

**Shri. S. A. Pirjade,**

V/s.

**Sangmeshwar Education Society and others.**

**Order below Exh. 47**  
**(Date - 22.02.2024)**

The present application is preferred by respondents no. 1 to 4 to frame the Preliminary Issue about the maintainability of the appeal. The appellant has filed a say at Exh. 50 and raised strong objections towards the application.

2. According to the respondent's present appeal is preferred under section 9 of the M.E.P.S. Act in the capacity of teacher, during the pendency of the appeal the appellant enrolled himself before the Bar Council of Maharashtra and Goa as a practicing advocate on record. Accordingly, he has received Sanad from the Bar Council of Maharashtra and Goa. Thus, it is necessary to frame the Preliminary Issue of maintainability of the appeal under the M.E.P.S. Act. Per contra, as per the say of the appellant present appeal is filed against the order of termination. The appellant has enrolled himself as an advocate and filed an affidavit along with the enrollment form before the Bar Council about his termination. If the appeal is allowed the consequential relief whatever it may be within the jurisdiction of this Tribunal, so, there is no point in framing Preliminary Issues as regards. It is further contended by the appellant that without any pleading no Preliminary Issue can be framed.

3. Heard both Ld. Counsel at sufficient length. They have reproduced their arguments as per their written pleadings and submitted various case laws on record.

4. Ld. Counsel Mr. Patil appearing on behalf of respondents has argued that, the position of the appellant is changed from terminated teacher to practicing advocate, then how his appeal is maintainable. The question of a change in status goes to the root of the case and it is required to be decided as a Preliminary Issue. Per contra Ld. Counsel Mr. Gaikwad appearing on behalf of the appellant has submitted that though it is admitted that the appellant is an enrolled advocate before the Bar Council of Maharashtra and Goa, he is not practicing to gain income. Furthermore, there is no pleading at all to frame the Preliminary Issue in that regard. The question of back-wages when the change in status can be considered. At this juncture, it is not required to frame a Preliminary Issue.

5. After going through the pleading of both parties it transpired that the appeal is preferred in 2017, however, as per the contentions of respondents the Sanad was issued on 18.10.2023. Bar Council of Maharashtra and Goa had issued a letter about the enrollment of the appellant as a practicing advocate, in favour of respondent no. 1. The contentions of the application itself show that about the enrollment of the appellant, they came to know on or before 18.10.2023. In that context, I have gone through the appeal memo at Exh. 1 and the written statement filed by the respondent no. 2 and 3 below Exh. 17 and adoption pursis of respondent no. 1 and 4 at Exh. 18. It is pertinent to note that, since the filing of

the appeal and written statement there is no single amendment in the pleading of both the parties. It is settled law that whenever any Preliminary Issue or issue settled for final adjudication is framed it must be framed upon the pleading of the parties. Filing subsequent applications for specific relief cannot be treated as part and parcel of the main pleading.

6. In cae of ***Sadhana Janardhan jadhav Vs. Pratibha Patil Mahila Mahamandal and Ors, 2013(2) Mh.L.J. 484*** make clear that the Court should not decide an issue not arising out of pleadings of parties (AIR 1968 SC 534). Similarly, no issue can be framed on a point not pleaded (1999 (8) SCC 692).

7. In the light of the observation laid down in supra and settled principle of law without pleading either by the appellant or by the respondents, the question of the dispute arises subsequently cannot become a part and parcel of the main pleading, and relying on the subsequent dispute Preliminary Issue cannot be framed.

8. I do agree with the argument advanced by Ld. Adv. Mr Patil that the preliminary issue about the fact goes to the root of the case must be framed. In the absence of pleading as regards the change of the status of the appellant, the application filed by the respondent to frame the preliminary issue was found pre-matured, hence, the application stands disposed off.

Date :- 22.02.2024  
Place:- Kolhapur.

sd/-  
(V.N.Dhavle)  
Presiding Officer,  
School Tribunal, Kolhapur.