

(1999) 12 BOM CK 0011

In the Bombay High Court

Case No : Review Petition No. 6168 of 1999 in Civil Revision Application No. 930 of 1999

Satyawadi Pimple and another

APPELLANT

Vs

Sow. Aruna Narwade and another

RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Civil Procedure Code, 1908 (CPC) — Section 115, 9
Constitution of India, 1950 — Article 227
Contempt of Courts Act, 1971 — Section 13
Industrial Disputes Act, 1947 — Section 2
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 10, 11, 12, 13, 16
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12, 24

Citation : (2000) 2 ALLMR 305 : (2000) 3 BomCR 182 : (2000) 2 MhLj 322

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : V.D. Patnoorkar, for the Appellant; P.K. Joshi and S.L. Deshpande, A.G.P., for the Respondent

Judgement

B.H. Marlapalle, J.—The Head Mistress of the school, run by the applicant society, had challenged her reversion effected by an order dated 1-11-1999, in Regular Civil Suit No. 58/ 1999, before the Civil Judge (Senior) Division, Nanded and her application for interim relief was rejected. She had gone in appeal before the District Court unsuccessfully and filed Civil Revision Application No. 930/1999 which came to be disposed of by this Court with liberty to approach the Schools Tribunal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short M.E.P.S. Act). The applicant society has filed the instant review application, contending therein that the view taken by this Court in Civil Revision Application No. 930/1999 that civil suit was not tenable before the Civil Court is contrary to the view taken earlier by this Court (Dr. Saraf, J.) in the case of Rasta Peth Education Society Vs. Pethkar Udhaio

Bhimashankar, and therefore, the order passed by this Court is required to be reviewed.

2. This Court in Rasta Peth Education Society's case, after referring to the judgments of the Supreme Court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, and Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), , held that there is nothing in the scheme of the M.E.P.S. Act to justify and infer implied exclusion of the jurisdiction of the Civil Court and it is open to the suitor to select one of the two fora viz. an appeal under the M.E.P.S. Act or a civil suit before the Civil Court and if the teacher opts for a civil suit, the remedy available under the M.E.P.S. Act, by way of an appeal, will not operate as a bar. This ratio implies that the remedy provided u/s 9 of the M.E.P.S. Act of filing of an appeal, against an order of termination, dismissal or otherwise removal or reduction in rank or supersession will not operate as a bar against filing of a suit u/s 9 of the Code of Civil Procedure, 1908, challenging such orders. Referring to the provisions of section 12 of the M.E.P.S. Act, this Court in Rasta Peth Education Society's case held that what is barred under the said section is suit, appeal or otherwise regular proceedings in any Court or tribunal in respect of the matters decided by the tribunal and section 12 does not prohibit suit or other proceedings in any Civil Court in any matter for which appeal has been provided under the said Act.

3. Section 9 of the C.P.C. states that the courts shall (subject to the provisions therein contained) have jurisdiction to try all suits of civil nature except the suites of which their cognizance is either expressly or impliedly barred. The Apex Court in the case of Dhulabhai (supra) laid down some summary principles regarding the jurisdiction of Civil Courts u/s 9 of the Code of Civil Procedure, 1908 and amongst them, following two are relevant:

"(1) Where the statute gives a finality to the orders of the special tribunal, the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a civil suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the enquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and determination of the right or liability

and further lay down that all the questions about the said right and liability shall be determined by the tribunal so constituted and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

4. In the case of Premier Automobiles (supra), the Supreme Court was examining the remedy, in the matters of industrial disputes as provided under the Industrial Disputes Act, 1947, (I.D. Act for short) and u/s 9 of the C.P.C. and it laid down the principles, applicable to the jurisdiction of the Civil Court, in relation to such disputes. Some of these principles were:

"(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Industrial Disputes Act, the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the I.D. Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to enforcement of a right or an obligation, created under the I.D. Act, then the only remedy available to the suitor is to get an adjudication under the said Act."

5. The Supreme Court in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , once again examined the principles regarding the jurisdiction of the Civil Court u/s 9 of C.P.C. vis-a-vis the remedies available under the Industrial Disputes Act for matters which fall within the ambit of the industrial disputes and after referring to the principles laid down by it in the case of Dhulabhai as well as Premier Automobiles (supra), it again laid down the principles following therefrom :

"(1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute within the meaning of section 2(k) or section 2A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the fora created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 which can be called "sister enactments" to Industrial Disputes Act and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the fora created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of section 2(k) and section 2A of Industrial Disputes Act or

where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the fora created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts. Indeed, the powers of the courts and Tribunal under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

6. In the case of Vankamamidi Venkata Subba Rao Vs. Chatlapalli Seetharamaratna Ranganayakamma, , the Supreme Court held that it is equally well settled legal position that where a statute gives finality to the orders of the special tribunal, the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. The same principle was reiterated by the Apex Court in the case of S. Vanathan Muthuraj v. Krishnamurthi 1997 S.C.C. 143 . In the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , a Bench of nine judges of the Supreme Court, while examining the issue of alternative remedies u/s 9 of the C.P.C. for the matters covered u/s 11B of the Central Excise & Salt Act, 1944, held that because the Central Excise & Salt Act created new rights and liabilities and also provided for the machinery for assessment and adjudication of those rights and liabilities, there is a bar to the jurisdiction of Civil Court which arises by necessary implications.

In a more recent case of Shri Panch Nagar Parakh Mandsaur Vs. Purushottam Das, , the Supreme Court examined the issue of implied bar of the Civil Court u/s 9 of the C.P.C. in the matter where remedy was provided in a special statute and it observed :

"..... However, in cases where there is no express provision, excluding jurisdiction of the Civil Court, it would be necessary to enquire and determine whether it is impliedly barred. For this purpose, the scheme of the Act and the relevant provisions are required to be examined to find out whether the statute provides rights and remedy and where the scheme of the Act is such that the procedure provided therein will be conclusive giving finality and thereby excluding the jurisdiction of the Civil Court in respect thereof."

7. The principles laid down in the above enunciations of the Apex Court, undoubtedly, make it clear that in a special statute if there is no specific bar to the jurisdiction of a Civil Court, it is necessary to examine whether such a jurisdiction is impliedly barred and if the special statute provides for measures to deal with the rights/grievances effectively and gives finality to such orders, the jurisdiction of the Civil Court is impliedly barred. It is, therefore, necessary to

examine the issue at hand viz. the bar of section 9 of M.E.P.S. Act against maintainability of civil suit before the Civil Court on the touchstone of these principles.

Let us, therefore, examine the scheme of the M.E.P.S. Act. as well as the M.E.P.S Rules, 1981 framed thereunder.

Section 3 of the Act states that it shall apply to all private schools in the State of Maharashtra whether receiving any grant-in-aid from the State Government or not and this Act shall not apply to the recruitment of the Head of the Minority Schools and any other persons, not exceeding three, who are employed in such schools and whose names are notified by the management to the Director or, as the case may be, the Deputy Director. Section 4 mandates the State Government to make rules providing for the minimum qualifications for recruitment, including its procedure, duties, pay, allowances, post retirement and other benefits, and other conditions of service of employees of private schools, including reservation of adequate number of posts for members of the backward classes. Sub-section (4) of section 4 specifically lays down that failure to comply with any direction given by the Director in pursuance of sub-section (3) may result in recognition of the said school being withdrawn and sub-section (6) stipulates that no employee of a private school shall be suspended, dismissed or removed or his services shall not be reduced in rank, by the management, except in accordance with the provisions of M.E.P.S. Act and the rules framed thereunder in that behalf. Section 5 creates certain obligations on the management of the private schools and more particularly, lays down the procedure for appointment to fill in permanent vacancies. Sub-section (3) of the said section provides for termination of an employee appointed on probation after giving one month's notice or salary in lieu thereof if in the opinion of the management, the work or behaviour of such probationer is not found satisfactory and the said provision will not be applicable to a person who has been appointed to fill a permanent vacancy by promotion as per sub-section 4(A). Section 7 lays down the procedure for resignation by employees and section 8 provides for constitution of School Tribunals. Section 9 gives a right to the employees to appeal to the tribunal against the order of dismissal, removal or otherwise termination or reduction in rank or supersession and such appeal is required to be filed within a period of 30 days from the date of receipt of such order. The tribunal has also been vested with the powers to entertain an appeal after the expiry of the period of 30 days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period. Section 10 deals with the powers and procedure of the tribunal and section 11 sets out the reliefs and directions that can be given by the tribunal against the management. It states that the tribunal may set aside the order of the management partially or wholly and direct the management to :

- (a) reinstate the employee on the same post or on a lower post;
- (b) restore the employee to the rank which he held before reduction or to any lower rank;

- (c) give orders of emoluments to the employee for such period;
- (d) award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank;
- (e) where it is decided not to reinstate the employee or in any other appropriate case, to give to the employee 12 months salary including allowances if he has been in service of the school for 10 years or more and 6 months salary if he has been in service of the school for less than 10 years, by way of compensation; and
- (f) to give such other relief to the employee and to observe such other conditions as it may specify.

Sub-section (3) of the said section empowers the tribunal to recommend to the State Government that any dues directed by it to be paid to the employees, 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 be due and payable in future to the management and be paid to the employees directly. Sub-section (4) provides that the directions given by the tribunal shall be complied with by the management within a period specified in the direction and it shall not be less than 30 days from the date of its receipt, Section 13 provides for penalty to management for failure to comply with the tribunal's directions and the management shall, on conviction, be punished for the first instance with imprisonment for a term which may extend to 15 days or with fine which may extend to Rs. 50,000/- or with both and for the second and subsequent offences, with imprisonment for a term which may extend to 15 days or with fine which may extend to Rs. 75,000/- or with both. Section 12 which is more relevant to decide the issue at hand reads thus:

Notwithstanding anything contained in any law or contract for the time being in force, the decision of the tribunal on an appeal entertained and disposed of by it shall be final and binding on the employee and the Management and no suit, appeal or other legal proceedings shall lie in any Court or before any other tribunal or authority, in respect of the matters decided by the tribunal.

8. Under its rule making powers, provided u/s 16 of the M.E.P.S. Act, the State Government has framed the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the same came into effect on 16-07-1981. These rules provide for qualification and appointment of Head, Assistant Head, Supervisor, Assistant Teachers, Pay Scales, categories of employees, wait list, assessment of employees, lien, superannuation and reemployment, duties & code of conduct, submission of representation, termination & retrenchment of service on account of the abolition of posts, termination of service of a temporary employee and termination by way of the punishment, procedure for imposing minor and major penalties, suspension pending enquiry, procedure for appeals, resignation transfers, etc.

Rule 12 provides for determination of seniority and gives adjudicatory powers to

the Education Officer. Rule 24 provides for submission of representation regarding any grievance relating to the service of an employee in the private school. Practically every aspect of the grievance relating to service has been taken care of and procedure for redressal has been provided.

9. In the case of *Mohammaedi Fida Hussain v. State of Maharashtra & others* 1986 Mh.L.R. 1250, while dealing with the provisions of section 11(3) of the M.E.P.S. Act, it has been, inter alia, held that the remedy provided therein is that of a more unorthodox execution. This Court further held that it is an independent remedy and is not to be exercised only at the time when an order is made u/s 11(2) and it would be ordinary exercised upon the employees pointing out the failure of the school's management to comply with an order of the School Tribunal directing payment to him. In the case of the *Maharashtra Shikshan Sanstha, Nagpur and Another Vs. Education Officer, Nagpur and Others* this Court examined the powers of the tribunal as set out under sections 10 and 11 of the Act and it held :

".... The School Tribunal u/s 10 and 11 of the Act is clothed with all the necessary powers, substantive as well as procedural to grant appropriate reliefs and to do justice in the appeals preferred before it. It is conferred with the powers of the Appellate Authority under the Code of Civil Procedure, 1908 for the purposes of admission, hearing and disposal of appeals and even otherwise, also being a quasi-judicial, if not a judicial authority, it would mean that it has inherent powers to pass appropriate orders in the list before it expedite justitiae including the power to issue temporary injunction in the matters not specifically covered by Order 39 of the CPC or by any provision of the Act. It has jurisdiction to issue mandatory injunctions at an interlocutory stage directing reinstatement."

In the case of *Chandrakant Ganpat Shelar v. Sophy Kelly Hill Garange High School, Bombay* 1987 Mh.L.J. 1012, this Court held that the school tribunal constituted under the M.E.P.S. Act is a Court within the meaning of the Contempt of Courts Act, 1971 and hence, a defiance of the order passed by the school tribunal can be punished u/s 13 of the said Act, In the case of *Saramma Varghese Vs. Secretary/President, S.I.C.E.S. Society and Others*, , this Court held that the Education Officer, while deciding the issue regarding seniority under Rule 12 of the M.E.P.S. Rules, acts as a tribunal amenable to the jurisdiction of this Court under Article 227 of the Constitution.

10. At the same time, there are some issues relating to the service of the employees in the private schools which are not covered u/s 9 of the M.E.P.S. Act and in respect of such matters, there is no remedy of an appeal under the said Act. Nevertheless, the employee aggrieved has a right to make a representation under Rule 24 of the M.E.P.S. Rules to the employer as well as to the Education Officer and the Education Officer has a statutory duty to pass appropriate orders on such representations, e.g. if an employee of the private school has not been paid his salary or has been paid less salary, no appeal lies before the school tribunal u/s 9 of the M.E.P.S. Act for claiming such unpaid salary or unpaid

emoluments from the management of the school. Undoubtedly, the employee may have a remedy to file a civil suit for recovery of such unpaid salary or part of the salary or any other emoluments, if he is unsuccessful, under Rule 24 of the M.E.P.S. Rules.

Prior to the promulgation of the M.E.P.S. Act, 1977 and the rules framed thereunder, the grievances in service matters of employees in private schools were dealt with under the provisions of the Secondary School Code. Section 15 of the M.E.P.S. Act states that all appeals of employees of private schools relating to the matters specified in section 9 which may be pending before the appropriate authority in accordance with the Secondary School Code shall be transferred to the tribunal and the tribunal shall hear and dispose of every such appeal as if it was made u/s 9 of the said Act. The provisions of section 12 of the Act, as reproduced herein above, undoubtedly, give finality to the orders passed by the tribunal and these orders are binding on the employee as well as the management. The only remedy available to the aggrieved party against the order passed by the schools tribunal in an appeal u/s 9 of the Act is to approach this Court by filing a writ petition seeking a writ of certiorari or an order in the nature of certiorari so as to quash and set aside the order and grant appropriate relief as stipulated u/s 11 of the Act, as the case may be.

11. A detail examination of the scheme of the M.E.P.S. Act and the Rules framed thereunder, as has been summarized herein above, would indicate that sufficient provisions have been made to deal with the grievances relating to the service matters of the employees in the private schools, whether aided or unaided, and the remedy so provided is, undoubtedly, efficacious as well as complete. As has been held by the Supreme Court in the cases of *Shri Panch Nagar* (supra) and *Dhulabhai* (supra) when the provisions of a special statute do not specifically bar maintainability of a suit u/s 9 of the Code of Civil Procedure, it is necessary to examine the provisions of such special statute to find out whether the jurisdiction of Civil Court is impliedly barred and if regards be had to the provisions of the M.E.P.S. Act and the rules framed thereunder, undoubtedly, the orders passed by the tribunal u/s 9 as well as orders passed by the Education Officer, under Rule 12 of the M.E.P.S. Rules, are final in nature and there is a forum provided to deal with almost every grievance relating to service matters of the employees in the private schools. In a civil suit filed u/s 9 of the Code of Civil Procedure, the Court cannot go beyond giving a declaration or granting relief as may be provided under the Specific Reliefs Act. As against this, the powers given to the tribunal u/s 11 and 13 of the M.E.P.S-Act are by way of a full, complete and speedy remedy, in as much as, the tribunal is empowered to substitute the punishment or modify the punishment order and grant relief, including reinstatement in service with or without backwages or part of backwages or compensation. Undoubtedly, such a relief cannot be granted by the Civil Court while decreeing a suit for declaration, etc. It would not be in the interest of employees in the private schools to hold that the remedy of filing a civil suit u/s 9 of the CPC is not barred u/s 9 of the M.E.P.S. Act. The employees in private schools may consist of

teaching and nonteaching and so far as nonteaching employees are concerned, they may have a remedy of a dual nature in as much as approach the school tribunal u/s 9 in respect of the matters provided thereunder or to the Education Officer in respect of the matters regarding seniority or any other grievance and alternatively, to approach the Labour Court/Industrial Court, under the provisions of the M.R.T.U. & P.U.L.P. Act, 1971. However, so far as the teaching staff is concerned, they have the remedy only under the M.E.P.S. Act and the Rules framed thereunder in respect of the service matters and for both, the teaching as well as nonteaching staff, the remedy of filing a civil suit u/s 9 of the CPC in respect of the matters set out in section 9 of the Act and Rule 12 of the M.E.P.S. Rules is impliedly barred, in view of the enunciations of the Apex Court, as referred to hereinabove. It is, therefore, clear that the law laid down by this Court in the case of Rasta Peth Education Society (supra) can no more be held to be a good law. The view taken by me while disposing the Civil Revision Application No. 930/1999 that a Civil suit, challenging the order of reversal, was not maintainable is correct and the review application, therefore stands rejected.

12. Review application rejected.