

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 163 OF 2003
IN
WRIT PETITION NO. 2569 OF 1997

Bharat Ramnihor Yadav
R/at: Gokuldaswadi, Khopat,
Jagnarayan Yadav Chawl, Room
No. 72 (9), Pokhran Road No. 1,
Thane 400 601

.....Appellant

V/s.

1. Surya Education Society
Chhatrapati Shivaji Vidyalaya,
Carvalo Nagar, Pokhran Road,
Thane 400 606

2. Education Officer,
Municipal School Board, Thane
Municipal Corporation, Thane.

3. The State of Maharashtra

.....Respondents

WITH
LETTERS PATENT APPEAL NO. 164 OF 2003
IN
WRIT PETITION NO. 2606 OF 1997

Jagdambaprasad Rajadev Pandey
Agra Road, Khajaka Tabela No. 2,
Thane 400 601

.....Appellant

V/s.

1. Surya Education Society
Chhatrapati Shivaji Vidyalaya,
Carvalo Nagar, Pokhran Road,
Thane 400 606

2. Education Officer,
Municipal School Board, Thane
Municipal Corporation, Thane.

3. The State of Maharashtra

.....Respondents

Mr. M. S. Lagu a/w Ms. Gauri Velankar i/b Smt. Meenal Bhate advocate for the appellants

Ms. Gauri Godse advocate for the respondent nos. 1 & 2.

Mr. B. V. Samant AGP for the State.

**CORAM : SMT. VASANTI. A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 15, 2017.

JUDGMENT: (PER: SMT. VASANTI A. NAIK, J.)

Since the issues involved in the Letters Patent Appeals are identical and similar orders of the Tribunal and the learned Single Judge are appealed against, they are decided by this common judgment.

The appellants claim to have been appointed as primary teachers in the school run by the Surya Education Society. One of the appellants was

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appointed in the year 1988 and the other was appointed in the year 1991. The services of the appellants were terminated in April 1993. The appellants filed the appeals before the School Tribunal under section 9 of the Maharashtra Employees Private School (conditions services) Regulation Act. The appeals were dismissed by the School Tribunal, mainly because the appellants did not possess the training qualification for appointment to the post of teacher in the primary school. The judgments of the School Tribunal were challenged by the appellants in two separate petitions that were dismissed by the learned Single Judge by the orders dated 02/08/2002 & 31/07/2002. The orders of the learned Single Judge are appealed against in these Letters patent appeals.

Shri. Lagu, the learned counsel for the appellants submitted that the School Tribunal as well as the learned Single Judge have committed an error in rejecting the claim of the appellants. It is submitted that no doubt, the appellants were appointed as primary teachers though they did not possess the training qualification but as per the Government Resolution that was then in force, the appellants had sought the permission to acquire the training qualification and were pursuing the education for securing the B.Ed. degree. It is submitted that though the B.Ed degree was not secured at the time of the termination the same was produced before the Tribunal. It is submitted that the Tribunal committed an error in holding that the appellants were not entitled to reinstatement in service as primary teachers as they did not possess D.Ed qualification and possessed B.Ed qualification. It is submitted that at least 25% of the primary teachers could possess B.Ed qualification but this

aspect of the matter was not considered by the Tribunal and also by the learned Single Judge. It is submitted that if this Court is not inclined to grant reinstatement to the appellants after setting aside the impugned orders, the Court may consider directing the management to pay compensation to the appellants.

Ms. Godse, the learned counsel for the management supported the orders of the Tribunal as also the learned Single Judge. It is submitted that the appellants were not appointed in primary school but were appointed for the secondary school classes. It is submitted that the appellants' services were terminated, as they did not possess D.Ed qualification. It is submitted that the orders passed by the Tribunal and the learned Single Judge are in consonance with the well settled position of the law and the letter patent appeals are liable to be dismissed.

On hearing the learned counsel for the parties and on a perusal of the judgments of the Tribunal and the orders of the learned Single Judge, it appears that there is no scope for interference with the judgments of the Tribunal that are upheld by the learned Single Judge. At the relevant time, admittedly the appellants did not possess the training qualification. The appellants claim to have been appointed as primary teachers but instead of securing D.Ed qualification that is meant for primary teachers the appellants proceeded to secure B.Ed qualification. It was not the case of the appellants before the School Tribunal or before the learned Single Judge, as could be

noted from the judgments of the Tribunal and the learned Single Judge that the appellants ought to have been absorbed in 25% quota in the primary school since they possess B.Ed qualification. If the said point was argued by the appellants before the Tribunal or before the learned Single Judge and the same did not find place in the judgments of the Tribunal and the learned Single Judge respectively, it was necessary for the appellants to move the Tribunal or the learned Single Judge in appropriate proceedings, with a prayer to consider the said aspect by seeking a review of the judgment or orders. However, this was not done. There is a serious dispute about the appellants being appointed in the primary school. It is the case of the appellants that the respondents were ready to permit the appellants to work in the secondary school, which the appellants did not agree. The appellants are not in service for more than 25 years. It is not stated either in the memorandum of these appeals or before the learned Single Judge that the appellants were unemployed during the long period of 25 years. In any case, since we do not find any error in the judgments rendered by the Tribunal and the learned Single Judge in the circumstances of the case, there is no reason to consider granting reinstatement or compensation to the appellants. The judgments reported in **(2014) 15 Supreme Court Cases 313, 1995 (2) Mh. L. J. 824** and relied on by the learned counsel for the appellants cannot be made applicable to the facts of these cases as the facts in the present cases there is a dispute whether the appellants were appointed in primary or secondary school and the appellants had not based their claim for continuation in the primacy school in the 25% graduates quota, after securing B.Ed qualification.

In the result, the Letters Patent Appeals fail and are dismissed with no order as to costs.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]