

(2011) 09 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 8744 of 2010

Rukhminibai Pratishthan

APPELLANT

Vs

Ravindra Deoram Patil and Others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31, 100
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 21, 8, 9, 9(1), 9(2)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
12, 3(5), 3(6)

Citation : (2012) 1 BomCR 468 : (2012) 1 MhLj 752

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.R. Barlinge, for the Appellant; D.V. Tele, AGP for R. Nos. 7 to 9,
V.D. Sapkal, for R. No. 1, Vinod Patil, for R. No. 2, M.A. Deshpande, h/f, A.S.
Deshpande, for R. Nos. 3 to 6, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This writ petition takes exception to the judgment and order dated 17th July, 2010 passed by the Presiding Officer, School Tribunal, Nashik in Appeal No. JAL/36/2009.

2. This Court on 13th December, 2010 directed this matter to be listed for final disposal. Accordingly, the matter is taken up for final hearing with consent of the parties.

3. Rule. Rule is made returnable forthwith.

4. The background facts of this case are, as under:

The Petitioner herein runs four schools namely, (1) Saraswati Madhyamik Vidyalaya, Sadawan, Tal. Amalner, Dist. Jalgaon; (2) Kirti Vijay Patil Army School, Shirdon, Tal. Panvel, Dist. Thane; (3) Nawal Bhau Madhyamik Vidyalaya,

Tade, Tal. Erandol, Dist. Jalgaon; and (4) Nawal Bhau Madhyamik Vidyalaya, Tade, Tal. Erandol, Dist. Jalgaon. All the four schools are functioning in different districts. The Respondent No. 1 herein - original Appellant before the School tribunal filed an appeal stating therein that the management of the Petitioner institute did not maintain combine seniority list of all the employees working in all the four schools. The management has prepared the seniority list of the employees working in the school itself. As per the seniority list, the original Appellant is senior to the Respondents No. 3 to

5. The original Appellant holds qualifications of M.A.,B.Ed. Since June, 2000, the Appellant has been working as Assistant Teacher in the school namely Saraswati Madhyamik Vidyalaya, Sadawan, Tal. Amalner, Dist. Jalgaon. The Appellant has been working as in charge Head Master.

6. In the month of October, 2008, the school namely Saraswati Madhyamik Vidyalaya, Sadawan became 100% aided school, which resulted in creating a permanent post of head master in the said school. It is the case of the original Appellant that since 9 years, the Appellant has been working as in-charge head master in the said school. The school management has recently promoted Respondent No. 6 on the post of Head Master w.e.f. 1st June, 2009. The Education Officer has also accorded approval to the said appointment. Therefore, the Appellant had made representations to the school authorities as well as the Education Officer for redressal of his grievance. The Appellant also came to know that the school management has promoted the Respondents No. 3 to 6 on the post of Head Master in other schools though they are junior to the Appellant. The Appellant has not relinquished his claim to the post of head master. The Appellant has rendered unblemished services, without any grievance, complaint and he has clean service record. In spite of this, the school management has illegally promoted Respondents No. 3 to 6 on the post of head master. Therefore, the Appellant was constrained to file appeal with the afore said grievance.

7. The present Petitioner, who is Respondent No. 1 in the appeal filed by the Appellant, resisted the claim of the Appellant by filing written statement. It was denied that the claim of the Appellant was refused by the Petitioner institute. It is stated that the appeal of the Appellant is hit by non joinder of necessary parties.

8. The Petitioner herein i.e. Respondent No. 1 in the appeal has further contended that the vacancy of the Head in Kirti Vijay Patil Army School, Shirdon occurred in the year, 2005. The post of Head Master was advertised by the school management. The Education Officer, Zilla Parishad, Raigad recommended the name of Madhukar Krushna Marathe for the post of head master on the basis of educational qualification and merit. Accordingly, the school management appointed Shri M.K. Marathe on the post of head master on 1st July, 2006 and the competent authority has also accorded approval to the said appointment. It was further contended that the management had communicated occurrence of vacancy of the post of head master to the Appellant and asked him to submit his willingness for the appointment to the said post; but, the Appellant by his letter,

refused for appointment to the post of head master in presence of Education Officer, Zilla Parishad, Nashik. Under circumstances, the school management has promoted Shri Ravindra Vishwanath Patil on the post of head master from the year, 2006. It was further contended that the management had communicated occurrence of the post of head master in Nawal Bhau Madhyamik Vidyalaya, Tade, Tq. Erandol, Dist. Jalgaon to the Appellant but, the Appellant has refused appointment to the said post and insisted to work in the school situated in his village. It is further contended that the Appellant had never raised objection after promotion of Shri Sharad Yashwant Ahirrao.

9. It is further stated that in the year, 2009, vacancy arose for the post of head master in Saraswati Madhyamik Vidyalaya, Sadawan, Tal. Amalner, Dist. Jalgaon but, it was incumbent on the part of the management to fill up the said post as per roster point and, therefore, the management has promoted Shri Sharadkumar Bhimrao Jadhav on the post of head master w.e.f. 1.6.2009. The school management has promoted Shri M.K. Marathe, S.Y. Ahirrao and R.V. Patil on the posts of head master in the year, 2006. The competent authority has also accorded approval to the said appointments. There is huge delay in filing appeal against these employees. There is delay in filing an appeal against the order of school management dt. 1.6.2009 promoting Mr. S.B. Jadhav on the post of head master. It is also stated that the Appellant has committed serious misconduct while working on the post of head master at Saraswati Madhyamik Vidyalaya, Sadawan. The allegations of willful negligence were also levelled against the Appellant by the Respondent management.

10. It appears that the original Respondents No. 2 to 9 in the appeal remained absent though served and, therefore, appeal set ex parte against the Respondents 2 to 9.

11. After appreciating the evidence on record and hearing the parties, framing necessary points, the School Tribunal decided the appeal filed by the original Appellant / Respondent No. 1 herein holding that the orders of the management of Respondents - institute promoting or appointing original Respondents No. 3 to 6 on the post of head master, are not sustainable and, therefore, the same came to be set aside. Further direction was given to the Respondents - institute to promote the appellant on the post of head master along with benefit attached to the said post w.e.f. June, 2009. The management was directed to comply with the said order within 14 days from the date of the order. Hence, this writ petition.

12. The learned Counsel for the Petitioner submits that the school tribunal did not frame necessary points for consideration/determination and, therefore, on that ground, the judgment and order impugned in this writ petition deserves to be quashed and set aside. It is submitted that the pleadings raised before the school tribunal clearly indicate that the school tribunal had no jurisdiction to decide the claim filed by the Respondent No. 1 herein - original Appellant. However, the school tribunal did not even frame an issue in that respect. The learned Counsel for the Petitioner further submitted that the first vacancy for the

post of head master in Kirti Vijay Patil Army School, Shirdon occurred in the year, 2005 and the said vacancy was advertised by the school management and after selection by the duly constituted selection committee, Mr. Madhukar Krushna Marathe was appointed on 1st July, 2006 as head master. It is further submitted that since that was direct recruitment, appeal was beyond the scope of Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, referred to as "MEPS Act") and was hopelessly barred by limitation also. It is further submitted that second vacancy had occurred in Naval Bhau Madhyamik Vidyalaya, Tade, Taluka Erandol, Dist. Jalgaon, to which the Respondent No. 1 i.e. original Appellant relinquished his claim and submitted a letter to that effect. This vacancy was also filled in the year, 2006 and there was delay of more than three years in challenging the said appointment. It is submitted that the last vacancy was filled in on 1st June, 2009 when Shri S.B. Jadhav was appointed as Head Master from reserved category. It is further submitted that even after appointment of Shri S.B. Jadhav, the Respondent No. 1 - original Appellant belatedly filed appeal without even filing an application for condonation of delay. It is further submitted that the school tribunal gets jurisdiction to decide an appeal if the appeal is filed within thirty days from the date of the impugned action as per the provisions of Sub-section (2) of Section 9 of the MEPS Act. However, the appeal in the present case was filed after three years and, therefore, an application for condonation of delay giving satisfactory explanation for the delay caused in filing the appeal was necessary. However, no such application for condonation of delay was filed and still, the school tribunal proceeded to decide the appeal on merits and condoned the delay without there being an application for condonation of delay. In fact, the pleadings raised before the school tribunal clearly indicated that the school tribunal had no jurisdiction to decide the claim filed by the Respondent No. 1 - original Appellant. However, the school tribunal even did not frame an issue in respect of inordinate delay. The school tribunal did not consider it necessary to frame an issue in respect of the direct recruitment to the post of head master and whether such direct recruitment can be challenged under the provisions of Section 9 of MEPS Act. The school tribunal also did not frame an issue in respect of the appointment of the Respondent No. 6 namely Mr. S.B. Jadhav, who was promoted to the post of head master on a reserved vacancy meant from the category of Scheduled Caste. Therefore, according to the learned Counsel for the Petitioner, the issues framed by the school tribunal were not proper and therefore, the school tribunal arrived at a wrong conclusion that the promotions given to the Respondents 3 to 6 before it, were contrary to the provisions of the MEPS Act and Rules framed thereunder.

13. It is further submitted that in respect of relinquishment of claim to the post of head master, in other schools, a specific plea was raised by the Respondents that the original Appellant had relinquished his claim to the post of head master when he was informed about vacancy. The tribunal did not frame any specific issue in this regard and without properly appreciating the evidence on record,

jumped to the conclusion that the Respondent No. 1 had not relinquished his claim. According to the learned Counsel for the Petitioner, this is totally erroneous approach shown by the tribunal and therefore, the impugned judgment and order deserves to be quashed and set aside.

14. It is further submitted that Respondents No. 3 to 6 are already occupying the posts of head master for more than three years and, therefore, they need to be protected during pendency of the writ petition.

15. The learned Counsel for the Petitioner invited my attention to the memo of petition, grounds taken therein, annexures thereto and submitted that the writ petition deserves to be allowed. It is further submitted that the school tribunal has not properly appreciated the provisions of Section 9 of the MEPS Act while appreciating the contention of the Petitioner that the appeal filed by the Appellant is hopelessly time barred. The learned Counsel further submitted that this Court in case of *The Executive President and Others Vs. Bhaskar Bhagwant Yadav and Others*, , has taken a view that in case of appeal filed aggrieved by supersession, the aggrieved person should file the appeal within 30 days of supersession. The learned Counsel invited my attention to paras 6 and 8 of the said judgment and submitted that this Court has already concluded the said point i.e. the point of limitation in filing appeal in case of supersession and, therefore, the school tribunal was bound to follow the said judgment.

16. On the other hand, the learned Counsel for Respondent No. 1 submitted that the school tribunal, after appreciating the entire evidence brought on record by the parties and also hearing the parties, has passed the impugned judgment and order and allowed the claim of the original Appellant being the senior most teacher in the Petitioner institute and, therefore, there is no infirmity in the impugned judgment and order and, therefore, this Court may not interfere in writ jurisdiction. The learned Counsel also invited my attention to the contentions raised in appeal memo and also the arguments advanced before the School tribunal and submitted that the writ petition is devoid of any merits. He further submitted that it is undisputed position that the Respondent No. 1 i.e. original Appellant is senior most teacher and he was entitled for appointment as full fledged head master even when first vacancy occurred in 2005 and the subsequent vacancies which occurred in the year, 2006. It is submitted that the Petitioner did not communicate about the said occurrence of vacancies to the Appellant. Since the schools are situated at different places, there was no occasion for the Appellant to know about the appointments of Respondents No. 3 to 6 as head masters though they are junior to the Appellant. It is submitted that the management has not maintained common seniority list. The learned Counsel invited my attention to Sub-rule (5)(a) of Rule 3 of the M.E.P.S. Rules, 1981 and submitted that if a suitable teacher possessing qualifications laid down in the foregoing provisions of this rule is not available to fill in the post of a Head of a school, the Management shall, with the prior permission of the Education Officer in case of primary schools, or of the Deputy Director in the case of other schools,

advertise the post and select and appoint a person possessing the requisite qualifications and experience. However, in the instant case, the Appellant was already working as in-charge head master and being senior most teacher, he was suitable teacher possessing qualifications and therefore, there was no occasion for the Petitioner management to advertise the said post and appoint Mr. Marathe as head master even without prior permission from the Education authorities. Therefore, according to the learned Counsel for Respondent No. 1 i.e. original Appellant, the appointment of Mr. Marathe as head master was also contrary to the M.E.P.S. Rules. It is further submitted that the contention of the Petitioner management that when second vacancy occurred, the said fact was communicated to the Appellant is devoid of any merits. The management has not placed anything on record to show that such a communication was there by the management to the Appellant. It is submitted that the Appellant has never relinquished his claim. The letter which is produced by the management on record stating the Appellant has relinquished his claim for the post of head master is a concocted document. The said document itself would demonstrate that the said document is dated 17.10.2006 and Shri Rajendra Vishwanath Patil has been appointed on 1.6.2006. Therefore, there is no question of relinquishment of claim by the Appellant on 17.10.2006 i.e. after more than three and half months of the appointment of Mr. R.V. Patil as head master. Therefore, according to the learned Counsel for the Appellant, such letter was never given by the Appellant to the Education Officer and it was never signed before the Education Officer since on the relevant date the Appellant was working in his school. There was no question of going to the Education Officer at Nashik and giving such letter or signing such letter. It is submitted that about the contention of the Petitioner that the Appellant had relinquished his claim, the school tribunal has given findings and nothing contra has been brought on record in this petition and, therefore, such finding recorded by the school tribunal cannot be disturbed. It is further submitted that even when three vacancies occurred, the same was not communicated to the Appellant. It is submitted that Respondents No. 3 to 6 herein are juniors to the Appellant. The Appellant was already working as in-charge head master for number of years and, there was no reason why he was not appointed as a full fledged head master in spite of four vacancies arose from 2005 till 2009. The learned Counsel also invited my attention to the appeal memo and submitted that the Appellant is working with the institute as in-charge head master from 2000 for about nine years and the approval has also been granted by the Education Officer from time to time. The learned Counsel invited my attention to the number of letters/representations made to the Education authorities by the Appellant raising his grievance that juniors to him are appointed as head masters. However, he is not appointed as head master. It is further submitted that the Petitioner institute has not prepared common seniority list. The Appellant was not able to get information about the inter-se seniority since four schools of the Petitioner management are in different districts. Taking undue advantage of this fact that the Appellant is not aware about the seniority list, the Petitioner management has given promotion to junior

teachers by denying claim of the Appellant to the post of head master, though Appellant is senior most teacher in the said institute. It is further submitted that under the provisions of Right to Information Act, the Appellant was able to get some necessary documents and he found that the Respondents No. 3 to 6, who are appointed as head master are juniors to him.

17. The learned Counsel for Respondent No. 1 further submitted that in cases of supersession when appeal is filed, the limitation is not provided by the legislature under the provisions of Section 9 of the M.E.P.S. Act. Therefore, according to the learned Counsel for Respondent No. 1, since no such limitation is provided for filing appeal, there was no question of filing an application for condonation of delay by the Appellant. However, he submits that satisfactory explanation was offered before the school tribunal and after appreciating the contention of the Appellant, the school tribunal was satisfied that the delay occurred in filing the appeal is condonable and to that effect findings are recorded by the tribunal. The learned Counsel further submitted that the point of limitation has been dealt with by the tribunal extensively and, therefore, merely because said point is not specifically framed, that would not render the decision of the school tribunal unsustainable. The learned Counsel submitted that this Court in case of Secretary, Shiorai Education Society v. Presiding Officer, School Tribunal and Ors. 2000 (2) Mh.L.J. 752 had an occasion to interpret the provisions of Sub-section (2) of Section 9 of the said Act and held that the words "such appeal" mentioned in Sub-section (2) of Section 9 can safely be construed to be referable only to contingencies mentioned in Sub-section (1)(a) of Section 9. It has no applicability to appeal challenging supersession. The learned Counsel for Respondent No. 1 invited my attention to paras 8 to 11 of the said judgment and submitted that the point raised by the Petitioner about the limitation in filing appeal in cases of supersession is no more res integra and is covered by the aforesaid pronouncement of this Court. The learned Counsel further invited my attention to the judgment of the Division Bench of this Court in case of Mohammad Hasan Khan v. Mohammad Majidulla and Ors. 2003 (Supp.) Bom.C.R. 235 and submitted that the Division Bench has also considered the grievance u/s 9(1)(b) and (2) of the MEPS Act, 1977 and had taken a view that the language of Sub-section (1) and Sub-section (2) is clear and unambiguous and if the legislature, at any time, had intended to provide limitation period for an appeal against the order of supersession within the meaning of Sub-clause (b) of Sub-section (1), it was not prevented from providing for such a contingency by amending the language of Sub-section (2). However, the legislature, in its wisdom, did not do so and, therefore, the view taken by Sinha, J., in case of Secretary, Shiorai Education Society (supra) must be upheld.

18. The learned Counsel further submitted that the Hon'ble Supreme Court in case of Uttam Namdeo Mahale v. Vithal Deo and Ors. 1998 (1) Bom.C.R. 786, has taken a view that in absence of any specific limitation provided under the Act, necessary implication is that the general law of limitation provided in the

Limitation Act stands excluded. Therefore, the learned Counsel would submit that the contention of the Petitioner that appeal should have been filed within a reasonable period, has no force and the same is required to be rejected.

19. The learned Counsel for Respondent No. 1, at the cost of repetition, would submit that merely because the school tribunal did not frame points of limitation and jurisdiction, that by itself cannot be a ground to interfere in the impugned judgment and order. The school tribunal has dealt with all the aspects and has given categorical findings on each aspect and, therefore, the contention of the Petitioner that since necessary points were not framed by the school tribunal, this petition may be allowed, is without any merits. In support of his contention, he relied on the judgment of this Court in case of Pushpalata Parshuram Borukar and Others Vs. Madhavlal N. Pittie Esquire and Another, and also the judgment of the Supreme Court in case of G. Amalorpavam and Others Vs. R.C. Diocese of Madurai and Others, . The learned Counsel vehemently submitted that the Petitioner has not brought any contra material to disturb the findings of the school tribunal and, therefore, in extraordinary jurisdiction of this Court, the findings recorded by the school tribunal may not be interfered with. Therefore, he submits that the writ petition deserves to be dismissed.

20. The learned Counsel for Respondent No. 2 submitted that Respondent No. 2 has relinquished his claim for the post of head master and also the Respondent No. 1 i.e. original Appellant has relinquished his claim for the post of head master.

21. The learned Counsel for the Respondents No. 3 to 6 invited my attention to the affidavit-in-reply filed on their behalf and submitted that Respondent No. 1 himself has relinquished his claim to the post of head master and, therefore, it is not open for him to challenge the appointments of the Respondents No. 3 to 6, which is hopelessly time barred. It is submitted that the contention of the Respondent No. 1 that on the date when the letter was written to the Education Officer about his relinquishing claim to the post of head master, he was present in the school, has no force since the Respondent No. 1 himself was working as incharge head master in the said school. Therefore, there is strong possibility that he might have managed the record to that effect. The learned Counsel for the Respondents 3 to 6 invited my attention to the operative part of the order and submitted that the order passed by the school tribunal practically cannot be implemented. Therefore, it is submitted that the writ petition may be allowed.

22. I have given due consideration to the rival submissions of the parties, perused the memo of writ petition, annexures thereto, all the documents made available, original appeal memo and reply filed by the respective Respondents. Coming to the point raised by the Petitioner about limitation for filing appeal in case of supersession, in my opinion, the said point has been answered and covered by the judgment of this Court in case of Secretary, Shiorai Education Society (supra). This Court, in the said judgment in para 7, has referred to the provisions of Section 9 of the MEPS Act. The said section has been quoted in para 7. In para 8 of the said judgment, this Court has observed that while interpreting

the statute, it is necessary to consider certain basic principles of interpretation of statute. When the words of statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. This Court, in para 9 of the said judgment, has considered the provisions of Sub-section (2) of Section 9 of MEPS Act. The Court has also considered the intention of the legislature, language used, object of the Act and scheme of Section 9. The Court has observed that initially Sub-Section 1(a) of Section 9 made right of appeal available to the employee who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the Management. Sub-section (2) of Section 9 provides limitation of thirty days for the purpose of filing appeal specifically in the cases of dismissal, removal, otherwise termination of service or reduction in rank of an employee by the Management. The language used in Sub-section (2) of Section 9 is absolutely clear, unambiguous and capable of conveying the only intention of the Legislature, i.e. to make Sub-section (2) of Section 9 applicable only in respect of cases of dismissal, removal, otherwise termination of service or reduction in rank of the employee by the Management as contemplated in Sub-Section 1(a) of Section 9. This Court further observed that it is clear that the Legislature never intended to include cases of supersession by the Management while making appointment to any post by promotion contemplated in Sub-Section 1(b) within the ambit of Sub-section (2) of Section 9. If the intention of the Legislature was to include aspect of supersession contemplated in Sub-Section 1(b) within the ambit of Sub-section (2) then the word "supersession" must have been used in the body of Sub-section (2) of Section 9 of the Act. In view of the intention of the Legislature as well as clear and unambiguous language used in the statute, the words "such appeal" mentioned in Sub-section (2) of Section 9 can safely be construed to be referable only to contingencies mentioned in Sub-Section 1(a) of Section 9.

23. This Court in para 10 of the said judgment has further observed that initially the right of appeal to the tribunal was not provided to the employee in case of supersession by the management while making appointment to any post by promotion. However, this right was made available to the employee in view of amendment to Section 9, which came into force in the year, 1987. It must be borne in mind that when an employee is eligible for promotion and legally entitled to be promoted to the higher post from a particular date, there is a legal right accrued in his favour to be promoted to the higher post. It is a continuing legal right and can come to an end only when it is considered by the appropriate Authority / Tribunal / Court and cannot be taken away by putting a rider of limitation. Hence the Legislature has not included the case of supersession in the ambit of Sub-section (2) of Section 9 of the Act.

(Emphasis supplied).

24. The judgment in case of Secretary, Shiorai Education Society (supra) has been referred by the Division Bench in case of Mohammad Hasan Khan (supra).

Para 11 of the said judgment reads, thus:

11. The original scheme of Section 9, if considered, would show that the limitation clause was incorporated in Sub-section (2) when there was no provision for an appeal on account of supersession or denial to appoint to a particular post by promotion, by the management under the scheme of Sub-section (1) and, therefore, the language of Sub-section (2) was confined to the orders to be appealed against under Sub-section (1) alone. However, when Sub clause (b) to Sub-section (1) was incorporated by the amendment brought into force w.e.f. 7th August, 1987, the provisions of Sub-section (2) regarding limitation were not amended and they remained as they were originally. This act of the Legislature must be deemed to be deliberate and, therefore, the provisions of Section 9 of the M.E.P.S. Act, in totality, are required to be read as they appear after the amendment of 1987. The language of Sub-section (1) and Sub-section (2) is clear and unambiguous and if the Legislature, at any time, had intended to provide limitation period for an appeal against the order of supersession within the meaning of Sub clause (b) of Sub-section (1), it was not prevented from providing for such a contingency by amending the language of Sub-section (2). The Legislature, in its wisdom did not do so and, therefore, the view taken by Sinha, J. must be upheld. The reasoning given in the said case does not, in our considered view, permit any other interpretation than the interpretation adopted. We must also keep in mind the doctrine of *Casus Omissus* while interpreting the statutory provisions.

25. Therefore, there is no force in the argument of the learned Counsel for the Petitioner that appeal was not filed within limitation. That apart, from perusal of the impugned judgment of the tribunal, I find that the tribunal has considered the said point and given satisfactory finding. Nothing contra has been brought on record to disturb the said finding. Merely because the said point of limitation and jurisdiction was not specifically framed, that by itself cannot be a ground to disturb the impugned judgment and order. The school tribunal has discussed all the points in the body of the judgment and given satisfactory findings on each aspect.

26. The learned Counsel for the Petitioner then contended that even in absence of any period of limitation, the appeal should have been filed within a reasonable time. This contention raised by the Counsel for the Petitioner can find an answer in the authoritative pronouncement of Supreme Court in case of *Uttam Namdeo Mahale* (supra). The Honourable Supreme Court, in the said judgment, held thus:

The learned Counsel for the Appellant, contends that in the absence of fixation of rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in *The State of Gujarat Vs. Patil Raghav Natha and Others*, ; *Ram Chand and Others Vs. Union of India (UOI) and Others*, ; and *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim* [CA No. 5023/85 decided on August 22, 1996]. We find no force in the

contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamalatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, Therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.

27. As far as the contention of the Counsel for the Petitioner that all the points including points of limitation, jurisdiction and on other necessary aspects are not framed by the school tribunal is concerned, in my opinion, once those points are discussed properly in the body of the judgment and satisfactory findings are rendered on them, merely because those points are not specifically framed, would not be a ground to interfere in the impugned judgment and order. In case of Pushpalata (supra), this Court had an occasion to interpret Order 41 Rule 31 of the Code of Civil Procedure. This Court held in para 10 as under:

10. It was also sought to be contended that the judgment passed by the Appellate Court is not in consonance with the provisions of Order XLI, Rule 31 of the Code of Civil Procedure, and in that regard, the decision of the learned Single Judge of this Court in Anita M. Harretto Vs. Abdul Wahid Sanaullah, is sought to be relied upon. It cannot be disputed that the Appellate Court has to formulate the points for determination which can be considered while dealing with the appeal arising out of a judgment passed by the trial Court. In the case in hand though the impugned judgment does not disclose framing of the points for consideration in accordance with the Order XLI, Rule 31 of the Code of Civil Procedure, nevertheless the impugned judgment discloses the recording of the points which were sought to be raised by the Petitioner before the Appellate Court as well as the discussion in relation to those points which were raised by the Petitioner in the appeal. Being so, though the points which have been considered are not formulated in the form of questions, certainly the judgment discloses the consideration of all the relevant points which arose for consideration in the judgment. Being so, there is substantial compliance of requirement of the provisions of Order XLI, Rule 31 of the Code of Civil Procedure, and therefore, merely on the technicalities there cannot be any justification for interference in the well reasoned judgment passed by the Court below. Certainly no such interference is called for in writ jurisdiction.

28. The Supreme Court in case of G. Amalorpavam and Ors. (supra) had also an occasion to interpret Order 41, Rule 31 and Section 100 of the Code. In the said authoritative pronouncement, the Supreme Court in para 9 held that Where there is an honest endeavour on the part of the lower appellate court to consider

the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination.

(Emphasis supplied).

29. Therefore, in my considered opinion, the contention of the Petitioner that the appeal is not filed within limitation and tribunal did not frame specific points for its determination, is devoid of any merits and the same stands rejected.

30. So far as the contention of the Petitioner that the Respondent No. 1 i.e. original Appellant, has relinquished his claim for the post of head master is concerned, the school tribunal has recorded findings that there was no such relinquishment as contended by the Petitioner herein. From perusal of the documents placed on record, I find that the second vacancy for the post of head master has been filled in by the Petitioner management in the month of June, 2006 by appointing Mr. Rajendra Patil as head master of V.N. Patil Madhyamik Vidhyalaya, Igatpuri and said letter which is placed at page 79 of the compilation by which the Appellant is said to have relinquished claim for the post of head master, is dated 17.10.2006. Therefore, it is impossible to digest that the Appellant has relinquished claim for the post of head master, which has already been filled in the month of June, 2006, by his letter dated 17.10.2006 addressed to the Education Officer. It is brought on record by the Appellant that on the relevant date, he was in the school and he was not at Nashik in the office of the Education Officer. Such finding of fact recorded by the school tribunal cannot be disturbed. There is no contra material brought on record to disturb the said finding.

31. The contention of the Petitioner that the first vacancy occurred in 2005 and they have appointed Mr. Madhukar Marathe by advertising the post and subsequently, his appointment has been approved by the authorities, has also been dealt with by the school tribunal. The school tribunal has dealt with the said contention in the light of the provisions of Rule 3(5)(a)(b) and Rule 3(6) of the MEPS Rules, 1981 which reads, thus:

3. Qualifications and appointment of Head- (1) ...

(2)

(3)

(4)

(5)(a) If a suitable teacher possessing qualifications laid down in the foregoing provisions of this rule is not available to fill in the post of a Head of a school, the Management shall, with the prior permission of the Education Officer in case of primary schools, or of the Deputy Director in the case of other schools, advertise

the post and select and appoint a person possessing the requisite qualifications and experience.

(b) The application for permission to advertise the post shall be made at least two months in advance. The period of two months may be relaxed by the Education Officer or the Deputy Director, as the case may be, in the case of new schools or in emergency cases wherein the vacancy could not have been anticipated. The advertisement shall be given after the permission of the Deputy or the Education Officer is received. Management shall ensure that the advertisement appears in at least two daily newspapers, one of which shall be a Marathi news paper, having wide circulation in the region wherein the primary schools or secondary schools or Junior College of Education is located.

(6) The Education Officer or the Deputy Director shall direct the management to cancel the appointments made without following the procedure laid down in this rule.

Explanation - For the purpose of this rule the record of service shall be deemed to be satisfactory if there is nothing adverse in the annual confidential reports of the teacher concerned during the previous five years. Adverse remarks not duly communicated in writing to the teacher concerned, shall be disregarded for this purpose.

32. Therefore, the perusal of Sub-rule (5)(a) of Rule 3 of the MEPS Rules will make it abundantly clear that if a suitable teacher possessing qualifications laid down as per the provisions of this rule is available to fill in the post of a Head of a school, in that case, there is no question of advertising the post and appointing head master by selection. Therefore, in my opinion, in view of the findings recorded by the tribunal that the Appellant was senior most and qualified person to be appointed as head master, the appointment of Mr. Marathe as head master was in breach of Rule 3(5)(a) of the MEPS Rules, needs no interference. It is also not in dispute that before advertising the said post, no such prior permission from Educational authorities was taken by the Petitioner management.

33. I find considerable force in the argument of the learned Counsel for Respondent No. 1 i.e. original Appellant, that the Petitioner management did not communicate about occurrence of vacancies to the Appellant. Nothing had been placed on record by the Petitioner management before the school tribunal showing that such occurrence of vacancies for the post of head master was communicated to the Appellant. Therefore, the findings recorded by the school tribunal on that aspect needs no interference.

34. The contention of the Petitioner before the school tribunal that the Appellant was negligent in performing his duties, has been negated rightly by the school tribunal. The Appellant was working for years together as in-charge head master and it is difficult to appreciate the contention of the Petitioner management that he was negligent in his duties. Even, in the year, 2009 the Appellant was working as in-charge head master and approval has been granted by the Education

Officer to that effect. Therefore, the school tribunal has rightly negated the contention of the Petitioner management that the Appellant was negligent in his duties.

35. The school tribunal has rightly exercised the jurisdiction vested in it. There is no substance in the contention of the Petitioner that entertaining the appeal by the school tribunal was beyond the scope of Section 9 of the MEPS Act and the school tribunal had no jurisdiction. The provisions of Section 9(1) (a) and (b) & (2) of the MEPS Act read, thus:

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.

(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.

36. Therefore, upon reading Section 9, it is clear that the candidate who is superseded by the management while making appointment to any post by promotion is entitled to file appeal and his appeal can be entertained by the school tribunal.

37. In case of Umesh Balkrishna Vispute (Shri) Vs. State of Maharashtra and Others, , the Division Bench of this Court observed thus:

Finalisation of the seniority list in terms of Rule 12 of the 1981 Rules is not final and conclusive and not binding on the tribunal and Section 9(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act has overriding effect as it opens with non obstante clause and the dispute relating to seniority list can also be considered by the tribunal as an incidental question while deciding the controversy in regards to the supersession. The dispute relating to supersession in the matter of promotion squarely lies within the jurisdiction of the tribunal.

38. So far as the contention of the Petitioner that Respondents 3 to 6 are already occupying the posts of head masters for more than three years and, therefore, the order of the school tribunal cannot be implemented practically, is concerned, the said contention is devoid of any merits. The Appellant being senior most teacher was entitled for the post of head master. It is an admitted position that the Respondents No. 3 to 6 are junior to the Appellant. It is also not in dispute that for years together, the Appellant was asked to work as in-charge head master and approval had been granted by the Education Officer to that effect. Taking overall view of the matter, it appears that the Petitioner, with calculated move, deprived the Appellant's claim for appointment as full fledged head master though he is senior most teacher in the Petitioner institute. The contention raised by the Appellant and the fact that he is senior most teacher and working as in-charge head master for years together goes to the root of the matter and, therefore, merely because the Respondents No. 3 to 6 are working for more than 4 years cannot be a ground to disturb the impugned judgment and order of the school tribunal. The claim of the Appellant is perfectly sustainable in law and if it is sustainable in law, the consequences would follow and, therefore, whatever will happen with the Respondents No. 3 to 6, would be a legal consequence flowing from the impugned judgment and order of the school tribunal. The contention of the learned Counsel for the Petitioner and also Respondents No. 3 to 6 that the order of the school tribunal cannot be implemented, is devoid of any merits. It is also relevant to mention that the Respondents No. 3 to 6 have not filed any proceedings challenging the judgment and order of the school tribunal. Rather, it appears that they have accepted the judgment and order of the school tribunal.

39. In the light of the discussion herein above and the reasons recorded, I am of the considered view that the impugned judgment and order of the school tribunal is perfectly sustainable in law. Nothing contra has been brought on record by the Petitioners to disturb the findings of the school tribunal.

40. Therefore, the writ petition is devoid of any merits and the same stands dismissed. Rule stands discharged. Interim relief stands vacated.

41. At this stage, the learned Counsel appearing for the Petitioner prays for continuation of interim relief, which was operating during the pendency of the writ petition, for further four weeks. Such prayer is vehemently opposed by the learned Counsel for Respondent No. 1.

42. However, I feel it appropriate to continue the interim relief for further four weeks from today. Accordingly, the interim relief granted in this petition to continue for further four weeks from today.