

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO.64 OF 2004

IN

WRIT PETITION NO.4711/2003

WITH

CIVIL APPLICATION NO.1885/2004

...

Shri Kalleshwar Dnyan Prasarak Bhagini Mandal, Togri,
Tq. Udgir Dist. Latur and Ors.

VERSUS

Sunil s/o Venkatrkao Patil and Ors.

...

Mr. BB Yenge, Advocate for appellants(absent)

Mr. GS Patil, Adv. For Respondent No.1;

Mr. DB Bhange, Adv. For Resp.No.2.

Respondent No.3 served.

**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE : 9th March,2015.

PER COURT :

1) The appellants have questioned order dated 20.11.2003 passed by learned Single Judge of this court in Writ Petition No.4711/2003. The aforesaid petition was filed by the present appellants, challenging the order dated 23.09.2003 passed by the School Tribunal, Aurangabad in Appeal No.77/2001,

whereby the order of termination dated 30th April, 2001 passed against Respondent No.1 herein was set aside by the School Tribunal and reinstatement was directed of Respondent No.1 with back wages and the consequential benefits.

2) In the present appeal, mainly two grounds are raised in challenge to the order passed by learned Single Judge as well as by the School Tribunal. It is the contention of the appellants that the appointment of Respondent No.1 was against the post reserved for a candidate falling in Nomadic Tribe (N.T.) category. As such, according to the appellants, the management was fully justified in carrying forward the said vacancy and the Respondent No.1 could not have claimed any right over the said post since he was not belonging to the N.T. category, but was in the category of Other Backward Classes (OBC).

. Secondly, the appellants have referred to the Government Resolution dated 5.12.1994 and have attempted to put forward the case that the management was scrupulously following the guidelines and the directions provided in the said Government

Resolution issued by the competent authority, i.e. State Government. According to the appellants, the learned Single Judge as well as the School Tribunal have completely overlooked the effect of said GR dated 5.12.1994. It is also the case of the appellants that the Judgment of the Apex Court in the case of Shakuntala Ganpatsa Shirbhate Vs. Industrial Weaving Co-operative Society and Ors.- reported in AIR 1994 SC 36, has been mis-interpreted by both the courts.

3) We have carefully perused the Judgment of the learned School Tribunal and the judgment delivered by the learned Single Judge of this Court, whereupon it is apparently revealed that the appellants have utterly failed in making out any case for interference in the concurrent findings recorded by the School Tribunal and the learned Single Judge.

4) Learned Single Judge has elaborately discussed the relevant provisions of M.E.P.S. Act and the Rules thereunder, having relevance with the controversy raised in the present appeal. We do not find any error in the interpretation made of Rule

9(a) by the learned Single Judge. We also do not find any infirmity in the finding recorded by the learned Single Judge that the provisions of the Act and the Rules will prevail over the executive directions issued by the Government, vide GR dated 5.12.1994. The learned Single Judge has rightly held that the action on the part of the appellants, in every time issuing temporary appointment orders in favour of the respondent, was wholly unjustified and illegal and on completion of two years after the very first appointment, the first respondent must have been deemed to have assumed confirmation. The appellants having disputed that in 1997-1998 when the Respondent No.1 came to be appointed, it was a clear vacancy. According to the appellants, the said vacant post was reserved for N.T. category candidate. Even if it is assumed that it was reserved for the N.T. category candidate, admittedly, according to the case of the appellants also, the candidate of N.T. Category had not become available and, therefore, Respondent No.1 was appointed on the said post. There is further no dispute that though the management continuously issued advertisements in the year 1998 and thereafter for next 2-3 years again, no N.T.

category candidate could become available and repeatedly, Respondent No.1 came to be appointed.

5) In the case of Shakuntala Shirbhate (cited supra) the Hon'ble Apex Court was required to deal with similar controversy and it was held by the Hon'ble Apex court in the aforesaid judgment that on non-availability of a candidate from N.T. category, candidate from another category, specified in Rule 9(7) of M.E.P.S. Rules, if appointed, was entitled for regular appointment by virtue of Rule 9(9)(a) of the said Rules.

6) Having regard to the law laid down by the Hon'ble Apex court in the aforesaid judgment, which has been relied upon by the School Tribunal, at the first instance, and thereafter by the learned Single Judge, the appointment of Respondent No.1 was liable to be regularised. His termination was, therefore, illegal and was rightly set aside by the School Tribunal and thereafter the said decision was confirmed by the learned Single Judge. It does not appear to us that any error has been committed either by the School Tribunal or by the learned Single

Judge. The Letters Patent Appeal is devoid of any substance and is liable to be dismissed and the same is accordingly dismissed. Pending Civil Application if any stands disposed of.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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