

(2021) 10 BOM CK 0134

In the Bombay High Court

Case No : Letters Patent Appeal No.05 Of 2013 In Writ Petition No.3470 Of 2006 (D)

Savitri Pushpashil Patel

APPELLANT

Vs

President And Others

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 — Section 3(1), 9, 11, 11(2), 11(2)(a), 11(3), 11(4), 13

Citation : (2021) 10 BOM CK 0134

Hon'ble Judges : A. S. Chandurkar, J G. A. Sanap, J

Bench : Division Bench

Advocate : Ram Heda, Anand Parchure, S. S. Ghate, S. Jachak

Final Decision : Allowed

Judgement

A. S. Chandurkar, J

1. Do the provisions of Section 11(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 provide an independent remedy to a successful employee to approach the School Tribunal for seeking enforcement of the order passed by the School Tribunal in his favour or are the said provisions merely recommendatory in nature and in aid of directions issued by the School Tribunal under Section 11(2) while deciding an appeal under Section 9 ?

2. The facts giving rise to the aforesaid questions are that the appellant was appointed as an Assistant Teacher on 01/08/1986 at the secondary School run by the respondent Nos.1 and 2. The services of the appellant were terminated on 07/05/1988 which led her to file an appeal under Section 9 the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the Act of 1977). The learned Presiding Officer, School Tribunal Nagpur by his judgment dated 29/11/1988 allowed the appeal and directed reinstatement of the appellant from 07/05/1988 in the pay scale of Rs.355-760/-. The Tribunal

also ordered the Management to permit the appellant to resume duties forthwith. The Management being aggrieved by the said judgment challenged the same in Writ Petition No.2873/1988. By an interim order dated 22/12/1988 the judgment of the School Tribunal came to be stayed. The said writ petition however was dismissed for want of prosecution on 19/02/1997. No steps were taken for having the said writ petition restored. The appellant attained the age of superannuation on 07/05/2002 and thus retired from service. On 01/03/2005 the appellant issued a registered notice to the Management stating therein that the order passed by the School Tribunal had not been implemented despite dismissal of Writ Petition No.2873/1988. The Management was therefore called upon to comply with the order passed by the School Tribunal within a period of eight days failing which it was stated that the appellant would take further steps against the Management under Section 11(3) of the Act of 1977. Since no steps as contemplated were taken by the Management the appellant on 31/03/2005 filed an application under Section 11(3) of the Act of 1977 praying therein that appropriate directions be issued to the Management to enable enforcement of the order dated 29/11/1988 passed in the appeal preferred by the appellant and emoluments be paid to the appellant by directing the same to be deducted from the grants admissible to the School. Reply was filed to the aforesaid application on 25/04/2005 opposing the same. It was pointed out that the appellant had attained the age of superannuation and that in absence of any directions by the School Tribunal to pay any emoluments to the appellant till the date of superannuation, the application was liable to be rejected. The learned Presiding Officer considered the aforesaid application and by his order dated 24/04/2006 was pleased to direct the Management to pay back-wages to the appellant from 07/05/1988 till her superannuation. The Education Officer was directed to deduct the arrears of emoluments for the aforesaid period as per the Pay Scale applicable and pay the same to the appellant within period of ninety days from receipt of copy of the order.

3. The Management being aggrieved by the aforesaid order challenged the same in Writ Petition No.3470/2006 and learned Single Judge by his judgment dated 16/06/2011 was pleased to allow that writ petition by holding that the directions issued by the School Tribunal to the Education Officer to deduct the arrears of emoluments to which the appellant was held entitled were beyond jurisdiction. The order passed by the School Tribunal was thus set aside. The appellant being aggrieved by that judgment preferred Letters Patent Appeal No.20/2012. By the judgment dated 07/02/2012 the Division Bench observed that in view of directions that the appellant was to be reinstated forthwith on 29/11/1988, the claim for wages after that period could not be viewed as back-wages. This aspect not having been considered by the learned Single Judge, the judgment of the learned Single Judge in Writ Petition No.3470/2006 was set aside. The proceedings in writ petition were directed to be decided afresh. Accordingly after restoration of that writ petition the learned Single Judge decided the same on 11/06/2012. Considering the question as to whether the appellant was entitled to

back-wages from 07/05/1988 till the date of her notional reinstatement on 29/11/1988 it was observed that there was no direction to pay back-wages.

As regards entitlement to arrears of salary from 29/11/1988 till the appellant attained age of superannuation on 07/05/2002 it was held that the School Tribunal had no jurisdiction under any of the provisions of the Act of 1977 to grant relief of payment of arrears of salary. On that premise the learned Single Judge set aside the order passed by the School Tribunal and allowed the writ petition. It is this judgment of the learned Single Judge that is challenged in the present Letters Patent Appeal.

4. Shri R. Heda, learned counsel for the appellant submitted that the learned Presiding Officer had rightly held the appellant entitled to back-wages from 07/05/1988 till her age of superannuation. According to him though the judgment of the School Tribunal dated 29/11/1988 was challenged by the Management by preferring Writ Petition No.2873/1988 the said writ petition was dismissed for want of prosecution on 19/02/1997. As a result the order passed by the School Tribunal stood restored and as the appellant was directed to be reinstated from 07/05/1988 it was clear that she was entitled for back-wages from that date. As the Management did not reinstate her services despite dismissal of the writ petition, it was the responsibility of the Management to pay her emoluments as directed till she attained the age of superannuation. The Management having prevented the appellant from discharging duties, there was no reason not to direct the Management to pay her emoluments for the entire period. He further submitted that merely because there was no specific direction to pay back-wages in the judgment of the School Tribunal dated 29/11/1988 that would not dis-entitle the appellant from receiving back-wages as the order of termination dated 07/05/1988 had been set aside. In that regard he relied upon a decision in *Manorama Verma (Smt) vs. State of Bihar and ors.* 1994 Supp(3) SCC 671.

As regards the finding recorded by the learned Single Judge that the provisions of Section 11 did not empower the School Tribunal to grant relief of emoluments as was done by the School Tribunal the learned counsel placed reliance on the judgment of the Division Bench in *Mohammedi Fida Hussain vs. State of Maharashtra* 1986 (88) Bom. LR 557 to urge that the remedy provided by Section 11(3) of the Act of 1977 was independent in nature and it could be exercised even subsequent to passing of an order under Section 11(2) of the Act of 1977. He thus submitted that the School Tribunal rightly exercised jurisdiction while allowing the application preferred under Section 11(3) of the Act of 1977. He also placed reliance on the decisions in *Sudhakar vs. State of Maharashtra and ors.* (2000) 4 Bom. CR 113, *Badarunnisa Begam Sheikh Abbas vs. State of Maharashtra* (2004) 2 Mh.L.J. 407, *Mohammad Salam Anamul Haque vs. S. A. Azmi and ors.* (2001) 1 Mh.L.J. 249, *Vilas Shankarrao Deshmukh and ors. vs. S. A. Ghode and ors.* (2001) 1 Mh.L.J. 261, *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalay* (2013) 10 SCC 324 and *Union of India vs.*

Madhusudan Prasad (2004) 1 SCC 43 to substantiate his contentions. It was urged that the learned Single Judge therefore was not justified in setting aside that order. He thus submitted that the order passed by the School Tribunal was liable to be restored.

5. Per contra Shri S. S. Ghate, learned counsel for the Management supported the judgment of the learned Single Judge. He submitted that since the School Tribunal while ordering reinstatement of the appellant had not directed payment of any back-wages, it was not open for the School Tribunal in proceedings under Section 11 of the Act of 1977 to grant that relief. By not granting that relief while deciding the appeal it was deemed that the relief of grant of back-wages stood refused by the School Tribunal. In that context the learned counsel referred to the decisions in Bahunjan Vikas Education Society and anr. vs. Mrs Vidya Devi w/o Abhimanyu Raut and ors. 2006 (5) Mh.L.J. 124, Rajasthan State Road Transport vs. Shayam Biharilal Gupta 2005(7) SCC 406 and General Manager Haryana Roadways vs. Rudhan Singh 2005(5) SCC 591. The relief that was not granted by the School Tribunal while deciding the appeal under Section 9 of the Act of 1977 could not be subsequently granted in proceedings under Section 11 of the Act of 1977. He then submitted that the order directing reinstatement had been challenged by the Management in Writ Petition No.2378/1988 and this Court had stayed the order passed by the School Tribunal. The order of stay operated till 19/02/1997. Even thereafter the appellant did not take any steps to have her services restored. The application under Section 11(3) of the Act of 1977 was filed after almost three years from attaining the age of superannuation. Even on that count there was no basis to direct payment of back-wages from 07/05/1988 till the date of the appellant's superannuation. It was his contention that if the order passed in the appeal under Section 9 of the Act of 1977 was not being complied with, it was for the appellant to have invoked the remedy under Section 13 of the Act of 1977. The same was not done and resort was taken of the provisions of Section 11 of the Act of 1977. He therefore submitted that the learned Single Judge rightly found that there was no jurisdiction whatsoever with the School Tribunal for being exercised under Section 11(3) of the Act of 1977 for grant of relief to the appellant that too at a belated stage. He also placed reliance on the decisions in R. N. Dey vs. Bhagyabati Pramanik 2000(4) SCC 400, Shaikh Badarunnisa Begum vs. State of Maharashtra 2004 (2) Mh.L.J. 407, Dwarka Bahu Uddeshiya vs. Presiding Officer School Tribunal 2011 (1) Mh.L.J. 216, Mohammad Salam vs. S. A. Azmi 2001 (1) Mh.L.J. 249, M.P. State Electricity Board vs. Jarina Bee 2003 (6) SCC 141 and Chennai Metropolitan Water vs. T. T. Murali Babu 2014 (4) SCC 108 to substantiate his contentions. He thus submitted that there was no reason to interfere with the judgment of the learned Single Judge.

6. We have heard the learned counsel for the parties at length. We have thereafter given due consideration to their submissions as well as the relevant statutory provisions that are found applicable.

In our considered opinion, Section 11(3) of the Act of 1977 does not provide any independent remedy to a successful employee to approach the School Tribunal for seeking enforcement of the order passed by the School Tribunal in his favour. The said provision being merely recommendatory in nature, it is only in aid of the directions issued by the School Tribunal under Section 11(2) of the Act of 1977.

7. It is an undisputed position on record that the School Tribunal allowed the appeal preferred by the appellant under Section 9 of the Act of 1977 on 29/11/1988. After directing reinstatement of the appellant the Management was further directed to permit the appellant to resume her duties forthwith. This judgment of the School Tribunal was challenged by the Management in Writ Petition No.2872/1988 and as stated earlier on 22/12/1988 the order of reinstatement was stayed until further orders. This writ petition came to be dismissed for want of prosecution on 19/02/1997. In the application dated 31/03/2005 preferred by the appellant under Section 11(3) of the Act of 1977 it has been averred in paragraph 4 that the Management failed to comply with the order of the Tribunal dated 29/11/1988 despite the fact that the writ petition preferred by the Management had been dismissed long back. In paragraph 5 it has been pleaded that in these facts since the Management had failed to comply with the order of the Tribunal, the appellant was compelled to file the said application to enforce the order dated 29/11/1988. In reply it was stated by the Management that the appellant had attained the age of superannuation and that she had not made any attempt to enforce the order passed by the School Tribunal. On that count it was stated that the proceedings were barred by limitation and also liable to be dismissed.

8. In this context it would be necessary to refer to the provisions of Section 11 of the Act of 1977. Section 11(1) empowers the Tribunal to dismiss an appeal if it is found that the appeal does not pertain to any of the matters specified in Section 9 or it is not maintainable or there is no sufficient ground to interfere with the order of the Management. In the present facts said provision is not very relevant. Under Section 11(2) the nature of directions that can be issued by the Tribunal while setting aside the order of the Management either partially or wholly have been stipulated. These directions include the direction to reinstate the employee on the same post or on a lower post or grant any further relief as provided therein. In the present case the direction issued by the School Tribunal on 29/11/1988 indicates exercise of jurisdiction under Section 11(2) (a) of the Act of 1977 while directing reinstatement of the appellant. Sub-sections (3) and (4) of Section

11 being relevant for the present adjudication, the same are reproduced herein :

(3) It shall be lawful for the Tribunal to recommend to 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, 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.

(4) Any direction issued by the Tribunal under sub-section (2) shall be communicated to both parties in writing and shall be complied by the Management within the period specified in the direction, which shall not be less than thirty days from the date of its receipt by the Management.

Section 11 of the Act of 1977 thus recognises the power of the School Tribunal to give appropriate reliefs and directions while deciding an appeal under Section 9. The nature of the reliefs that could be granted by the Tribunal are stated in Section 11(2). Such reliefs include the relief of reinstatement and payment of emoluments till reinstatement. While granting such reliefs it is permissible for the Tribunal to recommend to the State Government that any dues directed by it to be paid to the employee or any emoluments to be paid to an employee till he is reinstated may be deducted from the grants due and payable or would become due and payable in future to the Management may be paid to the employee directly. Such recommendation if made would form part of the directions issued under Section 11(2) of the Act of 1977. Such recommendation would therefore be in aid of the directions issued by the School Tribunal under Section 11(2) of the Act of 1977. The directions thus issued would have to be communicated to the parties in writing and are required to be complied with by the Management as per provisions of Section 11(4) of the Act of 1977. The use of the expression "direct/direction" in Section 11(2) and (4) in contra-distinction with the use of the expression "recommend" in Section 11(3) is too obvious to be ignored. In this regard we draw support from the observations of the Honourable Supreme Court in *Manohar Manikrao Anchule vs. State of Maharashtra* and anr. AIR 2013 SC 681 wherein it has been held that a recommendation must be seen in contra-distinction to a direction or a mandate.

9. Since the learned counsel for the appellant has placed considerable reliance on the decision in *Mohammedi Fida Hussain* (supra) it would be necessary to refer to the facts of that case. The petitioner therein was employed as an Accounts Clerk. The Management on 03/02/1983 terminated his services and that order was challenged by filing an appeal under Section 9 of the Act of 1977. The School Tribunal on 03/03/1984 allowed the appeal and remanded the proceedings to the Management for holding a fair enquiry after complying with the prescribed procedure. The order passed by the School Tribunal though challenged by the Management attained finality. The petitioner sought to resume his duties and called upon the Management to pay him arrears of salary. Since that was not done, the petitioner filed an application under Section 11(3) of the Act of 1977 before the School Tribunal. The School Tribunal held that the Act of 1977 did not provide for any means for executing the order passed under Section 11(2) of the Act of 1977. It further held that the provisions of Section 11(3) of the Act of 1977 could be applied only while deciding the appeal under Section 9

and as no directions under Section 11(3) had been issued by the School Tribunal while deciding the appeal on 03/03/1984 there was no question of issuing directions at a later stage. Since the order of the School Tribunal did not direct the Management to reinstate the petitioner or pay him back-wages there was no question of asking the Management to do so or recommend to the State Government to he deduct the amount of arrears of salary.

10. This order passed under Section 11(3) of the Act of 1977 was challenged before the High Court. It was held by the Division Bench that though the School Tribunal did not direct reinstatement of the petitioner and pay him back-wages, by directing holding of an enquiry, it was by implication clear that the order of termination had been set aside and the petitioner remained in service of the Management. He was therefore entitled to all arrears of salary and other emoluments up to that date. Further, as it was found that no enquiry had been held till the time the writ petition was decided, the petitioner was entitled to receive from the Management arrears of salary and other emoluments till date. In the context of the provisions of Section 11(3) of the Act of 1977, the Division Bench observed as under :

" 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(3). 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 under Section 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.

In the circumstances of this case, the School Tribunal ought to have exercised its powers under Section 11(3) of the said Act upon the petitioner's application. "

11. This decision in Mohammedi Fida Hussain (supra) has been referred to and considered by another Division Bench in Sudhakar (supra). The facts of this decision indicate that the services of the employee therein were terminated and the order of termination dated 19/03/1987 was challenged by filing an appeal under Section 9 of the Act of 1977. The School Tribunal allowed the appeal and set aside the order of termination and directed reinstatement with back-wages. This order of the School Tribunal attained finality. The employee sought implementation of the order passed by the School Tribunal. He moved an application under Section 11(3) of the Act of 1977 before the School Tribunal and sought recommendation to be made to the State Government to deduct the amount of salary payable to him from the grant. That application however

remained pending and the employee filed writ petition seeking enforcement of the order passed by the School Tribunal. When that writ petition was pending the employee filed a miscellaneous application under Section 13 of the Act of 1977. The Management opposed that application on the ground that the writ petition preferred by the employee was pending before the High Court. The School Tribunal therefore on that count dismissed the application filed by the employee under Section 13. One of the questions considered was whether an alternate efficacious remedy for implementing the order of School Tribunal was available under Section 11(3) and Section 13 of the Act of 1977. The Division Bench referred to the decision in Mohammedi Fida Hussain (*supra*) and in the facts of the case before it observed that the stand taken by the Management that the writ petition was not maintainable on account of existence of alternate remedy did not hold ground. The writ petition was entertained on merits and while allowing the same it directed the Management to forthwith reinstate the employee and pay him back-wages from 17/03/1984 till his reinstatement. It was further directed that the amount of arrears be deducted from the grants payable to the Management and thereafter the same were directed to be paid to the employee.

12. Two decisions of learned Single Judges wherein provisions of Section 11(3) of the Act of 1977 have been considered are required to be referred to. In Mohammad Salam (*supra*) the question that was considered by the learned Single Judge was whether the High Court should initiate proceedings in exercise of contempt jurisdiction against the Management for not complying with the orders passed by the School Tribunal. After considering various provisions of the Act of 1977 it was held that an order passed by the School Tribunal was an executable order and that it was open for the successful employee to approach the School Tribunal that passed the order to get it executed in accordance with the provisions of the Code of Civil Procedure, 1908. In paragraph 8 the following observations in the context of Section 11(3) have been made :

"8. So far as Sub-section (3) of Section 11 of the Act is concerned, it merely empowers the Tribunal to make recommendation to the State Government. It is further to be seen here that the recommendation made by the Tribunal to the State Government under Sub-section (3) of Section 11 may be of no avail, in case the management is not receiving any grant-in-aid from the State Government.... "

It was further observed that though the legislature while enacting the Act of 1977 was aware that the remedy of approaching the civil Court for having the order passed by the School Tribunal executed under provisions of the Code provided a more effective remedy to the employee. Such intention was clear from the provisions of Sections 11(3) and 13 of the Act of 1977.

13. The other decision of learned Single Judge that considers the provisions of Section 11(3) has been rendered in Vilas Shankarrao Deshmukh and ors. (*supra*). In that case the School Tribunal had after setting aside the order of

termination directed reinstatement of the employee within a period of thirty days of the order and payment of salary from the date of termination till reinstatement within a period of sixty days of the order. It was further directed that if the Management failed to pay the back-wages within a period of sixty days that amount be deducted from the grant admissible to the School. The employee filed a contempt petition in view of non-compliance of the directions issued by the School Tribunal. The learned Single Judge noticed the provisions of Section 11 and especially Sub-section (3) thereof. It was observed that though the School Tribunal was empowered to make a recommendation to the State Government to comply with the directions issued under Section 11(2) of the Act of 1977 there was no outer limit fixed by the legislature for complying with the recommendations of the School Tribunal. The State Government was therefore called upon to indicate the reasonable time that would be required for acting upon the recommendations or directions of the School Tribunal. An affidavit was accordingly filed and after considering the same it was held in paragraph 11 as under :

"11. On the basis of the said stand it is possible to hold that when recommendation is made by the School Tribunal and if the same is brought to the notice of the State Government or its agency, it is the duty of the authority to forthwith respond to the said recommendation. In case, the school in question is not entitled for grants from the State Government, it would be imperative for the authority to immediately inform the employee concerned that the school is not amenable to any grants. Such intimation should be sent within one month from the receipt of the recommendation or from the date on which the recommendation is brought to the notice of the authority. On the other hand, if the school is amenable to grants from the State Government and in the event no grants are due and payable, even then the authority should immediately bring this fact to the notice of the employee concerned, preferably within a period of one month from the receipt of the recommendation or from the date on which the authority was apprised of the said recommendation. However, if any non-salary grants are available and which are due and payable to the school in question, it would be the duty of the authority to forthwith deduct the amount payable to the employee as per the order of the School Tribunal and make it over to the employee directly."

It was thereafter observed that by taking recourse to the procedure indicated by the State Government the provisions of Section 11(3) would become meaningful and effective in larger sense.

14. The decisions in Mohammad Salam and Vilas Shankarrao Deshmukh and ors. (supra) recognise the fact that under Section 11(3) of the Act of 1977 the School Tribunal is empowered merely to make a recommendation to the State Government to deduct the amount due to be paid to an employee from the grants that are due and payable or would become due and payable in future to the Management. It is matter of common knowledge that grants paid by the

State Government to a school are made admissible subject to complying with various prescribed requirements by the State Government. Every school in the State does not receive grant-in-aid from the State Government and there are schools which operate on non-grant basis. That, the provisions of Section 11(3) in the matter of making recommendation to the State Government would be effective only with regard to those schools that receive grant-in-aid and not with regard to those schools which do not receive grant-in-aid is obvious. This fact has been noticed in the aforesaid two decisions by observing that the recommendation made by the School Tribunal to the State Government under Section 11(3) would not be of any avail in case the Management is not receiving any grant-in-aid from the State Government. For this reason it has been directed in *Vilas Shankarrao Deshmukh and ors.* (supra) that if the school is not receiving any grant-in-aid, the concerned authority has to immediately inform the employee concerned that the School is not amenable to any grants. It is thus clear that recommendation made by the School Tribunal to deduct the amount of dues payable to an employee would not assist an employee of a school that does not receive grant or is not entitled to receive such grant. In any event, Section 11(3) does not empower the School Tribunal to issue any directions whatsoever to the Management and hence said provisions cannot be construed as providing any remedy to a successful employee to have an order passed in his favour enforced qua the Management. Being merely recommendatory in nature, Section 11(3) if construed as providing an independent remedy would be unenforceable being neither a direction nor a mandate.

15. Another aspect which is jurisdictional in nature is whether an Authority or Tribunal which has been granted the power to recommend a course of action can itself enforce its own recommendation in the absence of any power conferred in that regard ? To put it differently, can a recommendation inherently carry with it the power of enforceability ?

Under Section 11(3), recommendatory jurisdiction has been conferred on the School Tribunal and such recommendation has to be made to the State Government. There is no statutory provision indicating the role of the State Government after receiving the recommendation made by the School Tribunal under Section 11(3) of the Act of 1977. Instead, what is required to be complied with is the direction issued to the Management under Section 11(2) by the School Tribunal. The School Tribunal has not and it could not have been clothed with the power and authority to enforce its own recommendation for what is enforceable is only "any direction" issued by it under Section 11 to the Management. A relevant distinction as noticed by the Honourable Supreme Court in *Ram Krishna Dalmia vs. Justice S. R. Tendolkar and ors.* AIR 1958 SC 538 is the one between a decision which by itself has no force nor any penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. This again indicates that Section 11(3) merely prescribes a recommendatory course to be followed and it is not in the nature of an independent remedy for an employee to invoke. This position can

also be gathered from the stand of the State Government as taken and accepted by the Court in Vilas Shankarrao Deshmukh and ors. (supra).

16. The Division Bench in Mohammedi Fida Hussain (supra) has held that the remedy provided by Section 11(3) is an independent remedy and is not to be exercised only at the time when an order is made under Section 11(2) of the Act of 1977. In our view, such interpretation would result in providing such independent remedy only to those employees of schools receiving grant-in-aid. This independent remedy would not be available to employees of schools not receiving grant-in-aid. In this context reference to the provisions of Section 3(1) of the Act of 1977 is necessary. The said provisions reads as under :

" 3. Application of Act :

(1) The provisions of this Act shall apply to all private schools in the State of Maharashtra, whether receiving a grant-in-aid from the State Government or not.
"

In our view such interpretation of Section 11 (3) making available the aforesaid remedy only to schools receiving grant-in-aid would be contrary to the spirit behind enacting the provisions of Section 3(1) since the provisions of the entire Act have been made applicable to all private schools in the State irrespective of the fact whether they are receiving any grant-in-aid from the State Government or not. An interpretation that results in negating the effect of any provision of the Act or restricting its application has to be avoided and it is necessary to harmoniously construe all the provisions of the Act. Perhaps conscious of the fact that all private schools in the State would not be admissible to grant-in-aid, the legislature has therefore conferred merely recommendatory power on the School Tribunal to recommend to the State Government deduction of the dues directed to be paid to an employee to be so paid from the grants due and payable to the Management. On the contrary, the recommendation to be made by the Tribunal under Section 11(3) is while deciding an appeal under Section 9. In that process while setting aside the order of the Management, partially or wholly and issuing directions to the Management under Section 11(2) of the Act of 1977 the School Tribunal can direct dues to be deducted from the grants and the amount to be paid to the employee directly. In other words, the recommendations that can be made by the Tribunal to the State Government under Section 11(3) are merely in aid of the directions issued under Section 11(2) of the Act of 1977. Thus what has to be complied by the Management within the period specified are the directions issued under Section 11(2) which position is clear in the light of provisions of Section 11(4) of the Act of 1977. In our view therefore for aforesaid reasons we are unable to agree with the proposition that Section 11(3) provides for an independent remedy for seeking compliance of the directions issued by the School Tribunal as held in Mohammedi Fida Hussain (supra).

17. We may note that the learned Single Judge in Education Society, Yavatmal vs. Narayan Govindrao Deshpande and ors. 2005(4) Mh.L.J. 417 has held that

Section 11(3) of the Act of 1977 is an independent provision and said sub-section does not require that the School Tribunal must exercise power to make recommendation to State Government about deduction from the grant only while deciding the appeal and not thereafter. It was held that the School Tribunal could make a recommendation contemplated by Section 11(3) at any time. The argument that direction under Section 11(3) could be given only while deciding the appeal finally and not thereafter or that the School Tribunal lost its power to pass such order after deciding the appeal finally was turned down. In the said case the order of reversion was challenged by the Head Master and the School Tribunal had dismissed the appeal under Section 9 of the Act of 1977. The writ petition filed by the employee was allowed on 08/03/1990 and after setting aside the order of reversion, the employee was restored to the post of Head Master with continuity of service and all back-wages. Since this order was not complied with entirely a contempt petition was filed in this Court. However since there was a genuine dispute as regards the effect of the order passed by this Court it was held that it was not a case of deliberate non-compliance. Liberty was given to the employee to raise dispute before an appropriate forum. Thereafter the employee filed an application under Section 11(3) and 13 of the Act of 1977 claiming the balance amount of salary. The School Tribunal accordingly directed the Management to pay the arrears of salary and in default recommended to the State Government to deduct an equal amount from the grant due and payable to the Management and to pay the same to the employee.

Since we are of the view that the recommendation under Section 11(3) of the Act of 1977 can be made only while deciding an appeal under Section 9, we have our doubt as to whether such recommendation could be made under Section 11(3) at any point of time for the reasons indicated by us in the foregoing paragraphs.

18. Since we have expressed our respectful inability to agree with the view taken in *Mohammedi Fida Hussain* (supra) that the provisions of Section 11(3) of the Act of 1977 provide for an independent remedy for seeking compliance of the directions issued by the School Tribunal to the Management, a reference to a larger Bench to resolve the issue is necessitated. The question that could be considered by the larger Bench is as under :

" Do the provisions of Section 11(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 provide an independent remedy to a successful employee to approach the School Tribunal for seeking enforcement of the order passed by the School Tribunal in his favour or are the said provisions merely recommendatory in nature and in aid of directions issued by the School Tribunal under Section 11(2) while deciding an appeal under Section 9 ? "

The Registry to place the papers before the Honourable the Chief Justice to consider referring the aforesaid question to a larger Bench. Order accordingly.