

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.97 OF 2008
IN
WRIT PETITION NO.6159 OF 1997**

Haribhau Nivrutti Nikam	)	
Adult, Occ: Service, residing at	)	
Ambavade Sammat Koregaon,	)	
Post Khed, Taluka Koregaon,	)	
District Satara	)	 Appellant.

V/s

1] The Chairman, Padmn.	)	
Vasantdada Patil High School and	)	
Junior College, Rahimatpur	)	
Taluka Koregaon, District Satara	)	
	)	
2] The Education Officer, Zilla	)	
Parishad, Satara	)	
	)	
3] The Deputy Director of Education,	)	
Kolhapur Region, Kolhapur	)	
	)	
4] Shri R.K. Nikam,	)	
C/o. Padmn. Vasantdada Patil	)	
High School and Junior College,	)	
Rahimatpur Taluka Koregaon,	)	
District Satara	)	
	)	
5] State of Maharashtra	)	
	)	
6] Shri Kiran Laxman Waghmare,	)	
Aged about 38 years, Occ. Service	)	
R/at post – Konharwadi, Tal. Khatav	)	
District Satara	)	 Respondents.

Mr. Uday P. Warunjikar for the Appellant.

Mr. N.V. Bandiwadekar for Respondent No.1.

Mr. S.L. Babar, AGP for Respondent Nos. 2 and 5.

Mr. Sagar Mane for Respondent No.6.

**CORAM: V. M. KANADE &
A.M. BADAR, JJ.**

DATE: 14th June, 2017

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1] Heard Mr. Warunjikar, the learned Counsel appearing on behalf of the Appellant and Mr. Bandiwadekar the learned Counsel appearing on behalf of Respondent No.1.

2] Appellant has filed this Letters Patent Appeal (“LPA”) challenging the Judgment and Order passed by the learned Single Judge, who had confirmed the Order passed by the School Tribunal.

3] Brief facts which are relevant for the purpose of deciding this LPA are as under:-

4] Respondent No.1 is an Educational Institution and it had issued an advertisement on 29/5/1994 inviting applications for appointment of teachers. In the said advertisement, it was clearly mentioned that the post of Assistant Teacher was a reserved category post. Respondent No.1, however, appointed the Appellant on 30/5/1994.

The letter of appointment which was in a standard format shows that there were several columns. In the first column, it was mentioned that the appointment was made on probation. The original letter of appointment indicates that column No.1 was tick marked by the Management, indicating that the appointment was made on probation. However, in column No.5 it was mentioned that the appointment was not made in Reservation(Open) Post.

5] Petitioner was granted approval by the Education Officer for a period of one year from 02/07/1993 for the academic year 1993-94. However, a note was made by the Education Officer which mentions the conditions to be fulfilled by the Management. Condition No.3 mentions that the backlog in respect of reserved category candidate should be filled-in and conditions of appointment should be strictly followed.

6] It is the case of the Appellant that he was working upto 17/06/1996. It is his case that thereafter he was not allowed to work and therefore his case fell under the category of “otherwise termination” as defined under the M.E.P.S. Act. He, therefore preferred an appeal before the School Tribunal. The School Tribunal, however, dismissed his appeal by giving a reasoned order.

7] Against the said order of the Tribunal, Appellant filed Writ Petition in this Court. The learned Single Judge, again, by passing a

detailed order, confirmed the order of the Tribunal and dismissed the Writ Petition. Appellant thereafter filed this LPA.

8] Without going into the question of maintainability of the LPA, we have heard the learned Counsel for the Appellant as also for Respondent No.1 at length.

9] Mr. Warunjikar, the learned Counsel for the Appellant submitted that the Appellant's appointment was made on probation and in view of sub-section (2) of Section 5 of the said Act, he was deemed to be confirmed and therefore his services could not have been terminated without holding an inquiry. He submitted that, both, the Tribunal as well as the learned Single Judge had not taken into consideration the said relevant provision while deciding the appeal and the Writ Petition. He has, in support of the said submission, practically taken us through the grounds of Memo of Appeal filed before the Tribunal as also through the averments made in the Writ Petition. He then invited our attention to the order passed by the Tribunal and contended that the Tribunal had completely overlooked this aspect. He then submitted that the letter of appointment clearly mentions that the Appellant was appointed on probation. He submitted that, in fact, the Appellant had worked on clock hour basis from 1991 to 1993 and therefore was appointed on probation for a period of two years. He submitted that the Tribunal had erred in giving the finding that the Appellant was working elsewhere after the interim order of

reinstatement was passed. He has then taken us through the entire judgment of the learned Single Judge and has challenged the finding recorded by the learned Single Judge in the impugned judgment and order.

10] On the other hand, Mr. Bandiwadekar, the learned Counsel appearing on behalf of Respondent No.1 submitted that the Appellant had suppressed material facts and had obtained an ad-interim order from the School Tribunal. However, the Appellant did not report to duty and he was already employed with P.V. Patil Junior College, Satara Road. He submitted that on this ground alone of suppression of material fact, his appeal was liable to be dismissed. He submitted that burden of establishing that the Appellant was appointed on clear and vacant post was on the Appellant and he had failed in establishing the said fact. He submitted that therefore Section 5(2) was not applicable to the facts of the present case. He submitted that mere continuation of service for a period of two years is not sufficient to establish that the teacher is appointed on clear and vacant post and is entitled to claim benefit under Section 5(2) of the M.E.P.S. Act.

11] Mr. Bandiwadekar, the learned Counsel for Respondent No.1 submitted that as per the order passed by this Court on 13/02/2009 while admitting the appeal, Respondent No.1 has paid the salary of the Appellant during the period indicated in the order.

12] We have heard both the sides at great length. In fact, in the last week, on 12/06/2017, we had dismissed the appeal by passing a reasoned order. However, since the Counsel for the Appellant was not present, he had mentioned the matter on the same day in the evening at 5 O'clock and we therefore restored the appeal.

13] It is a well settled principle that while exercising jurisdiction in Letters Patent, this Court is not expected to re-appreciate the material on record and set aside the finding recorded by both the Courts. The jurisdiction which can be exercised by this Court in LPA is very limited and if finding recorded by the lower Authorities or the learned Single Judge are perverse and contrary to the material on record then only this Court can interfere with such finding. Perusal of both the orders clearly reveal that Tribunal as well as the learned Single Judge have considered all the material in its proper perspective and have given cogent reasons for recording the finding that the Appellant was not appointed on permanent post and that he was appointed against the reserved category post. The Tribunal has elaborately considered the question as to whether the appointment of the Appellant was made against the reserved category post or in a clear vacancy and after examining the material on record has held that the appointment of the Appellant was against the reserved category post. The approval which was granted by the Education Officer was for five years and he had in his note directed the Management to fill-in the reserved quota.

14] The learned Single Judge has also recorded similar finding after examining the material on record. In view of this finding, the contention of the Appellant that he was appointed on probation was not accepted and, as such, the Appellant did not become entitle to get the benefit of Section 5(2) of the said Act. The Tribunal has also recorded that despite the interim order passed by the Tribunal, the Appellant did not report to duty. The Tribunal went to the extent of directing the P.V. Patil Junior College where the Appellant was working to produce the muster record and the muster record clearly indicated that the Appellant was working in the said College. The Tribunal therefore has noted this suppression of fact by the Appellant.

15] We are satisfied that both the Courts below have given cogent reasons while giving finding that the Appellant was not appointed in clear and permanent vacancy but on the other hand was appointed against the reserved category post. We are therefore not inclined to interfere with the order passed by the learned Single Judge who was pleased to confirm the order passed by the Tribunal. Letters Patent Appeal is therefore dismissed.

(A.M. BADAR, J.)

(V.M. KANADE, J.)