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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.9 OF 2007
IN
WRIT PETITION NO.4482 OF 2005**

Kundalik Nathaji Sale

... Appellant

Versus

The Secretary,
(Maratha Mandir Vidyavardhini) and Ors.

... Respondents

Mr. Suresh S. Pakale for the Appellant.
Mr. Manish Pabale, AGP for the Respondent - State.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 15th DECEMBER, 2016

ORAL JUDGMENT (Per A.S.Oka, J.)

1 On 17th November, 2016 submissions of the learned counsel appearing for the Appellant were fully heard. Judgment was not dictated in view of the request made by the learned counsel appearing for the Appellant for grant of time to enable him to take instructions. The matter was kept yesterday. On the prayer made by the learned counsel appearing for the Appellant, the matter is adjourned till today.

2 The Appellant has taken an exception to the order dated 9th November, 2006 passed by the learned Single Judge by which the Writ Petition filed by the Petitioner was dismissed.

3 With a view to appreciate the controversy involved in the Petition, a brief reference to the facts will be necessary. It is the case of the Appellant that on the basis of an advertisement published by second Respondent inviting applications for the post of Peon, he made an application. According to the case of the Appellant, on the basis of the said application, by the order dated 19th December, 1994, he was appointed as a Peon.

4 The further case of the Appellant is that in April, 1995 he was told to make a fresh application for grant of employment and accordingly on the basis of a fresh application, another order of appointment was issued on 21st June, 1995. By order dated 17th March, 1993, the first and second Respondents terminated his employment on the ground that the appointment of the Appellant was subject to the approval of the Education Department and that the Education Department has not granted approval. Being aggrieved by the order of dismissal, the present Appellant preferred an Appeal before the Presiding Officer of the School Tribunal at Kolhapur. By order dated 21st

April, 2005, the Appeal was dismissed. Being aggrieved by the order of the Tribunal that the Writ Petition was preferred by the Appellant before the learned Single Judge. By the impugned order, the said Writ Petition was rejected.

5 We may note here that in paragraph 2 of the impugned order, the learned Single Judge has noted the only contention raised by the Appellant before him. Relevant part of paragraph 2 reads thus :-

“2. By the impugned order, the School Tribunal has dismissed the appeal filed by the Petitioner against the order of the termination of his services. The contention of the petitioner is that the findings arrived at by the School Tribunal that the petitioner was wrongly appointed in the post meant for O.B.C. candidate and that the petitioner does not belong to O.B.C. category and, therefore, the appointment of the petitioner was not in a clear vacancy, are contrary to the materials on record.”

6 In paragraph 3, the learned Single Judge has noted that in spite of the repeated queries made to the Appellant to point out the material which would show that the said findings are contrary to the material on record and perverse, apart from drawing attention of the Court to the statements in the written statements filed by the management before the Tribunal, the counsel for the Appellant could

not point out any other material. After considering the said material in the form of statements in the written statements of the management, the learned Single Judge proceeded to reject the Petition.

7 The learned counsel appearing for the Appellant has taken us through the advertisement as well as orders of appointment issued to the present Appellant from time to time. He invited attention of the Court to the advertisement dated 8th October, 1994 and urged that the advertisement was specifically for the posts reserved for SC/ST candidates. He pointed out that it is only on the basis of representation contained in the said advertisement that the Appellant applied for the post. Inviting our attention to the letter of appointment dated 19th December, 1994 he urged that the said letter of appointment does not mention that the appointment of the Appellant was against the post which is to be utilised for the backlog of O.B.C candidates. He also invited our attention to the subsequent orders of appointment. Inviting our attention to the letter dated 28th September, 1998 addressed by the Deputy Director of Education to the Principal of the second Respondent, he submitted that approval was also granted by the Education Officer to the appointment of the Appellant made on 2nd January, 1995. He submitted that as approval has been granted to the appointment of the Appellant, the termination order will not stand. He would, therefore,

urge that now after completing 22 years of service, the Appellant cannot be thrown out of employment.

8 We have given careful consideration to the submissions. It is true that there was an advertisement published by the second Respondent on 8th October, 1994 for filling in one post of Peon reserved for SC/ST. The Appellant claims to belong to SC category. On the basis of the application made by the Appellant, he was called for interview by a letter dated 21st November, 1994. The order of appointment dated 19th December, 1994 clearly records that appointment was provisional subject to approval of the Education Department. Clause 2 of the order clearly records that appointment was purely temporary upto 30th April, 1995. A fresh order of appointment was issued on 21st June, 1995 which again records that it was subject to approval of the Education Department. It also records that the appointment will be temporary upto 30th April, 1996 in the deputation vacancy. Further letter of appointment dated 8th June, 1996 again makes it clear that appointment of the Appellant will be upto 30th April, 1996 in leave/deputation vacancy. It also records that the appointment will be provisional. The order of termination dated 22nd March, 1997 specifically records that the appointment of the Appellant was purely on temporary basis till 30th April, 1997 and as the Education Department

has not granted approval, the appointment has come to an end on 30th April, 1997. As stated earlier, the last temporary appointment of the Appellant was under the appointment order dated 8th June, 1996. Therefore, it is not possible for us to accept the submission of the learned counsel appearing for the Appellant that the appointment of the Appellant was made on the basis of advertisement dated 8th October, 1994 by which one post of Peon was advertised for SC/ST category. In fact, last two appointments of the Appellant were against leave/deputation vacancy and subject to the approval of the Education Department.

9 The learned counsel appearing for the Appellant relied upon the approval allegedly granted to the Appellant. We have carefully perused the said letter dated 28th September, 1998 issued by the Deputy Director. We may note here that by ad-interim order dated 9th June, 1997, the learned Presiding Officer of the School Tribunal permitted the Appellant to continue in the employment till further orders. Therefore, the letter of approval dated 28th September, 1998 clearly records that the same has been granted subject to order which may be passed by the Presiding Officer of the School Tribunal in the pending Appeal. As stated earlier, the Appeal was dismissed. In deference to ad-interim order passed by the School Tribunal subject to final order in Appeal that

the said communication was issued. Therefore, argument of the Appellant that there was an approval granted to his employment by the Education Department deserves to be rejected. Both the learned Presiding Officer of the Tribunal and the learned Single Judge have come to the conclusion that the appointment of the Appellant was against backlog of O.B.C. candidates.

10 There is no reason to disturb the said findings of the fact. In any event, once the Appellant fails to establish that his appointment was on the basis of advertisement dated 8th October, 1994, he is not entitled to claim that his appointment was permanent. Reliance is placed by the learned counsel appearing for the Appellant on the decision of the Apex Court in the case of *Shakuntala Ganpatsa Shirbhate Vs. Industrial Weaving Co-operative Society and others*¹. In the facts of the present case, the appointment of the Appellant was purely on temporary basis and hence, the said decision has no bearing on the facts of the said case.

11 It is pointed out that in view of the fact that during the pendency of the Appeal, the Writ Petition and this Letters Patent Appeal, there was an interim order protecting the employment of the Appellant, he has completed 22 years in service. Considering this

1. AIR (1994) SC 36

factual submission, notwithstanding the dismissal of the Appeal, it will be open for the Appellant to make a representation to the Appropriate Authority for regularising his employment. If such an application is made, the same shall be disposed of expeditiously considering the fact that the original appointment of the Appellant is of the year 1994.

12 Hence, we pass the following order :-

ORDER

- (i) Appeal is dismissed with no orders as to costs;
- (ii) On the prayer made by the learned counsel appearing for the Appellant, interim order which is operative till today is extended by a period of three months from today.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)