

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13782 OF 2016

President / Secretary, Maratha Samaj Seva Mandal
and another ... Petitioners
Vs.
State of Maharashtra through Secretary and others ... Respondents

Mr. Vishwasrao S. Deokar for Petitioners.
Mr. A. R. Metkari, AGP for Respondents No.1 to 3.
Mr. N. V. Bandiwadekar i/b. Mr. Mandar G. Bagkar for Respondent No.4.

CORAM : R. G. KETKAR, J.
DATE : JULY 04, 2017

P.C. :

Heard Mr. Deokar, learned Counsel for petitioners, Mr. Metkari, learned AGP for respondents No.1 to 3 and Mr. Bandiwadekar, learned Counsel for respondent No.4 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioners have challenged the order dated 21.03.2016 at exhibit-F (pages 34-35) passed by the Deputy Director of Education, Pune Division, Pune-1 and order dated 06.05.2016 at exhibit-G (pages 36-37) passed by the Education Officer (Secondary), Zilla Parishad, Solapur. Mr. Deokar invited my attention to paragraph 1 of the Petition wherein petitioners have also challenged the order dated 08.10.2015 passed by the Deputy Director of Education, Pune Division, Pune-1. He submitted that inadvertently, in the prayer clause, order dated 08.10.2015 remained to be challenged. He, therefore, seeks leave to amend the Petition. As the Petition is pending for admission as also in view of paragraph 1 of the Petition, leave to amend prayer clause so as to challenge order dated 08.10.2015 is granted. Amendment shall be carried out forthwith.

3. Mr. Deokar submitted that respondent No.4 had preferred Writ Petition No.1848 of 2012 in this Court challenging the order dated 04.05.2010 passed by the Deputy Director of Education refusing to entertain the appeal against order dated 11.06.2008 by which minor penalty of the permanent denial of promotion was imposed upon the fourth respondent. By order dated 04.03.2015, this Court directed the Deputy Director of Education to consider the fourth respondent's appeal on merits and in accordance with law and dispose of the same within a period of three months. In pursuance thereof, by order dated 08.10.2015, Deputy Director of Education disposed of the appeal. Deputy Director of Education held that parties agree that the penalty of permanent denial of promotion is not prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'Act') and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'Rules'). Deputy Director further directed the Management to grant all service benefits to the fourth respondent. He submitted that subsequently, by order dated 21.03.2016 at exhibit-F (pages 34-35), Deputy Director modified order dated 08.10.2015. By this modification, Deputy Director directed the petitioners to extend benefits of the post of Head Master to the fourth respondent. He submitted that once the order was pronounced / passed by the Director of Education, he became *Functus Officio* and consequently, could not have passed order dated 21.03.2016. Similarly, the order dated 06.05.2016 passed by the Education Officer (Secondary), Zilla Parishad, Solapur is based upon the order dated 21.03.2016 passed by the Deputy Director of Education.

4. Mr. Deokar invited my attention to the letter dated 10.02.2016 addressed by the petitioners to the fourth respondent, and in particular, paragraph 3 thereof to contend that as per clause 4 of the operative part

of the order dated 08.10.2015 passed by the Deputy Director of Education, all the benefits were given to the fourth respondent. He further submitted that respondent No.4 has retired as Assistant Teacher. In support of his submission that the quasi judicial authority has become Functus Officio and orders dated 21.03.2016 and 06.05.2016 could not have been passed, he relied upon the decision of the Apex Court in ***State Bank of India Vs. S. N. Goyal, (2008) 8 SCC 92***, and in particular paragraph 28 thereof. He, therefore, submitted that the impugned orders deserve to be set aside.

5. On the other hand, Mr. Bandiwadekar submitted that petitioners have imposed penalty of permanent stoppage of promotion, which is not prescribed either under the Act or the Rules. He invited my attention to paragraph 1 of the communication dated 10.02.2016 wherein petitioners have raised contention that the order passed by the Deputy Director does not show that appeal preferred by the fourth respondent was allowed. He submitted that it is in that context, Deputy Director of Education issued letter dated 21.03.2016 and Education Officer (Secondary) based on communication dated 21.03.2016 issued communication dated 06.05.2016. He, therefore submitted that the decision relied by Mr. Deokar is not applicable to the facts of the present case.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that in pursuance of the order passed by this Court on 04.03.2015 in Writ Petition No.1848 of 2012, Deputy Director of Education heard the parties and passed the order on 08.10.2015. A perusal of the operative part of that order shows that Deputy Director of Education observed that the parties agreed that the penalty of stoppage of permanent promotion is not prescribed under the Act or the Rules.

Deputy Director directed the petitioners to grant all services benefits to the fourth respondent. A perusal of the communication dated 10.02.2016 and in particular, paragraph 1 thereof shows that the petitioners were under the impression that Deputy Director of Education did not allow the appeal preferred by the fourth respondent.

7. In my opinion, the impression carried by the petitioners was totally unfounded. Even during the course of hearing, Mr. Deokar could not substantiate that the penalty of stoppage of permanent promotion is prescribed under the Act or the Rules. By the order dated 08.10.2015, Deputy Director of Education set aside the penalty imposed by the petitioners and directed them to extend all the service benefits. A communication dated 21.03.2016 was addressed by the Deputy Director, Education Officer (Secondary), who in turn also addressed a letter on 06.05.2016. A perusal of letter dated 21.03.2016 and in particular clause 2 thereof shows that the Deputy Director of Education directed the petitioners to extend the benefits as per the seniority to the fourth respondent for the post of Head Master. Mr. Deore did not dispute that the fourth respondent was the senior most Assistant Teacher.

8. In view thereof, no fault could be found in the impugned orders. The decision of the Apex Court in **State Bank of India** (*supra*) is not applicable to the facts of the present case. Hence, Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab