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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL No. 399 OF 2011
IN
WRIT PETITION No. 8626 OF 2010
WITH
CIVIL APPLICATION No. 521 OF 2011

Vidyarthi Vikas Mitra Mandal, ... Appellants /
through its President & Anr. Applicants

Vs.

Smt. Choudhary Deepmala Ramesh & Ors ... Respondents

Mr. S. V. Pitre, for the Appellants / Applicants.

Mr. V. K. Bodhare i/b A. M. Joshi, for Respondent No. 1.

CORAM : V. M. KANADE, &
Mrs. SWAPNA S. JOSHI, JJ.

DATE : OCTOBER 5, 2016

PC.

1. Heard the learned counsel appearing on behalf of the Appellant and the learned counsel appearing on behalf Respondent No. 1. The Appellants are aggrieved by an order dated 9th December, 2011 passed in the writ petition, and has filed the present letters patent appeal.

2. The brief facts which are relevant and germane for the purposing of deciding the appeal, are as under:

Respondent No. 1 was appointed as Shikshan Sevak in 2003 in a School run by the Appellant No. 1 (for short the “Management”). A proposal was sent for the first time in 2005. However, it was returned back on the ground that Shikshan Sevak could be appointed only for one academic year. Respondent No. 1 continued to work as Shikshan Sevak. In the meantime, there was a dispute between the members of the Managing Committee, and an Administrator was appointed. The Administrator sent a proposal on 8.5.2010 seeking approval of Respondent No. 1 for a period from 21.6.2003 to 30.4.2006 as Shikshan Sevak. The School Board, which was appointed under the notification issued by the State Government for regulating the services of the Shikshan Sevak, has accepted the proposal and granted the approval, and thereafter she continued to work as a regular teacher. The Government of Maharashtra had issued a notification in the year 2007 mentioning therein that after a period of three years, Shikshan Sevak was to be absorbed in service. The Management, however, terminated the services of the Petitioner on

21.5.2009 on the ground that she was a temporary teacher.

3. The Respondent challenged the said order by filing an appeal under Section 9(1) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977. The said appeal was allowed and the School Tribunal directed the Management to reinstate the Petitioner (Respondent No. 1 herein) with full back-wages.

4. The Management challenged said order by filing a writ petition. The learned Single Judge, after considering the submissions made by the counsel appearing on behalf of the Management, was pleased to dismiss the writ petition by a well reasoned order. Against the said order, present appeal has been filed.

5. It is well settled position in law that the scope and ambit of the jurisdiction of this Court under the letters patent is very limited. It is equally well settled that if two views are possible and the Single Judge has taken a plausible view, in letters patent appeal this Court is not expected to re-appreciate the evidence on record and substitute the view taken by the Single Judge by its own view.

6. Mr. Pitre, the learned counsel appearing for the Appellants submitted that the appointment of Respondent No. 1 was not made in accordance with law. He submitted that no advertisement was issued for the appointment of Shikshan Sevak after her initial appointment in the year 2003. Thirdly, he submitted that the approval which was obtained by the Administrator was a bogus and a fabricated approval. He relied on a letter dated 5.10.2009 written by the Education Officer to the Management. He submitted that by the said letter the Dy. Director of Education directed Respondent No. 2 to hold an inquiry and find out whether Shikshan Sevaks working in the said school were appointed after following the procedure laid down under the notifications issued by the Government. He submitted that no such inquiry was made. He, therefore, submitted that the approval, in fact, was not granted to her, and therefore, her appoint was irregular. He then submitted that the appointment of Respondent No. 1 was made on a temporary basis, and therefore, it was open for the Management to terminate her services.

7. It is not possible to accept the said submissions. In the first place, there is a concrete finding of fact recorded by the School

Tribunal, as well as by the learned Single Judge that appointment of Respondent No. 1 was in accordance with the procedure laid down at the relevant time. It was not established by the Management that the approval obtained by the Administrator was bogus or fraudulent. No material was produced before the Tribunal to substantiate the said claim. It is not now open for the Management to make the submissions on the basis of a general letter written by the Education Department dated 5.10.2009 and ask the Court to draw an inference that the approvals obtained during that period were not in accordance with law.

8. The learned counsel Mr. Pitre submitted that there has been a significant reduction in the strength of the students, and therefore, the Respondent No. 1 could have been declared as a surplus teacher. He further submitted that the Management does not have adequate funds and it would not be possible to pay the back-wages to Respondent No. 1. It is further submitted that Respondent No. 1 is working in some other school.

9. It is not possible to accept this submission because, as rightly observed by the learned Single Judge that, it was never

contended before the Tribunal that Respondent No. 1 had become a surplus teacher. In any event, the Management in such a case after obtaining approval from the Education Inspector, could have declared her as a surplus teacher, as per the rules laid down under Section 25, 25A and 26 of the MEPS Rules. The Management has not chosen to take recourse of that procedure. It is, therefore, not open for the Management to take that ground or plea in the appeal. It is, therefore, not possible to interfere with the order passed by the learned Single Judge or the order passed by the School Tribunal.

10. Upon an enquiry being made to the learned counsel appearing on behalf of Respondent No. 1 as to whether Respondent No. 1 is at the moment working as a teacher in any other school, the learned counsel for Respondent No. 1 has answered in the negative. We, therefore, direct that Respondent No. 1 should be reinstated and the back-wages should be paid to her. Moreover, when the matter was admitted by this Court in 2011, interim relief was granted in favour of the Management, and the Management has deposited Rs. 2,90,000/- in this Court. However, the Respondent No. 1 was not allowed to withdraw that amount. Now, Respondent No. 1 is permitted to

withdraw the said amount alongwith the interest accrued on it. It is open for the Management to take a decision, in accordance with law, if it is found that Respondent No. 1 has become a surplus teacher as a result of reduction in the strength of students. With these observations, letters patent appeal is dismissed. Interim order stands vacated.

11. In view of dismissal of the appeal, Civil Application No. 521 of 2011 filed therein does not survive and is accordingly disposed of.

Sd/-
[Mrs. SWAPNA S. JOSHI, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath