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**(1986) 09 BOM CK 0002**

**In the Bombay High Court**

**Case No :** Writ Petition No. 980 of 1985 (Bom. Appellate Side)

Mohammedi Fida Hussain

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 04-09-1986

**Acts Referred:**

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 11(5)

**Citation :** (1986) 88 BOMLR 557

**Hon'ble Judges :** V.V. Vaze, J; S.P. Bharucha, J

**Bench :** Division Bench

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## Judgement

S.P. Bharucha, J.—The third respondent is the Mohammed Haji Saboo Siddik Institution, which is a public charitable trust, It runs a technical high school, a polytechnic and trade and certificate courses. The 4th respondent is the Anjuman-I-Islam which is incorporated under the Indian Companies Act, 1913, and is also registered as a public charitable trust. It is responsible for the management and administration of the 3rd respondent.

2. It is the petitioner's case that on April 1, 1958 he was employed by the third respondent as an accounts clerk. The petitioner worked with the 3rd respondent until March 6, 1980. On March 6, 1980 his services were temporarily transferred by the 3rd respondent to the 4th respondent. From March 10, 1980 to June 22, 1982 he worked with the 4th respondent in a temporary capacity. On June 22, 1982 the 4th respondent issued to the petitioner a letter stating that his services had been permanently transferred by the 3rd respondent to the 4th respondent. The petitioner made representations there against but to no avail.

3. On January 4, 1983 the petitioner was served with a notice by the 4th respondent asking him to show cause why disciplinary action should not be taken against him for insubordination, etc. On January 25, 1983 the petitioner replied showing cause.

4. On January 29, 1983 the petitioner filed a suit in the City Civil Court at

Bombay (being Suit No. 618 of 1983) challenging the order by which his services had been transferred to the 4th respondent. Apprehending the termination of his services forthwith, he made an ad-interim application in the suit to restrain such termination. An ad-interim order was refused. On February 1, 1983 the petitioner served the notice of motion upon 3rd and 4th respondents.

5. On February 3, 1983 the petitioner's services were forthwith terminated by the 4th respondent.

6. On March 14, 1983, when the notice of motion reached hearing, a preliminary objection was raised on behalf of the 3rd and 4th respondents. It was submitted that, inasmuch as the petitioner's services had been terminated, the jurisdiction in that behalf lay not with the City Civil Court but with the School Tribunal. The contention was upheld and the notice of motion was dismissed. The court, however, directed that charge of the post that the petitioner held should not be taken from him for a period of thirty days to enable him to approach the School Tribunal by way of appeal.

7. The petitioner's suit in the City Civil Court is still pending.

8. In the appeal which was filed by the petitioner before the School Tribunal an order was passed on March 3, 1984. The appeal was allowed and the matter was "remanded back to the Respondents for holding a fair enquiry" after complying with the necessary formalities and rules.

9. On March 16, 1984 the petitioner wrote to the 3rd and 4th respondents recording the substance of the order of March 3, 1984. He asked to be allowed to resume service and for payment of arrears of salary. There being no response the petitioner wrote a reminder on April 21, 1984.

10. On April 23, 1984 a writ petition filed by the 3rd and 4th respondents before this Court impugning the order of the School Tribunal dated March 3, 1984 was rejected in limine. On December 10, 1984 a petition for special leave to appeal against that order was rejected by the Supreme Court.

11. In the meantime, the petitioner had filed before the School Tribunal a miscellaneous application u/s 11(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter called "the said Act"). Sub-section, (3) reads thus:

It shall be lawful for the Tribunal to recommend to the State Government that any dues directed by it to be paid to the employee, or in case of an order to reinstate the employee any emoluments to be paid to the employee till he is reinstated, may be deducted from the grant due and payable, or that may become due and payable in future, to the Management and be paid to the employee direct.

12. The School Tribunal passed an order on the application on January 19, 1985. This order is impugned in this petition. The School Tribunal found it clear from

the provisions of the said Act that it did not provide any means for executing an order passed u/s 11(2) of the said Act. (Section 11(2) is the provision whereby the School Tribunal is empowered to set aside an order of dismissal, removal or other termination of service or reduction in rank and to reinstate an employee and give him arrears of salary, etc.) The School Tribunal referred to Section 13(1) which provided for a penalty to be imposed upon a school's management for failure to comply with the School Tribunal's direction. It appeared to the School Tribunal therefrom that non-compliance of its directions was an offence punishable with fine. But there was no remedy given to an aggrieved party to compel a school's management to carry out the School Tribunal's directions. Section 11 Sub-section (3) had to be exercised only at the time of passing the order on the appeal. Since, in the order of the School Tribunal dated March 3, 1984, directions u/s 11(3) had not been given, the question of issuing directions at a later stage did not arise. Besides, the order of March 3, 1984 did not give any direction to the 3rd or 4th respondents to reinstate the petitioner or to pay him back wages. Therefore, the question of asking the 3rd and 4th respondents to pay him arrears of salary did not arise nor the question of recommending to the State Government the deduction of those arrears of salary.

13. We must express our dismay at both orders of the School Tribunal.

14. It is regrettable that in the order dated March 3, 1984 it was not spelt out that the order of termination of the petitioners services was set aside and the 3rd and 4th respondents were not in terms directed to reinstate the petitioner and pay him full back wages and other emoluments. Having regard to the petitioner's appeal to the School Tribunal and the order that it passed, however, there is no question but that, by implication, this was what was ordered. When the respondents were directed to hold an enquiry, the order of termination passed without the holding of an enquiry was in fact set aside. The petitioner then remained in the service of the 3rd and 4th respondents and was entitled to all arrears of salary and other emoluments upto that date.

15. Since no enquiry has yet been held the petitioner remains in the service of the 3rd and 4th respondents and is entitled to receive from them all arrears of salary and other emoluments upto date.

16. The School Tribunal erred in holding in the impugned order that there is no provision in the said Act in regard to the execution of its orders. The provision is in Section 11(5). Thereunder the School Tribunal is empowered to recommend to the State Government that any dues directed by it to be paid to an employee be deducted from the grant due and payable or to become due and payable to a school's management and be paid directly to the employee. The State Government would ordinarily be expected to heed and comply with such recommendation. The remedy provided by Section 11(3) is, therefore, as effective as that of more unorthodox execution. It is an independent remedy and is not to be exercised only at the time when an order is made u/s 11(2). It would ordinarily be exercised upon the employee's application pointing out the failure

of the school's management to comply with an order of the School Tribunal directing payment to him.

17. In the circumstances of this case, the School Tribunal ought to have exercised its powers u/s 11(5) of the said Act upon the petitioner's application.

18. The order of the School Tribunal dated January 19, 1985 is quashed and set aside.

19. The 3rd and 4th respondents shall forthwith reinstate the petitioner to the post that he had held.

20. The 3rd and 4th respondents shall within a period of six weeks from today deposit in court all arrears of the petitioner's salary and other emoluments commencing from February 3, 1983 upto date. In making such deposit the 3rd and 4th respondents shall be entitled to credit for the sum of Rs. 18,135/- already deposited pursuant to this Court's order dated November 19, 1985. The petitioner shall be entitled to withdraw from court the said sum of Rs. 18,135/- and such other deposit as is hereafter made by the 3rd and 4th respondents.

21. The petitioner has tendered a statement of detailed calculations of his dues upto July 1986. The total amount shown as due to him is Rs. 77,516.95. Of this Rs. 18,135/- are already deposited. In the event that the 3rd and 4th respondents fail to deposit in court an amount of at least Rs. 55,000/- within the period of six weeks from today, the 1st respondent is directed to deduct the amount of Rs. 55,000/- from the grant due and payable or to become due and payable in future to the 3rd respondent and/or the 4th respondent and pay such amount to the petitioner directly.

22. The aforesaid order is without prejudice to the rights and contentions of the parties in the petitioner's suit in the City Civil Court at Bombay in regard to the validity of the transfer of the petitioner's services from the 3rd to the 4th respondent.

23. The 3rd and 4th respondents shall pay to the petitioner the costs of the petition.

24. Rule absolute accordingly.