
(2013) 04 BOM CK 0158
In the Bombay High Court
Case No : Writ Petition No. 4673 of 2012

Latika Rajaram Mane

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 10, 11, 12, 13, 14

Citation : (2013) 4 ABR 114 : (2013) 4 ALLMR 59 : (2014) 3 BomCR 439 : (2013) 138 FLR 649 : (2013) LabIC 2502 : (2013) 4 MhLj 244

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Sunil Dighe, for the Appellant; Darius J. Khambatta, Advocate General with Mr. Nitin Deshpande, AGP for Respondent Nos. 1, 7 and 8, Mr. N.V. Bandiwadekar with Mr. Sagar A. Mane for Respondent Nos. 3 to 5, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule; with the consent of Counsel for the parties returnable forthwith. With the consent of Counsel and at their request the Petition is taken up for hearing and final disposal. The Petitioner was appointed as an Assistant Teacher in the Primary Section of the Fifth Respondent on 18 June 1984. On 17 October 1994, she was promoted as Headmistress of the Primary Section. On 2 August 2004, the management issued a notice to show cause to the Petitioner, to which the Petitioner responded by her letter dated 25 August 2004. A statement of allegations was served by the management on 1 October 2004 and a formal charge sheet was issued on 20 November 2004. The Petitioner submitted her reply to the charge sheet and denied the allegations. An Enquiry Committee was constituted for the purpose of conducting disciplinary proceedings and on 25 July 2005, the Committee submitted its findings, holding that the charges were proved. The Petitioner was terminated from service on 7 August 2005. On 2 September 2005, the Petitioner filed an appeal before the School Tribunal at Kolhapur. By an order dated 21 January 2012, the appeal was

dismissed on the ground that the Tribunal had no jurisdiction to entertain an appeal against an order of termination passed by the management of a Primary School governed by the provisions of the Bombay Primary Education Act, 1947. In coming to this conclusion, the Tribunal has relied upon a judgment of a Full Bench of this Court in Smt. Komal Rugwani Vs. State of Maharashtra and Others,

2. The Bombay Primary Education Act, 1947 came into effect on 29 January 1948. The legislature in the State of Maharashtra enacted the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act). The Act came into force on 15 July 1981. Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 which was published in the Gazette of India on 27 August 2009. On 9 June 2011, a Full Bench of this Court held in Komal Rugwani's case (supra) that the School Tribunal constituted under the MEPS Act had no jurisdiction to entertain an appeal filed by a primary teacher as primary schools governed by the Bombay Primary Education Act, 1947 are not "recognised schools". On 11 October 2011, the State Government made the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 under which jurisdiction to entertain appeals by primary school teachers in respect of matters referred to in Rule 20, was conferred upon the School Tribunal constituted under the MEPS Act.

3. The present petition before the Court forms part of a batch of Writ Petitions in which the central issue relates to the jurisdiction of the School Tribunal constituted under the MEPS Act, 1977 to entertain appeals in respect of grievances of primary school teachers as a result of the enactment of the Right to Education Act and the Rules framed by the State Government conferring a right of appeal before the School Tribunal. As the facts in the present case would indicate, the appeal in the case of the Petitioner was filed on 2 September 2005, prior to the enforcement of the Central Act. The appeal was dismissed by the School Tribunal for want of jurisdiction, applying the judgment of the Full Bench in Komal Rugwani's case, after the Central Act was brought into force and as noted above, after the Rules were formulated by the Government of Maharashtra. The issue which will fall for determination is as to whether the appeal which was filed before the School Tribunal prior to the enactment of the Central Act and the enforcement of the said Rules would be maintainable or whether the Tribunal was justified in dismissing the appeal for want of jurisdiction. In order to bring clarity to the issues involved in the appeal, the points for consideration are formulated as follows:

(i) Whether the School Tribunal has erred in failing to apply the provisions of the Rules framed by the State Government under the Right to Education Act while deciding the issue of jurisdiction;

(ii) Whether the Rules framed by the State of Maharashtra under the Right to Education Act would apply to an appeal that was filed before the Tribunal prior to the enforcement of the Central Act and the State Rules, but which was pending when the Rules framed by the State Government came into force;

(iii) Whether there has been a foundational change in the position in law as it existed when the decision in Komal Rugwani's case was rendered as a result of the framing of the Rules by the State Government in 2011 in pursuance of the provisions of the Right to Education Act, conferring a right of appeal. The Petition has been heard together with a batch of Petitions on the same issue. Since the point involved is of considerable significance to the large body of primary teachers in the State, we had the benefit of considering the well researched arguments of Counsel appearing on behalf of the Petitioner and the carefully drafted written submissions which have been placed on record by the Learned AGP.

4. The MEPS Act, 1977 was enacted by the State legislature to regulate the recruitment and conditions of service of employees in certain private schools in the State with a view to providing them security and stability of service. The object of the State legislature in doing so was to enable the teachers of these private schools to discharge their duties towards their students and to their guardians as well as towards the institution and to society in general. Section 8 of the Act provided for the constitution of Tribunals. u/s 9, a right of appeal was conferred upon employees of private schools in respect of certain specified orders. Sub-section (1) of Section 9 provides 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 u/s 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.

Under Sub-section (1) of Section 9, an appeal is provided to any employee of a private school. The expression "employee" is defined in Section 2(7) to mean a member of the teaching and non-teaching staff of a recognized school. The expression "private school" is defined by Section 2(20) to mean a recognized school established or administered by a management, other than the Government or a local authority. Section 2(21) defines the expression "recognised" to mean recognised by the Director, the Divisional Board or the State Board. These provisions when read together indicate that in order to be an

employee of a private school, the school has to be recognized by one of the authorities stipulated in Section 2(21). Primary Schools were not recognized by the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training, but by the authorities constituted under the Bombay Primary Education Act, 1947.

5. In this view of the matter, the law which held the field until the formation of the Right to Education Act, was that the employees of primary schools had no remedy u/s 9 of the MEPS Act, 1977 against an order of dismissal, removal, termination, reduction in rank or supersession in the matter of promotion. In *Komal Rugwani vs. State of Maharashtra*, (supra), the following questions were referred to the Full Bench for consideration:

(I) Whether an employee employed in a private primary school recognised 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 u/s 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 recognised by a body or officer referred to in sub-section (2) of section 39 of the Bombay Primary Education Act, 1947?

These questions were answered by the Full Bench by holding that if a private primary school is recognized by a body or officer referred to in Section 39(2) of the Bombay Primary Education Act, 1947, it will not be governed by the provisions of the MEPS Act and an employee working in such a school cannot file an appeal u/s 9 of the MEPS Act. The judgment in *Komal Rugwani*'s case was delivered on 9 June 2011.

6. Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 in order to provide free and compulsory education to all children of the age of six to fourteen years. Section 2(f) defines the expression "elementary education" to mean the education from the first to the eighth standards. Section 2(n) defines the expression "school" as follows:

(n) "school" means any recognised school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

Chapter II of the Act provides in Section 3 for the right of every child of the age of six to fourteen years to have free and compulsory education in a neighbourhood school till completion of elementary education. Chapter III provides for duties of the appropriate government, local authority and parents while Chapter IV defines responsibilities of schools and teachers. Section 18 stipulates that every school, other than one established, owned and controlled by the appropriate Government or the local authority, shall, after the commencement of the Act, obtain recognition from such authority and after making an application in such form and manner, as may be prescribed. Section 23 provides for qualifications for appointment and terms and conditions of service of teachers. The minimum qualifications have to be prescribed by an academic authority which is authorised by the Central Government under Sub-section (1) of Section 23. Sub-section (3) of Section 23 stipulates that the salary and allowances payable to, and the terms and conditions of service of teachers shall be such as may be prescribed. Section 24(1) provides for duties of a teacher. Under Sub-section (2) of Section 24, a teacher committing default in performance of duties specified in sub-section (1), is liable to disciplinary action under the service rules that are applicable. Sub-section (3) provides that the grievances, if any, of the teacher shall be redressed in such manner as may be prescribed.

7. A rule making power is conferred upon the appropriate Government by Section 38 for carrying out the provisions of the Act. Under clause (l) of Sub-section (2) of Section 38, the rules may provide for the salary and allowances payable to, and the terms and conditions of service of teachers under Sub-section (3) of Section 23. Under clause (m) of Section 38(2), the rules can prescribe the duties to be performed by teachers while under clause (n), the rules are to stipulate the manner of redressing grievances of teachers under Sub-section (3) of Section 24.

8. The Central Act defines duties of teachers, provides for disciplinary action being taken in the event of default and contemplates that the grievances of teachers would be redressed in such manner as may be prescribed by the rules. The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 were brought into force on 11 October 2011. Rule 11 provides for recognition of a school by the District Education Officer. Rule 15 provides that minimum qualifications of teachers for the purposes of Section 23(1) shall be laid down by the academic authority notified under the aforesaid statutory provision. Rule 18 stipulates the manner in which the Government or local authority, as the case may be, shall specify the terms and conditions of service and the salary and allowances of teachers. The duties to be performed by teachers are provided in Rule 19. Rule 20 provides for a grievance redressal mechanism for teachers. Rule 20 reads as follows:

20. Grievance Redressal mechanism for teachers for purposes of section 24(3).-
(1) A teacher or employee of a school other than a school run by Government or Local Authority, who is aggrieved by any of the decisions of the management

regarding his or her service conditions or a teacher or an employee.-

(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 shall have a right of appeal and may appeal against such order or supersession to the tribunal constituted u/s 8 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Mah. III of 1978).

(2) The appeals so preferred shall be governed by the provisions of sections 8, 9, 10, 11, 12, 13 and 14 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Mah. III of 1978) and the Rules 39 and 43 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

9. The field of elementary education comprising of education from the first to eighth standards has now been comprehensively regulated by the Central Act. The Right to Education Act specifically contemplates that the grievances of teachers shall be redressed in such manner as may be prescribed by the rules. The rules which have been framed by the State of Maharashtra provide for a right to appeal to the Tribunal constituted u/s 8 of the MEPS Act in respect of the matters enunciated therein. Rule 20 is framed in broad terms. A right of appeal is conferred against the following orders: (i) An order of dismissal; (ii) An order of removal; (iii) An order otherwise terminating the services; (iv) An order of reduction in rank; and (v) An order of supersession by the management while making any appointment to a post by promotion. These categories correspond broadly to clauses (a) and (b) of Sub-section (1) of Section 9 of the MEPS Act. But significantly, the ambit of the remedy which is made available to primary school teachers by Rule 20 is not only confined to these orders, but has been widened to include any decision of the management regarding the service conditions of a teacher or employee by which any teacher or employee is aggrieved. As a result of the framing of Rule 20, in accordance with, and under the power conferred by the Central Act, a comprehensive remedy in the form of an appeal before the School Tribunal is provided to any teacher or employee who is aggrieved by any decision of the management regarding his or her service conditions, including those decisions which result in one of the consequences spelt out in clauses (a) and (b).

10. The object and purpose of making a comprehensive remedy available to primary school teachers across the State of Maharashtra against any decision of the management with regard to their conditions of service, as well as decisions of the nature contemplated by clauses (a) and (b) of Rule 20 is to ensure that such teachers are protected against exploitation and unfair practices. The ability of a teacher to dedicate himself or herself to the cause of education of young children is contingent on a secure working environment and on conditions of

work which provide certainty, transparency and objectivity in decision making by management. Leaving primary teachers to the whim and caprice of a private management was evidently a consequence which both the Central legislation and the rule making authority sought to obviate by providing a judicial remedy before the School Tribunal manned by a Judicial Officer. Access to judicial remedies is an integral part of any regime which provides just and stable conditions of work. This is also the ethos of the constitutional values in the Directive Principles of State Policy. Those values the Court has a duty to protect. It is necessary to emphasize this aspect because in determining as to whether the rules which have been framed under the Right to Education Act, would apply to a situation where a termination of services has taken place even prior to the enforcement of the rules, the object and purpose of the remedy is an important circumstance which must be taken into account. The essential object and purpose is to provide access to justice to primary school teachers. The constitutional guarantee of free and compulsory primary education is given practical content by the Act and the Rules. As judges give substance to them in deciding cases, the importance of the constitutional guarantee must be borne in mind.

11. What the rules have essentially done is to provide a forum to primary school teachers who are aggrieved by the action of the management in matters falling within the purview of Rule 20. The forum is in the nature of access to a judicial tribunal. As far back as in 1927, the Privy Council held in AIR 1927 242 (Privy Council) that the provisions of a statute dealing merely with matters of procedure must be construed to have retrospective effect whereas provisions which affect substantive rights are not to be applied retrospectively except by an express statutory provision or by necessary intendment. The Privy Council held as follows:

The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the Colonial Sugar Refining Co. v. Irving (2), where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders, which, when the statute came into force, were final, are provisions which touch existing rights.

In New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, the Supreme Court while construing the provisions of the Motor Vehicles Act, 1939 held that where a change in law only provides a forum and does not amount to a change in substantive law, such a change would operate retrospectively. Consequently, the new forum would be available even if a cause of action or right of action has accrued prior to the change which has been brought out by an amending provision. The Supreme Court held as follows:

On the plain language of Sections 110A and 110F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective.

In *Narhari Shivram Shet Narvekar Vs. Pannalal Umediram*, the Supreme Court held that execution proceedings being purely a matter of procedure, any change in law which is made during the pendency of the cause would be deemed to be retrospective in operation of which an appellate Court would be bound to take notice. At para 8 page 207

12. The matter may be looked at also from another perspective. It is a well settled principle that the procedural law which must be applied is that which governs when the suit or proceeding comes up for trial or disposal. Where the Court has jurisdiction to entertain a proceeding when it comes up for disposal, it cannot refuse to entertain the proceedings on the basis that it had no jurisdiction to do so on the date when it was instituted. These principles must apply to a situation such as the present where the State Government as a delegate of the legislature has, in Rule 20 of the Rules framed under the Right to Education Act, provided a comprehensive remedy to teachers of primary schools as a matter of public policy to move a judicial forum in the interests of ensuring secure and stable conditions of service.

13. The judgment of the Full Bench of this Court in *Komal Rugwani's* case considered the position in law as it obtained prior to the enforcement of the Right to Education Act which was enacted by Parliament and the Rules which were framed by the State Government. Under the MEPS Act, 1977, a right of appeal u/s 9(1) is provided to employees of private schools. In order to be a private school, a school has to be recognized by one of the authorities specified in Section 2(21). Since primary schools governed by the Bombay Primary Education Act, 1947 were not recognized by the Director, the Divisional Board or the State Board, primary schools were not recognized schools within the meaning of the MEPS Act, 1977. As we have noted, the expression "private school" is defined in Section 2(20) to mean a recognized school established or administered by a management other than by the Government or local authority. Unless a school is recognized by one of the authorities prescribed by Section 2(21), it did not meet the definition of the expression "private school" with the result that employees of primary schools were deprived of a remedy of an appeal u/s 9. This position held the field as noted in the judgment of the Full Bench in *Komal Rugwani's* case. The framing of the Rules under the Right to Education Act by the State

Government has fundamentally altered the situation. The forum of the School Tribunals is now provided to employees of primary schools in the State of Maharashtra who are aggrieved by any of the decision of the management regarding their conditions of service and in regard to the matters referred to in Rule 20. As a consequence of the notification of the Rules framed by the State Government in exercise of the power conferred under the Right to Education Act, there has been a fundamental change in the position in law as it obtained prior thereto. The position in law which held the field prior to the framing of the Rules under the Right to Education Act, has now been materially altered as a result of which a right of appeal is provided to teachers of primary schools in respect of decisions falling within the purview of Rule 20.

14. In the present case, the appeal filed by the Petitioner in September 2005 was pending before the School Tribunal on the date on which the Rules framed under the Right to Education Act came into force. The Rules which provide a remedy against termination, among other decisions, affecting the conditions of service, must necessarily apply to such an appeal as in the present case, which was pending on the date on which the rules came into force. The pendency of the appeal is indicative of the fact that the order of termination had not attained finality. Since the order of termination had not attained finality, no substantive right can be regarded as having accrued to the management. Having regard to the public purpose underlying the enactment of the Right to Education Act and the framing of the rules including Rule 20, it would but necessarily follow that the availability of the forum of the School Tribunal would extend to a situation such as the present. The mere fact that the termination in the present case had taken place prior to the enforcement of the Act and the Rules would not make any difference to the position. It is well settled that the statute cannot be said to be retrospective only because a part of the requisites for its actions is drawn from a time antecedent to its passing. *Sajjan Singh Vs. The State of Punjab*,

15. For these reasons we have come to the conclusion that the order of the School Tribunal, dismissing the appeal for want of jurisdiction was in error and would have to be quashed.

16. During the course of the hearing, the Learned Advocate General has stated before the Court that the State Government in the Education Department is in the process of preparing rules under the Right to Education Act, regarding the conditions of service of primary teachers. An affidavit dated 12 April 2013 has been filed in these proceedings by the Joint Secretary to the Government in the School Education and Sports Department to that effect. The Learned Advocate General has stated before the Court that the Government is conscious of the fact that besides the provision of a forum to teachers of primary schools, it is necessary for the Government to frame rules regulating the service conditions of the primary teachers. The Court has been informed that the Government has initiated the process and that this exercise would be completed as expeditiously as possible. The questions of law framed are answered in the affirmative. In the

circumstances, we allow the Petition by quashing the order of the School Tribunal dated 21 January 2012, dismissing the appeal for want of jurisdiction. The appeal filed by the Petitioner shall accordingly stand restored to the file of the School Tribunal, Kolhapur for a decision afresh in accordance with law. Since the State Government is now, in terms of the statement made before the Court by the Advocate General, in the process of formulating the rules governing service conditions of primary teachers, we clarify on the request of Counsel that it would be open to the Petitioner to request the School Tribunal to defer the hearing of the appeal for a period of three months so that the Tribunal can be apprised of the formulation of the rules governing the service conditions by the State Government. The Petition is accordingly disposed of. We grant liberty to the Petitioner to apply in the event of any difficulty. There shall be no order as to costs. We conclude by recording our appreciation of the assistance rendered by all the Learned Counsel in this batch of cases, including the industry and research by the Learned A.G.P.