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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6222 OF 2016

Mrs. Bhavika Anil Vartak

...Petitioner

vs

Tarapur Education Society Through its
Secretary And Others

...Respondents

.....

Mr. Mandar Limaye, for the Petitioner.

Mr. N.V. Bandivadekar, i/b. Sagar Ashok Mane, for Respondent Nos. 1 to 3.

Ms. K.R. Kulkarni, AGP, for Respondent No.4.

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CORAM : PRASANNA B. VARALE, J.

DATED: 26 SEPTEMBER, 2017

P.C. :

. The Petitioner is before this Court challenging the judgment and order passed by learned Presiding Officer, Additional School Tribunal, Navi Mumbai in Appeal No.19 of 2015.

2. Heard learned Counsel for the Petitioner. The Counsel for the Petitioner submitted that the Petitioner was appointed in the school, namely, Ramchandra Hiraji Save Secondary School being run by Respondent No.1 Society as Shikshan Sevak. Learned Counsel submitted that an advertisement was published in the newspaper calling the applications from the eligible candidates. In response to the advertisement, the Petitioner submitted his claim for the appointment

and was appointed on 15 June 2011. It was submitted by learned Counsel that in view of the resolution passed by the School Committee, the Petitioner was informed about his discontinuation in the service. Being aggrieved by the communication, which was an otherwise termination, the Petitioner filed the appeal. It was submitted that the Petitioner was possessing the requisite qualification at the time of her appointment to the post of Shikshan Sevak, namely, H.S.C. D.Ed. Learned Counsel for the Petitioner then submitted that the reason assigned in the communication for discontinuation of the services was certain irregularities in the appointment of the Petitioner. It was also submitted that Respondent No.1 Society forwarded an intimation to the Education Officer (Secondary), Zilla Parishad, Thane, about the irregularities in the appointment of the Petitioner and sought the opinion and guidance. Neither the opinion, nor any guidance was received, and before the Education Officer could take some decision, the resolution was passed by the School Committee against the Petitioner. Learned Counsel for the Petitioner submitted that the Tribunal framed the points for consideration, namely, whether the Appellant's services were terminated by impugned order dated 28 April 2014, or by oral order dated 16 June 2014 and whether the Appellant is entitled for any relief as claimed. The Tribunal recorded its negative finding on both the points framed for determination. Learned Counsel appearing for the Petitioner submitted that the communication issued to the Petitioner was discontinuation of the services, and it could not have been treated as an otherwise termination. Learned Counsel for the Petitioner submitted observations of the Tribunal were on erroneous assumption and presumption. As such, the findings recorded by the Tribunal is unsustainable. Learned

Counsel then submitted that to support the findings, the Presiding Officer, School Tribunal placed reliance on the judgment of the Apex Court. Learned Counsel submitted that the judgment of the Apex Court relied on by the learned Tribunal was clearly not applicable to the facts of the appeal. Learned Counsel for the Petitioner then submitted that the judgment, on which the learned Tribunal placed a heavy reliance, was not cited by any of the parties. It was vehemently submitted by learned Counsel for the Petitioner that the School Committee was not the authority to take a decision about the discontinuity of services of the Petitioner. Learned Counsel submitted that the learned Tribunal also failed to appreciate that the appointment of the Petitioner was by following due procedure, namely, by publishing an advertisement, by calling the applications from the eligible candidates, and the Petitioner was found a suitable candidate complying with all the requisite criteria was appointed. Learned Counsel for the Petitioner then submitted that even the appointment order issued to the Petitioner clearly states that the Petitioner was eligible for grant of permanency, in case the Petitioner completed three years service satisfactorily. Learned Counsel for the Petitioner, thus, submitted that the order passed by the learned Presiding Officer of the Tribunal dismissing the appeal is clearly unsustainable per contra. Learned Counsel for Respondent Nos. 1 to 3 supports the order impugned in the petition. Learned Counsel for the Respondents submitted that the appointment order issued in favour of the Petitioner itself referred to the fact that the appointment of the Petitioner was a periodical appointment and it was for only three years. Learned Counsel then submitted that clause 4 of the appointment order clearly states that the Petitioner was not entitled for status of a permanent employee, nor

he could have granted any benefits of a permanent employee. On hearing the rival submissions of the learned Counsel appearing for the rival parties, and material on record, I find considerable merit in the submission of the learned Counsel for the Petitioner. Learned Presiding Officer of the Tribunal, on the basis of the communication dated 28 April 2014 arrived at a finding that the said communication could not have been treated as the termination, oral or otherwise, and the communication was also not satisfying the test of Section 9 so as to entertain the appeal. As stated above, it is not in dispute that the Petitioner was appointed by following due procedure. The communication issued to the Petitioner though stated that the Petitioner is informed about discontinuation of service, the same is in fact an otherwise termination of the services of the Petitioner. There is also considerable merit in the submission of the learned Counsel for the Petitioner that though the communication refers to certain illegality in the appointment of the Petitioner and a resolution passed by the Committee, the School Committee was not empowered to take the decision of discontinuation of services of the Petitioner. The decision could have been taken by the management or the administrative board of the management by passing the necessary resolution. There is also merit in the statement of the learned Counsel for the Petitioner that the management on one hand though stated in the communication that an opinion is sought for from the Education Officer (Secondary), on the other hand, without waiting for an opinion from the Education Officer, the services of the Petitioner were discontinued. Thus, there is merit in the submission of the learned Counsel for the Petitioner that the communication informing the Petitioner's discontinuation show the

absence of a fair play. Learned Counsel then submitted that there is also merit in the submission of the learned Counsel that firstly, the School Tribunal placed heavy reliance on the judgment of the Apex Court, which was not referred in the Apex Court by any of the parties. Secondly, the judgment of the Apex Court was not applicable in the present case, i.e. in the appeal preferred by the Petitioner. The perusal of the judgment of the Apex Court in the matter of **Chhatrapati Shivaji Shikshan Prasarak Mandal and others vs. Dattatraya Rupa Pagar and others**¹ shows that the respondent in the said matter was appointed against leave vacancy for period of one year. The period expired in the year 2000. After one year again the respondent was appointed as Shikshan Sevak. The Apex Court in the matter of **Chhatrapati Shivaji Shikshan Prasarak Mandal and others vs. Dattatraya Rupa Pagar and others** clearly observed that it is neither the pleaded case of the respondent nor has any document produced before the Court, but show that respondent no.1 was appointed as a teacher after regular selection and he was appointed as a teacher after regular selection and he was appointed on probation. In the present case, the relevant material placed on record, namely, to show that the Petitioner was appointed by due procedure is placed on record, namely, the copy of the advertisement published in the newspaper, copy of the appointment of the Petitioner. Copy of the proposal forwarded to the Education Officer (Secondary) also states that there was an advertisement published in the newspaper. The Petitioner was called for an interview and the Petitioner was selected in the interview conducted on 14 May 2011 and accordingly was appointed. It was also stated that the Petitioner was completing the period of three

¹ Civil Appeal No.3563 of 2012 (Arising out of SLP(C) No.18327 of 2011)

years as Shikshan Sevak. Considering these aspects, I am of the opinion that learned Presiding Officer of the Tribunal failed to consider the material placed on record in its proper perspective. Learned Tribunal also failed to note the facts of the present matter and the facts of the judgment of the Apex Court in the case of **Chhatrapati Shivaji** (supra). In my opinion, the order passed by the learned Presiding Officer, Additional School Tribunal is unsustainable. Accordingly, the following order is passed:

: ORDER :

- (i) The order dated 5 February 2016 passed by the Presiding Officer, Additional School Tribunal, Navi Mumbai, is set aside and the matter is remanded back to the Tribunal to decide the appeal on merits;
- (ii) Needless to say that by giving full opportunity of hearing to the parties, the exercise of deciding the appeal be undertaken as expeditiously as possible and preferably before 31 December 2017.

3. While this Court declared the operative order, the parties were directed to appear before the learned Presiding Officer Additional School Tribunal, Navi Mumbai on 18 September 2017. The order is modified to the effect that the parties to appear before the learned Presiding Officer, Additional School Tribunal, Navi Mumbai on 3 October 2017 instead of 18 September 2017.

(PRASANNA B. VARALE, J.)