

(2002) 04 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 1573 of 1999

Suryakant Sheshrao Panchal

APPELLANT

Vs

Vasantrao Naik Vimukta Jati, Bhatakya Jamati Aadarsh
Prasarak Mandal and Others

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 2(20), 2(21), 2(6A), 9

Citation : (2002) 5 BomCR 95 : (2002) 3 BOMLR 281 : (2002) 3 MhLj 659

Hon'ble Judges : C.K. Thakkar, C.J.;N.H. Patil, J;B.H. Marlapalle, J

Bench : Full Bench

Advocate : S.R. Barlinge, for the Appellant; R.R. Suryawanshi, for Respondent Nos. 1 and 2, E.P. Sawant, G.P. and U.K. Patil, A.G.P. for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—While hearing Writ Petition No. 526 of 2002, the learned Single Judge (Coram : A. B. Naik, J.) by referring to the earlier two decisions rendered by two different Division Benches of this Court observed that both the decisions were at variance with each other on the same point and therefore, on 7-2-2002 he passed an order of reference under Rule 7 of Chapter I of the Bombay High Court Appellate Side Rules, 1960, for placing the matter before His Lordship The Chief Justice for his considerations to refer the issues to a Bench of two Judges.

2. At the first instance, Writ Petition No. 526 of 2002 came to be placed before the Division Bench consisting of C.K. Thakker, C.J. and B.H. Marlapalle, J. By order dated 15-3-2002, the said Division Bench directed the matter to be placed before a Full Bench.

3. Writ Petition No. 1573 of 1999 was also placed along with Writ Petition No. 526 of 2002 before the Full Bench as admittedly the same issues in controversy

are also involved in the said writ petition.

4. Writ Petition No. 1573 of 1999 has been admitted on 21-9-1999 and it is ready for final hearing. We, therefore, proceed to decide the issues under reference in the said writ petition.

5. In Writ Petition No. 2919 of 1991 the Division Bench of this Court (Coram : H. W. Dhabe and N. P. Chapalgaonker, JJ) held that an "Ashram School" is not a "private school" within the meaning of Section 2(20) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (for short, "M.E.P.S. Act") and therefore, an employee of Ashram school cannot approach the School Tribunal by filing an appeal u/s 9 of the said Act.

6. In the case of Gokul Prkalp Pratishthan v. Smt. Mangat Ganpati Potdar and Ors., (Writ Petition No. 3583 of 1999, decided on 13-8-1999) the learned Single Judge of this Court (Coram : D.K. Deshmukh, J.) took the same view. This order dated 13-8-1999 came to be challenged in Letters Patent Appeal No. 293 of 1999 which came to be decided by another Division Bench (Coram : A. P. Shah and J. A. Patil, JJ.) on 10-2-2000. The Division Bench held that the Ashram School in the said case satisfied the definition of the term "private school" within the meaning of Section 2(20) of the M.E.P.S. Act.

7. In the case of Shri Cadge Maharaj Mission and Ors. v. Wasudeo Ramji Patil, (Writ Petition No. 869 of 2000), another learned Single Judge of this Court held that an Ashram School is not a "private school" within the meaning of Section 2(20) of the M.E.P.S. Act. The said view came to be confirmed in Letters Patent Appeal No. 111 of 2001.

8. The Government of Maharashtra through its Tribal Development Department came out with "Ashram School Code" in 2001 and provided for a remedy of an appeal u/s 9 of the M.E.P.S. Act before the School Tribunal against the order of punishment imposed against an employee of an Ashram School.

9. The issues for our considerations pursuant to the reference order made by the learned Single Judge are as follows :

"(a) Whether an "Ashram School" is a "private school" within the meaning of Section 2(20) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977?

(b) If answer to the aforesaid first issue is in the negative, whether an employee of an Ashram School has a remedy of an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 against an order of punishment passed by the Management in view of the Ashram School Code formulated by the State Government?"

10. The Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977, came into force with effect from 15th July, 1981. By exercising powers u/s 16 of the said Act, the State Government has framed the

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

11. Section 2 of the M.E.P.S. Act deals with the definition clauses. It would be advantageous to reproduce the definitions of certain terms in the Act which are relevant for our present purpose :

"2. In this Act, unless the context otherwise requires, --

(1) to (5)

(6) "Director" means the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art as the case may be, appointed as such by the State Government;

(6A) "Divisional Board" means the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965;

(7) "employee" means any member of the teaching and non-teaching staff of a recognised school;

(8) to (11)

(12) "Management" in relation to a school means, --

(a) in the case of a school administered by the State Government, the Department;

(b) in the case of school administered by local authority, that local authority; and

(c) in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such school;

(13)to(17)

(18) "Primary education" means education imparted in such subjects and upto such standards as may be determined by the State Government, from time to time, located either in a primary or a secondary school;

(19) "primary school" means a recognised school, or a part of such school, in which primary education is imparted;

(20) "private school" means a recognised school established or administered by a Management other than the Government or a local authority;

(21) "recognised" means recognised by the Director, the Divisional Board or the State Board or by any officer authorised by him or by any of such Boards;

(24) "School" means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including technical, vocational or art institution or part of any such school, college or institution which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level;

(25) "State Board" means, --

(a) The Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965;

(b) the Board of Technical Educations, Maharashtra State;

(c) the Maharashtra State Board of Vocational Examinations; or

(d) the Art Examinations Committee;

(26) "teacher" means a member of the teaching staff, and includes the Head of a school.

12. In the case of Taramati Bafna Blind Welfare and Research Institute, Aurangabad v. State of Maharashtra, (Writ Petition No. 29/9 of 1999) (supra) the petitioner was employed as a Peon in the blind school of the petitioner. The Division Bench referred to the definitions of the terms "private school" and "Director" and held that a private school must be recognised by the Director so as to fall within the ambit of Section 2(20) of the M.E.P.S. Act and that the term "Director" means "Director of Education or Director of Technical Education or Director of Vocational Education and Training or the Director of Art as the case may be appointed as such by the State Government". Section 2(20) states that a private school means a recognised school established or administered by a management other than the Government or the Local Authority, whereas, the term "recognised" means recognised by the Director or the Divisional Board or the State Board or by any officer authorised by him or by any such Boards. The subject "blind school" was not recognised by the Director or Divisional Board or the State Board as required u/s 2(20) of the Act. On the other hand, it was recognised by the Director of Social Welfare, which was not covered by the definition of expression "Director" u/s 2(6) of the M.E.P.S. Act. There was nothing brought on record in the aforesaid case that the "blind school" was recognised either by the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art, as appointed as such by the State Government or the Divisional Board or the State Board or any other officer authorised by such Director or by State Board. The term "employee" means "any member of teaching and non-teaching staff of a recognised school". Unless employed in a recognised school one does not come within the ambit of the term "employee" as defined in Section 2(7) of the M.E.P.S. Act and thus, any person employed in any school is not any employee under the said Act. The view taken by the Division Bench in Writ Petition No. 2919 of 1999, therefore, does not suffer from any error, inasmuch as, the terms "Director, Divisional Board or the State Board" are required to be interpreted on the basis of plain language used by the statute in the respective definitions and the term "Director" shall not include "Director of Social Welfare" or "the Director of Tribal Development". The definitions of the respective terms are restricted and they are not open or inclusive definitions.

13. It is well known that in the early fifties of the last century the State Government came out as a policy of encouraging Ashram Schools to be started by the private management as fully aided primary schools and they were mostly supposed to be residential schools. The permission to start such schools is given by the Deputy Director of Social Welfare or the Deputy Director of Tribal Development, as the case may be. Subsequently looking to the growing needs of education beyond primary level, the State Government revised its policy and allowed post-basic Ashram Schools to be started by the private managements as aided schools. A primary school is normally from 1st to VIIth standards. However, a primary school from 1st to IVth standards is called as Level-f and the primary school from Vth to VIIth standards is called as Level-TI. An Ashram school from 8th standard and onwards is called a post-basic Ashram school. If such a post-basic Ashram School has classes upto 10th standard, then obviously it needs recognition from the State Board as defined u/s 2(25) of the M.E.P.S. Act. On the other hand, primary Ashram schools are recognised only by the Director of Social Welfare or the Director of Tribal Development, as the case may be and there is no question of their being recognised within the meaning of Section 2(21) of the Act, though they are schools within the meaning of Section 2(24) of the M.E.P.S. Act.

14. In Letters Patent Appeal No. 293 of 1999 the appellant-management was running Ashram School (Secondary) and it had brought on record the fact that the Maharashtra State Secondary and Higher Secondary Board which is a Divisional Board within the meaning of Section 2(6A) of the Act had recognised the said Ashram school. Such an evidence was not placed before the learned Single Judge when Writ Petition No. 4561 of 1999 came to be decided on 13-8-1999. It is under these circumstances and in the facts as brought on record the Division Bench held that the appellant society was running a private school as defined in Section 2(20) of the Act. We are in respectful agreement with the view taken by the Division Bench in Letters Patent Appeal No. 293 of 1999 and the said ratio is applicable to all Secondary Ashram Schools or the Ashram Schools which have classes upto 10th standard or 12th Standard.

15. On considering the views taken in Writ Petition No. 2919 of 1999 (supra) and Letters Patent Appeal No. 293 of 1999 (supra), we have no doubt in our mind that they are not contrary to each other and the respective views lay down the correct position in law based on the facts of each case.

16. When it comes to an Ashram school which is only a primary school, it does not satisfy the definition of "private school" within the meaning of Section 2(20) of the Act. However, if an Ashram school is running classes from 1st to 10th standard obviously it would have recognition from the Divisional Board and thus, would fall within the ambit of the term "private school". On the other hand, Ashram school running classes from 1st to 7th standard or any intermediary level, would not require recognition from any of the authorities as specified in Section 2(21) of the M.E.P.S. Act and therefore, it would not be a "private

school"" within the meaning of the said Act. Resultantly, the employees working under the Ashram Schools which are only primary level cannot maintain an appeal u/s 9 of the M.E.P.S. Act. However, an employee working in an Ashram school which is a secondary and higher secondary Ashram school has a right to approach the School Tribunal by filing an appeal u/s 9 of the Act against an order of punishment/termination of service or for redressal of grievances enlisted in the said section as they come within the ambit of the term employee as defined u/s 2(7) of the said Act.

17. We now come to the Ashram Schools Code as formulated by the State Government in the year 2001. It is well established in law that the provisions of a statute cannot be amended by administrative orders, circulars or Codes. The provisions of Section 9 of the M.E.P.S. Act state that notwithstanding anything contained in any other law or contract for the time being in force any employee in a private school 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 who is superseded by the management while making an appointment to any post by promotion shall have a right of an appeal and may appeal against any such order or supersession to the Tribunal constituted u/s 8 of the said Act, When a statute has provided a remedy to an employee in a private school, such a remedy cannot be extended to an employee in any school and the meaning of the terms "employee" and "private school" cannot be altered or amended by formulating a Code.

18. We have already held above that a secondary or higher secondary Ashram School satisfies the definition of the term "private school" within the meaning of Section 2(20) of the M.E.P.S. Act and therefore, any employee of such a school has a remedy of an appeal u/s 9 of the said Act. However, when such a remedy is not available to an employee working in a basic Ashram school or an Ashram school upto primary level under the provisions of Section 9 of the M.E.P.S. Act, the State Government cannot provide for such a remedy by formulating a Code. The provisions of a statute cannot be amended or deemed to be amended by an administrative order or circular or a code and therefore, if the State Government was convinced that the employees working in basic Ashram schools or primary Ashram schools ought to be provided that remedy of an appeal u/s 9 of the M.E.P.S. Act it could do so only by amending the relevant provisions of the said Act so as to make it applicable to an employee in any school. This has not yet been done by the Legislature. What is required to be done by the Legislature cannot be done by the State Government by issuing administrative orders or circulars or by formulating a Code. In this regard we may usefully refer to a decision of the Supreme Court in Commissioner of Income Tax Vs. Sirpur Paper Mills, . We, therefore, hold that the remedy of an appeal provided under the Code is not available to the employees working in the basic/ primary Ashram schools.

19. In Letters Patent Appeal Nos. 111 and 112 of 2001, a Division Bench of this

Court has already noted that the employees working in the basic Ashram schools have been provided with a remedy of filing an appeal before the Deputy Director/ Commissioner of Tribal Development. When such a remedy is available there was no reason for the State Government to formulate" a Code which virtually amounts to amending the provisions of Sections 2 and 9 of the Act.

20. To conclude, we answer the reference as under:

(a) There is no controversy between the views enunciated by the respective Division Benches in Writ Petition No. 2919 of 1991 and Letters Patent Appeal No. 293 of 1999.

(b) Secondary or Higher Secondary Ashram Schools or Blind Schools are "private schools" within the meaning of Section 2(20) of the M.E.P.S. Act and any employee of such a school has a remedy of an appeal u/s 9 of the said Act.

(c) The Ashram School Code providing for remedy of an appeal to the employees working in the basic/primary Ashram Schools is contrary to the provisions of Section 9 of the Act and to that extent same is hereby held to be invalid. It is declared that an employee working in a primary Ashram school or any other school which does not fall within the ambit of the term "private school" cannot approach the School Tribunal u/s 9 of the M.E.P.S. Act.

21. The petitioner who was employed as an untrained teacher in an Ashram School and whose appointment was approved by the District Social Welfare Officer vide order dated 20-11-1995, was subsequently given fresh appointment orders. Those appointment orders were also approved by the same authority. He acquired D.Ed, qualification in 1998 and came to be employed as an Assistant Teacher in the primary/basic Ashram school by name Vidyadhan Ashram School at Ghatangri. The said school has not been recognised by any authority specified u/s 2(21) of the Act and it has been recognised by the Director of Social Welfare. It is not in dispute that he was removed from service by an order dated 16-3-1998 and he challenged the said order in Appeal No. 57 of 1998 before the School Tribunal. By the impugned Judgment and order dated 11-2-1999 the appeal was dismissed by the learned Presiding Officer on the ground that it was not maintainable u/s 9 of the M.E.P.S. Act. This view taken by the Tribunal is in keeping with the legal position which we have clarified on the reference decided by us. The petition, therefore, must fail.

22. The writ petition is accordingly dismissed. Rule is discharged with no order as to costs.