlier, it does not mean that the School Tribunal has jurisdiction to entertain the appeal, as jurisdiction cannot be conferred by consent. Mr. Bandiwadekar relied upon the decisions of the Supreme Court in the case of Harshad Chiman Lal Modi v. DLF Universal Ltd. & Anr. (2005) 7 SCC 791 and The United Commercial Bank Ltd. v. Their Workmen AIR 1951 SC 230 .

7 The lack of inherent jurisdiction strikes at the root of the matter. Therefore, neither the parties' consent nor acquiescence can confer jurisdiction upon an authority if it inherently lacks it. However, there is another aspect emanating from Respondent No.1's objection. Under Articles 226 and 227 of the Constitution of India, the High Court exercises discretionary power when it examines a challenge to the jurisdiction of the authority at the request of a party. In this context, the decision of the Division Bench of the Mysore High Court in the case of C.R.Gowda v. Mysore Revenue Appellate Tribunal, Bangalore AIR 1965 MYSORE 41 requires to be noted. The Division Bench was faced with a question as to whether a party who seeks to challenge the jurisdiction of the Tribunal to which he has submitted himself be permitted to raise the question of jurisdiction when he invokes the power in a petition under Art. 226 or 227 of the Constitution of India. The Division Bench referred to its earlier decision in Civil Petition No.400/1961, decided on 22 August 1963 and observed as follows.

"The power the High Court is asked to exercise is a discretionary one, and when

the party who has not challenged the jurisdiction of a Tribunal but submitted to it and took the chance of a decision in his favour, later turns round when the decision goes against him and challenges the jurisdiction of the very Tribunal, the High Court will not exercise its discretionary power in favour of such a party. By refusing to exercise its discretionary power under Art. 226 or 227 of the Constitution, it is plain that the High Court is not holding that the petitioner by not challenging the jurisdiction of the Tribunal confers jurisdiction upon it if that Tribunal has, in fact, no jurisdiction, but simply tells him that he by his own conduct is precluded from invoking its discretionary powers under the writ jurisdiction, no matter whether the proceedings which he seeks to quash are without jurisdiction."

This observation highlights two distinct questions. The first question would be whether the tribunal lacked jurisdiction to pass the impugned order. The second question would be whether the High Court should exercise its discretion to set aside the impugned order based on the applicant's conduct. The observations of the Mysore High Court suggest that these are separate questions that should not be confused. However, we have only referred to the opposing views and have not reached a final conclusion. Even if the court possesses the power to reject a challenge to the jurisdiction of the tribunal on the ground that the applicant's conduct is blameworthy, this exercise will be contingent upon various factors. These factors will differ from case to case. Therefore, it is for Respondent No.1 to urge this contention before the learned Single Judge and for the Petitioner to respond, when the case is considered on its merits. Thus, we proceed to examine the issues referred to this Full Bench.

8. To provide context, it is necessary to give a brief overview of the governing legislations: the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977, and the National Council of Teachers Education Act, 1993. Additionally, it is important to consider earlier precedents on the subject.

9. The MEPS Act was enacted to regulate the recruitment and conditions of service of employees in certain private schools. Before its enactment, the service conditions of employees in primary, secondary, higher secondary, and junior colleges were not governed by a special enactment. Due to the growth in the number of educational institutions and employees, it became necessary to have legislation to effectively regulate the service conditions of employees in educational institutions. The MEPS Act was enacted to establish duties and a code of conduct for employees and to provide a remedy of appeal for them. This would enable employees to effectively and efficiently carry out their duties towards pupils, parents, institutions, and society.

10. Section 3 of the MEPS Act declares that the Act applies to all private schools in Maharashtra, whether or not they receive a grant-in-aid from the State Government. Section 3(2) provides certain exceptions. Section 4 of the MEPS Act lays down terms and conditions for employees of private schools. Section 4(1)

empowers the State Government to make rules providing for the minimum qualification for recruitment, duties, pay, allowances, post-retirement and other benefits, and other conditions of service of employees of private schools, as well as for the reservation of an adequate number of posts for members of the backward classes. Section 4 specifies various other terms and conditions applicable to private school employees.

11. As regards a forum for the employees of private schools against certain serious actions taken against them by the Management, the MEPS Act provides for the constitution of School Tribunals under section 8, with specific qualifications outlined for the Presiding Officer of the Tribunal. Section 8 also lists the functions of the Tribunal. The main provision under consideration is section 9, which pertains to the right of appeal to the Tribunal for employees of private schools. The text of section 9 is as follows:

9. Right of appeal to Tribunal to employees of private schools.-

(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 supersession 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.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section

(2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of five hundred rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

Sections 10 and 11 prescribe the general powers and procedures of the Tribunal,

including the power to give appropriate reliefs and directions. The Act also confers rule-making powers on the State Government under Section 16, which led to the framing of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. This is a brief overview of the relevant provisions of the MEPS Act.

12. The title of Section 9 of the MEPS Act suggests that only "employees of private schools" have the right to appeal to the Tribunal. Therefore, it is necessary to analyse these phrases, their definitions, and the phrases referenced within the definitions. Section 2(7) of the MEPS Act defines an employee as under:-

"2 . Definitions:

.....

(7) - "employee" means any member of the teaching and non-teaching staff of a recognised school; and includes Assistant Teacher (Probationary)."

Therefore, the employee within the meaning of Section 9 would be any member of the teaching or non-teaching staff of the recognised school. The phrase "recognised" is defined under Section 2(21) which reads thus:-

"Section 2(21) - "recognised" means recognised by the Director, the Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards."

"School" is defined under Section 2(24) as under :-

"Section 2(24) - "School" means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including, technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level."

Therefore, the phrase "School" would include within its ambit primary school, secondary school, junior college or any other institution which includes technical, vocational or art institutions which impart general, technical, vocational training, special education or training in any faculty or discipline or subject below the degree level. The definition of "School" in Section 2(24) of the MEPS Act includes junior colleges of education. Additionally, Section 2(10) defines "Junior College of Education" as a school that provides teacher education to those who will be appointed as teachers. However, they must be recognised under Section 2(21) of the MEPS Act.

13. Section 9 would thus provide a right of appeal to any member of the teaching or non-teaching staff of a recognised school, including the primary school, secondary school, higher secondary school, junior college of education and such other institutions defined under Section 2(24) of the MEPS Act which are

established and administered by a Management other than Government or a local authority and which are recognised by the Director, Divisional Board or the State Board or any other officer authorised by him or any such Boards.

14. The "State Board" is defined under Section 2(25), which reads thus:-

"Section 2(25) - "State Board" means -

(a) the Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965;

(b) the Board of Technical Examination, Maharashtra State;

(c) the Maharashtra State Board of Vocational Examinations; or

(d) the Art Examinations Committee."

The phrases "Director" and the "State Board" have been defined under the MEPS Act, and the recognition for the private schools will have to be by these authorities as specified under Section 2(21) read with Section 2(6) and 2(25). There is a particular methodology for opening a private school which entails various steps to be taken by approaching the authorities. The recognition to the private schools has to be given by the authorities under Section 2(21). Section 2(21) lays down that the recognition has to be done by the Director, the Divisional Board or the State Board or by any officer authorised or by any such Boards.

15. The concept of a recognised school came up for consideration of the Hon'ble Supreme Court in the case of *Dagdu v. President Anandrao Naik Shikshan Prasarak Mandal* (2006) 9 SCC 782 .

In this case, the employer- Trust- terminated the services of an assistant teacher working in an ashram school. The teacher filed an appeal challenging the termination before the School Tribunal. The Tribunal allowed the appeal filed by the teacher, quashing the termination order and directing reinstatement with back wages and other reliefs. The Trust filed a writ petition in this court impugning the decision of the Tribunal. The writ petition was allowed on the sole ground that the Tribunal had no jurisdiction to entertain the teacher's appeal. The teacher appealed to the Supreme Court, and while negating the challenge, the Hon'ble Supreme Court observed 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 recognised school established or administered by management, other than the Government or local authority. The word "recognised" has been defined in Section 2(21) as meaning recognition by the Director, the Divisional

Board or the State Board or by any officer authorised 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 "recognised" 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 recognised either by the Director or by the Boards as defined under the Act. Since it is not recognised, 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* [WP No.1573 of 1999 dated 12-4-2002 (FB)] is, in our opinion, correct, and the High Court rightly applied the principle thereof in the impugned decision.

(emphasis supplied)

The Supreme Court thus held that the school, having not been recognised either by the Director or by the Boards as defined under the Act, is not a "private school" within the meaning of Section 2(20), and consequently, the Tribunal did not have the jurisdiction to entertain an appeal of the teacher therein since he was not an employee of a private school.

16. In the case of *Shobha Kailash Bonekar v/s. Cantonment Executive Officer and Ors.* 2007(3) Bom.C.R.1 the Special Bench of five learned Judges of this Court dealt with the meaning of the phrase "any such Boards" occurring in Section 2(21) of the MEPS Act. It was argued on behalf of the teacher that this phrase should be read as covering "Cantonment Board", and the school run by the Cantonment Board should be treated as a recognised school, and therefore, it is a private school under Section 2(20) of the Act. It was submitted that Section 2 states that the definitions in this Act are to be so read unless the context otherwise requires, and, the context requires that the phrase "any such Boards" occurring in Section 2(21) be read to mean that the schools of the Cantonment Board as well. The Special Bench rejected this contention following the decision of the Supreme Court in *Dagdu v. President*, observing thus:

"10. For examining this submission, we have to note that the MEPS Act is enacted to regulate the recruitments and the conditions of employees in certain private schools. This is clearly stated in the preamble of the Act with a further statement that this is with a view to providing such employees security and

stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently. Section 3(1) of the Act declares that 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, receiving of any aid from the State Government is not the determining factor. What is material is that a school has to be a private school. Private school is defined in S. 2(20) as follows:

"Section 2(20) 'Private school' means a recognised school established or administered by a management other than the Government or a local authority."

Thus, to be a private school under the Act, two conditions are required to be fulfilled:

- (i) that it must be a recognised school and
- (ii) it must be established or administered by the management which is other than that of the Government or a local authority.

"A local authority" is specifically defined for the purposes of this Act under S. 2(11) as follows:

"Section 2(11) 'local authority' means a Zilla Parishad, a Municipal Corporation, or a Municipal Council, as the case may be."

Inasmuch as the Act itself defines as to what is local authority, that definition of the local authority under the Act will govern the concept of the local authority as used under the Act and one is not required to look to the definition under the General Clauses Act. Besides, the definition uses the phrase "local authority means." It does not use the phrase "local authority includes." Thus, for the purposes of this Act only the entities mentioned in this definition will be covered thereunder namely : Zilla Parishad, Municipal Corporation or Municipal Council.

11. The concept of being "recognised" is defined in S. 2(21) of the Act reproduced above. The definition is in two parts and these two parts are separated by a comma. The first part is quite clear and it states that "recognised" means "recognised" by

- (i) Director,
- (ii) the Divisional Board or (iii) State Board.

This "State Board" is defined under S. 2(25) of the Act. It covers thereunder four authorities. Section 2(25) reads as follows:

"Section 2(25) 'State Board' means—

- (a) the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965;

- (b) the Board of Technical Examinations Maharashtra State;
- (c) the Maharashtra State Board of Vocational Examinations; or
- (d) the Act Examination Committee.

12. The Divisional Board is defined as a Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965, (for short, Boards Act). It is constituted under S. 6 of this Act. Thus, as far as the first part of the definition of being recognised is concerned, it includes, as stated above, four Directors, the Divisional Boards and four State Boards. The second part of this definition which comes after the "comma" refers to any officer authorised by the Director or by any of such Boards.

13. The question to be examined is whether the school run by the Cantonment Board could be said to be one run by any such Boards. As far as the Secondary and Higher Secondary Education Board is concerned, the powers and duties thereof are provided in S. 18 of the Boards Act. It includes amongst others, the duty to advise the State Government on matters of policy relating to secondary or higher secondary education, ensure a uniform pattern of secondary or higher secondary education and for junior colleges, to lay down guiding principles for determining curricula and syllabi, to prescribe standards of secondary and higher secondary education, to prescribe books, to award certificates to the candidates passing the final examinations, etc. As far as the Divisional Boards are concerned, their duties are given in S. 19 of the Act, which amongst others, include conduct of final examination within its area, to admit the candidates, to open centers within its jurisdiction for the final examination conducted by it, declaration of results, etc. "A private school" has to be recognised by the State or the Divisional Board or by any officer authorised in that behalf. When this phrase namely; recognised "by any officer authorised by the Director or by any of such Boards," is included in the latter part of S. 2(21), such Boards will be of the level of the State Board or the Divisional Board. This view has been taken now by the Apex Court in *Dagdu v. President, Anandrao Naik Shikshan Prasarak Mandal*, [(2006) 9 SCC 782], decided on 20 March, 2006.

(emphasis supplied)

Thus, the special Bench held that the phrase " Such Boards " would be one at the State Board or the Divisional Board level.

17. Next question will be about the D.Ed colleges and the colleges recognised under the National Council of Teachers Education Act, 1993. While broader issues may arise concerning the interplay between the MEPS Act and the NCTE Act, the issue at hand is limited to the right of appeal under Section 9 of the MEPS Act for employees of a D.Ed. College that is not recognised under the MEPS Act but is recognised under the NCTE Act of 1993.

18. The National Council for Teacher Education Act, 1993 was enacted to establish the National Council for Teacher Education to achieve planned and

coordinated development of the teacher education system throughout the country. The NCTE Act is an important legislation governing teacher education in India. The Act was enacted to improve the quality of teacher education in the country. It provides for establishing a National Council for Teacher Education (NCTE), which regulates and oversees teacher education programs in India. The NCTE Act aims to ensure that teachers in India are qualified, trained, and equipped to provide quality education to students. The Act mandates the recognition of teacher education institutions to ensure they meet the required standards.

19. Section 2(c) of the NCTE Act defines the "Council" as the National Council for Teacher Education. The establishment of the Council is provided for under Section 3 of the NCTE Act. Chapter II of the NCTE Act deals with the establishment of the Council; terms and conditions of the members of the Council; disqualification of the member; appointment of staff; meetings of the Council; and other procedural aspects. Chapter III of the NCTE Act lays down the functions of the Council. Chapter IV deals with teachers' educational institutions. Section 14 of the NCTE Act specifies norms for recognised educational institutions offering a course of training in teacher education. Section 14 reads thus:-

"Section 14. Recognition of institutions offering course or training in teacher education.

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

Provided further that such institutions, as may be specified by the Central Government by notification in the Official Gazette, which--

(i) are funded by the Central Government or the State Government or the Union territory Administration;

(ii) have offered a course or training in teacher education on or after the appointed day till the academic year 2017-2018; and

(iii) fulfill the conditions specified under clause (a) of sub-Section (3),

shall be deemed to have been recognised by the Regional Committee.

(2) The fee to be paid along with the application under sub-Section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-Section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,--

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-Section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-Section (3).

(6) Every examining body shall, on receipt of the order under sub-Section (4),--

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused."

Section 14 thus provides a methodology for the recognition of institutions offering courses or training in teacher education.

20. Chapter 5 of the NCTE Act specifies the bodies of the Council, which include the Executive Committee and Regional Committees. The Regional Committees are constituted under Section 20 of the NCTE Act. It provides for the Council by notification to establish the Eastern, Western, Northern and Southern Regional Committees, also with the approval of the Central Government to establish more Regional Committees. Section 31 of the NCTE Act empowers the Central Government to make rules to carry out provisions of the Act in general and in particular categories enumerated in Section 31(2). Section 32 of the NCTE Act confers power on the Council to make regulations by notification in the Official Gazette, which is not inconsistent with the provisions of the Act to carry out functions under Sections 12(d) and 12(g) of the Act. Under Section 12(d) of the

NCTE Act, the Council is empowered to lay down the guidelines in respect of minimum qualifications for a person to be employed as a teacher in a recognised institution. Section 12(g) empowers the Council to lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission etc. In summary, Chapter 5 of the NCTE Act defines the different bodies of the Council and their roles, while Sections 31 and 32 grant powers to the Central Government and the Council, respectively, to create rules and regulations that will help implement the provisions of the Act. Sections 12(d) and 12(g) give the Council the authority to establish guidelines and standards for teacher qualifications and education.

21. It is thus clear that the recognition contemplated under the NCTE Act is vested in the authorities specified in the said Act. The NCTE Act is not specifically enacted to regulate the conditions of services of those who are employed in the education institution imparting teacher education, but it is primarily for the planned and coordinated development of the teacher education system throughout the country. As per Section 14 of the NCTE Act, every institution offering or intending to offer a course in teachers' education will have to apply in the prescribed manner to the Regional Committee as per the norms laid down. The Regional Committee, after processing the application, decides whether to grant or refuse recognition.

22. The question as to whether the employees of the DEd college recognised under the NCTE have a right of appeal under section 9 of the MEPS Act arose for consideration before the learned Single Judge of the Aurangabad Bench of this Court (V.R. Kingaonkar, J.) in the case of Ravindra Motiram Firake.

23. The learned Single Judge (V.R. Kingaonkar, J.) considered two petitions that challenged the order of the Presiding Officer of the School Tribunal. The petitioners therein were employees of a D.Ed college conducted by the respondent management therein. The management took adverse action against the petitioner employees, and the employees filed appeals in the School Tribunal challenging the action. The management at the outset objected to the jurisdiction of the Tribunal. The Tribunal framed a preliminary issue of whether the appeals were maintainable under Section 9 of the MEPS Act, as the D.Ed and B.Ed colleges were not recognised institutions under Section 2 of the MEPS Act. The Tribunal framed this issue as a preliminary issue, ruled in favour of the management, and dismissed the appeals. The School Tribunal dismissed appeals filed by the petitioners on the ground that the School Tribunal lacked jurisdiction to hear appeals under Section 9 of the MEPS Act. The learned Single Judge framed a question as to whether D.Ed./B.Ed. Training Institutes/Colleges came under the definitions envisaged under Sections 2(20) and 2(21), read with Section 2(24) of the MEPS Act, and whether the School Tribunal could entertain appeals preferred by the petitioners. The learned Single Judge considered the scheme of the MEPS Act and the definitions of the relevant phrases, particularly the definition of the term "recognised" under Section 2(21) of the MEPS Act. The

learned Single Judge also noted the scheme of the NCTE Act, the definition of the recognised institution therein, and the object of the Act. The learned Single Judge observed that the object of the NCTE Act is broader. The concept of recognition for an institute under the MEPS Act and the permission required from the Central Authority under the NCTE Act to run a training course is entirely different. The learned Single Judge observed that the NCTE Act aims to standardise teacher education and does not deal with the service conditions of the teachers and the educational institutes. The plain reading of the MEPS Act's scheme would show that only the employees of a recognised private school are entitled to file appeals under Section 9 of the MEPS Act. The employees of D.Ed and B.Ed colleges, which are not recognised under Section 2(21) of the MEPS Act, will not be able to file appeals. The Single Judge observed that employees were not remediless as they could file civil suits. Accordingly, V.R. Kingaonkar, J thus concluded that the School Tribunal rightly dismissed the appeal of the employees who were working with the school not recognised under Section 2(21) of the MEPS Act and dismissed the petitions.

24. This decision by the learned Single Judge in Ravindra Motiram Firake pertains specifically to the jurisdiction of the School Tribunal with regard to B.Ed and D.Ed colleges. The School Tribunal had framed a preliminary question concerning its authority to entertain appeals filed by employees working in schools that are not recognised under the MEPS Act. The learned Single Judge also framed a specific issue on this point and extensively considered the issue and arrived at a detailed conclusion. The learned Single Judge relied on the decisions of this Court in Shobha Kailash Bonekar v/s. Cantonment Executive Officer and Ors. 2007(3) Bom.C.R.1 , Suryakant Sheshrao Panchal v/s. Vasantrao Naik Vimukta Jati Shikshan Prasarak Mandal 2002(5) BCR 95 and the decision of the Supreme Court in Dagdu v/s. President, Anandrao Naik Shikshan Prasarak Mandal 2006(9) SCC 782 .

25. Now we turn to the primary issue to be resolved is whether the Division Bench's observations in Gururaj Vasantrao Kulkarni have impliedly overruled the law laid down in Ravindra Motiram Firake.

26. Mr. Bandiwadekar, learned Senior Advocate for the Petitioner submitted that the Division Bench in Gururaj Vasantrao Kulkarni has in no manner disturbed the legal position laid down in Ravindra Motiram Firake and the legal issues as to the jurisdiction in School Tribunal were neither debated nor considered by the Division Bench and, therefore, the decision of the learned Single Judge in Ravindra Motiram Firake is good law, and reference to the larger Bench was not necessary.

27. The Division Bench in Gururaj Vasantrao Kulkarni considered three writ petitions filed by three individual employees. These petitions were disposed of by order dated 28 February 2019, by a short order of three paragraphs. It can be discerned from the order that the petitioners had filed the petitions seeking that the Court should declare that the MEPS Act and the MEPS Rules apply to the

D.Ed colleges which are running within the State of Maharashtra and the petitioners before the Court have a remedy of filing an appeal to the School Tribunal under Section 9 of the MEPS Act. The Division Bench disposed of the writ petitions in the following three paragraphs:

"1. By these petitions under Article 226 of the Constitution of India the essential relief claimed is, that this Court should declare that The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) and The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("the MEPS Rules" for short) apply to D.Ed. Colleges which are running within the State of Maharashtra and that such of the petitioners before this Court who have been thrown out of service or are terminated otherwise have a remedy of filing an Appeal to the Tribunal under Section 9 of the MEPS Act.

2. In answer to such petitions, affidavits in reply have been filed in two petitions and in which a categorical stand is taken by respondent Nos.1 to 3. They say in relevant para as under:

"8. With reference to Para 13 of the Writ Petition, which contains the Grounds for the petition, I say and submit that no separate service rules have been prepared under N.C.T.E. Act and made applicable to the employee in recognised D.Ed. Colleges. The N.C.T.E. Act deals with the recognition of D.Ed. Colleges in the country. Under the circumstances it is presumed that the employees in D.Ed. Colleges will be governed by Service Conditions as per M.E.P.S. Act, 1977 and M.E.P.S. Rules, 1981 till the separate service conditions rules are prepared, prescribed and applied to them. Considering this aspect the contentions raised by the Petitioner, it is felt that it deserves consideration. However, since the D.Ed. College in which the Petitioner has worked is a Permanently No Grant Basis, the liability of payment of salary lies on the Respondent No.4 Trust and hence the management of the said Trust only is liable to face all the consequences arising out of termination of the Petitioner and not these Respondents."

On a perusal of this paragraph, it is evident that the understanding of respondent Nos.1 to 3 is that the law, namely, the MEPS Act and the MEPS Rules, applies till separate service conditions are prescribed and applied to the teachers or employees in the D.Ed. Colleges. No such separate rules are prepared, prescribed and applied to them, presently. In the absence thereof, there cannot be a vacuum nor these employees can be left without remedy. Once the substantive law applies, then all provisions, including Section 9, will apply, is the understanding of the Government.

3. We accept this understanding only because we feel that such petitioners should not rush to this Court challenging the termination orders or make grievance that their services are otherwise terminated. The nature of the dispute and the pleadings involved would show that a writ petition under Article 226 of the Constitution of India cannot always be said to be an equally efficacious

remedy. In such circumstances, accepting the statement made in para 8 reproduced above, we dispose of each of these petitions.”

(emphasis supplied)

The Division Bench thus accepted the statement made in paragraph-8 of the affidavit and disposed of the writ petitions.

28. Dr. Saraf, the learned Advocate General, addressed the Court to clarify the State Government's stand as stated in the affidavit that the Division Bench had relied upon in its order dated

28 February 2019. He pointed out that the affidavit was filed by an officer of the Education Department who had only presumed that until separate service conditions rules were prepared and applied to the employees in D.Ed colleges, they would be covered by service conditions as per the MEPS Act and the MEPS Rules. The learned Advocate General emphasised that the affidavit did not conclude that the School Tribunal would have jurisdiction to entertain an appeal under Section 9 of the MEPS Act if it is filed by an employee working in a school not recognised under the MEPS Act. He further argued that the Division Bench had incorrectly attributed to the Government the understanding that all provisions of the MEPS Act, including Section 9, would apply as long as substantive law applied. The learned Advocate General contended that there was no categorical admission in the affidavit that the School Tribunal would have jurisdiction to entertain appeals of employees who are not covered under the ambit of Section 9 of the MEPS Act. The learned Advocate General submitted that even if such an admission was to be imputed, it would be contrary to the law sine the correct interpretation of Section 2(21) read with Section 9 of the MEPS Act is that only employees of private schools recognised by the authorities specified under the MEPS Act will have the right to file an appeal under Section 9 of the Act. He further submitted that the view taken by the learned Single Judge in the case of Ravindra Motiram Firake is proper and correct.

29. We concur with the learned Advocate General's submission that the State Government did not take a specific stand on the legal interpretation of Section 9 of the MEPS Act in the excerpt from the affidavit quoted above. The Division Bench did not address several legal aspects and binding precedents that the learned Single Judge (V.R.Kingaonkar, J) had extensively discussed. Instead, The Division Bench relied on a statement in the State Government's affidavit, which also did not explicitly state that appeals under Section 9 of the MEPS Act would be available to employees working in private schools not recognised under the MEPS Act. The deponent had merely presumed a legal position and expressed a sympathetic consideration of the issue. The Division Bench proceeded on this statement, presuming that the deponent had conceded that appeals would be maintainable and disposed of the three petitions. The presumption of the deponent was limited to the applying of the service conditions and the deponent did not specifically state that Section 9 of the MEPS Act will be applicable. Even if

the the deponent had given his consent that the appeal is maintainable, it is well established that a finding based on counsel's consent on a legal issue does not constitute a binding precedent if it is demonstrated that the concession contradicts the settled legal position. This proposition is laid down by the Hon'ble Supreme Court in the cases *Uptron India Ltd. v. Shammi Bhan*(1998) 6 SCC 538 ; *Central Council for Research in Ayurveda & Siddha v. Dr.K.Santhakumari* (2001) 5 SCC 60 ; *Union of India v. Mohanlal Likumal Punjabi*(2004) 3 SCC 628 ; and *Union of India v. S.C.Parashar* (2006) 3 SCC 167 .

30. Furthermore, the decision of the learned Single Judge in *Ravindra Motiram Firake* was not an isolated legal pronouncement. There already existed a substantive body of law, predating the learned Single Judge's decision regarding the right of appeal under section 9 of the MEPS Act. The learned Single Judge had relied on the decision of the Hon'ble Supreme Court in the case of *Dagdu v. President and of the Special Bench in the case of Shobha Kailash Bonekar*. These decisions had already established that, for an employee of a private school to file an appeal under section 9 of the MEPS Act, the school must be recognised as per section 2(21) of the MEPS Act by the specified authorities alone. Therefore, if the Division Bench was to disagree with the view taken by the learned Single Judge and confer right of appeal to the employees of D.Ed and B.Ed colleges, it had to deal with the aforesaid decisions of the Hon'ble Supreme Court and of the Special Bench of this Court. The Division Bench made no reference to these decisions. There could not have been any implied overruling of these decisions.

31. The primary principle of the law of precedents is that a decision is binding only when it decides a legal issue that was actually raised and argued by the parties to the case. The leading decision of the Supreme Court on this subject is in the case of *Municipal Corpn. of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101. Here, the facts were that some encroachers had earlier filed petitions under Article 32 of the Constitution (*Jamna Das and others - Writ Petitions Nos. 981- 82 of 1984*) seeking a writ of mandamus to compel the Municipal Corporation of Delhi to provide them with a suitable site on the pavement at a specific location, claiming they had a license to occupy the space. The Supreme Court had directed the Municipal Corporation to rehabilitate those petitioners. Later the Delhi High Court ordered the provision of a stall to one Gurnam Kaur, similar to that provided to Petitioners in the *Jamna Das* case. The Municipal Corporation challenged this decision and the Supreme Court upheld the challenge and explained the law on when a dictum is considered binding. The relevant passages from the decision rendered in the case of *Gurnam Kaur*, are reproduced below.

"9 We find it rather difficult to sustain the judgment of the High Court. The learned Judges failed to appreciate that this Court in *Jamna Das* case [*Writ Petitions Nos. 981-82 of 1984*] made a direction with the consent of parties and with the reservation that it should not be treated as a precedent. It expressed no opinion on the question of whether there was any statutory obligation cast on the Municipal Corporation to provide an alternative site to a person making illegal

encroachment on a public place like any public street etc. contrary to Section 320 of the Act, as a condition precedent to the exercise of its powers under Section 322 of the Act for the removal of such encroachment on any public street, footpath or pavement. That apart, the High Court, could not have made the impugned direction contrary to the provisions contained in Sections 320 and 322 of the Act. Section 320(1) in terms creates a statutory bar against illegal encroachment on any portion of a public street. It provides that: "No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any booth or other structure whether fixed or movable or whether a permanent or temporary nature, or any fixture in or upon any street etc." Having regard to this express provision, the High Court failed to see that the respondent Gurman Kaur had no legally enforceable right to the grant of a writ or direction in the nature of mandamus. The High Court could not obviously issue any such direction which would tantamount to a breach of the law. Furthermore, the High Court could not also make the impugned direction in view of the provision contained in Section 322(a) of the Act, which expressly confers power on the Commissioner to cause the removal of any structure which constitutes an encroachment on a public place like a street which is meant for the use of the pedestrians.

10. It is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das case [Writ Petitions Nos. 981 -82 of 1984] was made not only with the consent of the parties but there was an interplay of various factors and the court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned.

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to

us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

12. In *Gerard v. Worth of Paris Ltd. (k)*. [(1936) 2 All ER 905 (CA)] , the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* [(1941) 1 KB 675] , the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.

(emphasis supplied)

Therefore, the settled position is that a decision of the court is binding only to the extent that it decides a legal question that was actually raised and argued by the parties to the case. This ensures certainty and predictability. As referred to earlier, the Division Bench, in its order dated 28 February 2019, did not address

various legal intricacies concerning the jurisdiction of the School Tribunal under Section 9 of the MEPS Act. The Division Bench only provided relief under the court's equity jurisdiction to the petitioners before it. Applying the test laid down in Gurnam Kaur, we find that the Division Bench in Gururaj Vasantryao Kulkarni and ors did not lay down any binding precedent.

32. Therefore it will have to be concluded that the Division Bench's order dated 28 February 2019 in Gururaj Vasantryao Kulkarni does not directly or impliedly overrule the decision of the learned Single Judge in Ravindra Motiram Firake holding that employees of D.Ed and B.Ed colleges do not have a remedy for filing an appeal under Section 9 of the MEPS Act.

33. While referring the issues to the larger Bench, the learned Single Judge (G.S. Kulkarni, J.) did not express disagreement with the learned Single Judge's view in Ravindra Motiram Firake neither the referral order mentions that there is any decision taking contrary view to the one taken in Ravindra Motiram Firake, except for the order of the Division Bench in Gururaj Vasantryao Kulkarni. Kulkarni, J deemed it appropriate to refer the matter to the larger Bench because of the observations made by the Division Bench in Gururaj Vasantryao Kulkarni. After careful consideration, we have concluded that the Division Bench did not overrule the view taken in Ravindra Motiram Firake. That being the conclusion, the legal position on the subject at hand reverts to the one already settled in Ravindra Motiram Firake.

34. As a result, the issues referred to the Full Bench are answered as follows:

(i) The order passed by the Division Bench dated 28 February 2019 in Gururaj Vasantryao Kulkarni has not sub silentio overruled the view taken by the learned Single Judge in Ravindra Motiram Firake that the employees of the D.Ed.and B.Ed. Colleges, not recognised under the MEPS Act, cannot file an appeal under Section 9 of the MEPS Act.

(ii) The second issue already stands answered in Ravindra Motiram Firake that the employees of the D.Ed. and B.Ed. Colleges, not recognised under the MEPS Act, cannot file an appeal under Section 9 of the MEPS Act.

Both issues thus are answered accordingly.

35. Before parting we clarify that while we have explained the current legal position, it does not indicate our endorsement of its implications. Most employees in private schools in Maharashtra have access to a specialised tribunal. With the introduction of the Maharashtra Rules under the Right to Education Act, additional categories of teachers became eligible to file appeals to the School Tribunal. A small number of employees, those from B.Ed and D.Ed colleges do not have access to a specialized tribunal. Legislative amendment is necessary to address this issue. The State Government should take concrete steps towards resolving this prejudice when it has expressed sympathy in the affidavit for these employees. The learned Advocate General states that this aspect will be

examined.

36. The Registry to place the petition before the learned Single Judge for disposal.