

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

**SECOND APPEAL NO. 214 OF 1992
WITH
CIVIL APPLICATION NO.397 OF 1993
WITH
CIVIL APPLICATION NO.1674 OF 1992**

Sharda Bhuvan Education Society,
Nanded, through its Secretary
Baburao Ganpatrao Phalak ..Appellant

V E R S U S

1. Govind Nagorao Deshmukh,
Age : years, Occu :
R/o :
2. Chief Executive Officer,
Zilla Parishad, Nanded ..Respondents

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Mr.P.P.Kothari, Advocate i/b. Mr.S.S.Bora,
Advocate for appellant
Mr.N.S.Tekale, Advocate i/b. Mr.P.V.Mandlik,
Senior Advocate for for respondent No.1

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**CORAM : SANGITRAO S. PATIL, J.
DATE : AUGUST 01, 2017**

ORAL JUDGMENT :

Heard the learned Counsel for the
parties.

2. The appellant has challenged the judgment and decree dated 03.04.1992 passed in R.C.A. No.7 of 1996 by the learned IV Asstt. District Judge, Nanded, whereby the judgment and decree dated 08.12.1985 passed in R.C.S. No.121 of 1981 by the learned Civil Judge, Junior Division, Nanded, came to be reversed and it has been declared that respondent no.1 is entitled to the post of Headmaster with effect from September, 1976, with the benefits attached to the post of Headmaster, but he was held entitled to get monetary benefits towards the difference in the salary for the period of three years preceding the date of filing of the suit.

3. This Second Appeal came to be admitted on the sole substantial question of law, which reads as under :-

" Whether the suit filed by respondent no.1 (original plaintiff) for declaration is within limitation?"

4. As seen from the facts of the case, respondent no.1 became eligible for being appointed to the post of the Headmaster in the month of September, 1976, after he completed Diploma in Education. He made an application to the appellant with a request to appoint him to the post of the Headmaster but that was ignored. Thereafter also, respondent no.1 moved the appellant for getting himself appointed as Headmaster. The last application is dated 26.07.1978 in the form of reminder to the appellant, wherein it was specifically mentioned that respondent no.1 had filed application for getting appointment to the post of Headmaster on 19.08.1977, but no reply has been received by the appellant in respect of that application. Respondent no.1, therefore, requested the appellant to consider that application and take decision thereon. Admittedly, no decision was taken by the appellant on that application and it

was not ever communicated to respondent no.1 that his claim for being appointed as Headmaster, was rejected on any count.

5. The learned Counsel for the appellant submits that the cause of action for the suit arose in April, 1974 when respondent no.1, for the first time, had applied to the appellant for being appointed as Headmaster. He submits that the respondent actually acquired the qualification for being appointed to that post in September, 1976. Therefore, even if the cause of action is considered to have arisen in September, 1976, the present suit filed on 06.03.1981, would not be within limitation as per Article 58 of the Limitation Act. He, therefore, submits that the suit was rightly dismissed by the trial Court holding that it was not within limitation, however, the first appellate wrongly reversed that finding as well as the decree passed by the trial Court holding that the suit is within limitation.

6. As against this, the learned Counsel for respondent no.1 pointed out to the letter Exh.65 dated 26.07.1978, wherein it was specifically mentioned that the previous application dated 19.08.1977 filed by respondent no.1 for getting himself appointed as Headmaster was not replied by the appellant. Therefore, a request was made by respondent no.1 to the appellant to take appropriate decision on that application, however, no decision had been taken by the appellant and therefore, the suit filed on 06.03.1981, would be within the limitation.

7. As stated above, the application dated 19.08.1977 filed by respondent no.1 for being appointed to the post of Headmaster was not ever replied by the appellant. As per the letter dated 26.07.1978, respondent no.1 requested the appellant to take decision on the application dated 19.08.1977. However, no decision was taken

by the appellant, therefore, even if it is held that the limitation started after 26.07.1978, giving cause of action for respondent no.1 to file the suit for declaration of his entitlement to the post of Headmaster, the suit filed on 06.03.1981, would be well within the limitation vide Article 58 of the Limitation Act. The first appellate Court has rightly considered the evidence on record and has rightly held that the suit is within the limitation.

8. So far as the monetary benefits are concerned, the first appellate Court has rightly held that respondent no.1 is entitled to get difference of salary for the period of three years preceding the date of filing of the suit. As such, though the status of respondent no.1 to hold the post of the Headmaster was declared with effect from September, 1976, the actual monetary benefits were given to him for the period of three years preceding the date of filing of the suit.

9. The first appellate Court has rightly reversed the findings of the trial Court and rightly decreed the suit. I do not find any illegality or perversity in the judgment of the first appellate Court.

10. The appeal is devoid of any substance. It is liable to be dismissed and accordingly, dismissed. No costs.

11. Civil Applications stand disposed of.

[SANGITRAO S. PATIL, J.]

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