

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO. 25 OF 2003
IN
WRIT PETITION NO. 1026 OF 2001

Santosh S/o Shesherao Joshi
Age : 31 years, Occu.: Nil,
R/o. Panewadi, Tq. Ghansawangi,
District Jalna

.. Appellant
(Petitioner in W.P.
No. 1026/2001)

Versus

- 01) The State of Maharashtra
- 02) The Mahatma Phule Shikshan
Sanstha, Panewadi,
Tq. Ghansawangi, Dist. Jalna
Through its Secretary
- 03) Mahatma Phule Vidyalaya
Panewadi, Tq. Ghansawangi,
District - Jalna
Through its Head Master
- 04) The Education Officer (Secondary)
Zilla Parishad, Jalna,
Tq. and District Jalna
- 05) Janardhan S/o Sukhdeo Karangal
Age : 33 years, Occu.: Nil,
R/o. Panewadi, Tq. Ghansawangi,
District – Jalna

.. Respondents
(Orig. Respondents in
W.P. No.1026/2001)

...
Mr. S.S. Choudhari, Advocate h/f Mr. A.N. Irpatgire, Advocate
for appellant

Mr. U.R. Awate, Advocate h/f Talekar and Associates for
respondent no.5
Mr. S.N. Morampalle, AGP for respondent-State
Mr. D.J. Choudhari, Advocate for petitioner in WP/4511/2001
...

CORAM : SUNIL P. DESHMUKH &
K.K. SONAWANE, JJ.
DATE : 29-10-2018

JUDGMENT :

1. Heard learned counsel for appearing parties.
2. It transpires that in the appeal preferred by Mr. Janardhan S/o Sukhdeo Karangal, who is respondent no. 5 in present letters patent appeal against order of his termination dated 12-08-1997 effective from 23-09-1997, order came to be passed by school tribunal setting aside his termination with direction to reinstate him.
3. It appears to be the case of respondent no.5 that present appellant had been appointed after his termination. It appears to have been claimed that present appellant has been occupying the post which had until his termination, been occupied by present respondent no. 5. Since then, appellant has been working. The tribunal has set aside termination of respondent no. 5, directing his reinstatement.

According to appellant in natural course of events, such a reinstatement in all probability, is likely to be claimed, and would impinge on the post occupied by present appellant.

4. It further appears that writ petition bearing no. 1026 of 2001 in the aforesaid circumstances, had been preferred by present appellant.

5. While writ petition no. 1026 of 2001 came up for hearing, Hon'ble Single Judge, on 06-06-2001, had passed following order,

WRIT PETITION NO. 1026 OF 2001

Santosh S/o Shesherao Joshi	.. Petitioner
V/s.	
The State of Maharashtra	.. Respondents

Shri A.N. Irpatgire, Advocate for petitioner
Shri P.B. Gaikwad and S.P. Brahme, Advocate holding for
Shri S.R. Barlinge, Advocate for respondent no.5
Shri K.S. Patil, A.G.P. for Respondent/State

CORAM : R.M.S. KHANDEPARKAR, J.
DATE : 06-06-2001

- “ 1. None present for the petitioner.
2. Heard Learned Advocates present fro the concerned respondents.
3. Perused the records.
4. The appointment of the petitioner was in the post reserved for scheduled caste category.

Undisputedly, the petitioner does not belong to the said category. Besides, the impugned order does not disclose any directions prejudicial to the petitioner having been issued and, therefore, no interference is called for in the impugned order at the instance of the petitioner.

5. Hence, the petition is reject. ”

6. Respondent - management as well has preferred writ petition no. 4511 of 2001, challenging the decision of school tribunal on merits.

7. It appears to be the contention of management that respondent no. 5 had been initially appointed on 05-10-1995 for a period upto 30-04-1996 on the post reserved for scheduled caste category. Respondent no. 5 had educational qualifications M.A. B.P.Ed. He had been appointed after obtaining an undertaking from him to the effect that he would not seek any benefit of such appointment.

8. After expiry of period of appointment of respondent no.5, one Mr. Patole had been appointed by management on 13-06-1996 who belonged to scheduled caste category holding proper educational qualifications. His

services were approved by Education Officer for the academic year 1996-1997. Mr. Patole had left the job after academic year 1996-1997 and had not rejoined duty. In the circumstances, on 14-06-1998, Mr. Mhaske belonging to scheduled caste category has been appointed holding educational qualifications H.Sc. D.Ed. His appointment for academic year had been approved by Education Officer. His appointment had been permanent.

9. Respondent no. 5 had thereafter been appointed in open category on B.Ed. scale as Assistant Teacher on 01-05-1996. His services were approved only for academic year 1996-1997. His services were refused to be approved further by Education Officer for want of availability of accommodation for a candidate of his educational qualifications since other persons had been occupying the posts for said qualifications and accordingly, he had been issued a notice on 12-08-1997 terminating his service with effect from 23-09-1997, which had been subject matter of challenge before the School Tribunal, as referred to above. It is being submitted that respondent no.5 had not been

continued in post reserved for scheduled caste category, beyond the period of his first appointment.

10. *Albeit*, Mr. U. R. Awate, learned counsel for respondent no. 5 submits that appointment of respondent no. 5 is prior to appointment of one Mr. Kale also having B.P.Ed. educational qualification and since respondent no. 5's appointment being in prior in point of time, the argument that there would not be accommodation for B.P.Ed. candidate, is fallacious. Mr. Awate, additionally submits that writ petition no. 4511 of 2001 has been moved by the management by suppressing dismissal of writ petition no. 1026 of 2001.

11. It appears that, in the meanwhile, present appellant had also been appointed in open category. His services were approved permanently and present appellant had been made a party to appeal by respondent no. 5 before school tribunal.

12. Having regard to aforesaid aspects, it emerges that Hon'ble Single Judge had not been apprised on facts and circumstances in the absence of appearance on behalf of

appellant in writ petition no. 1026 of 2001, and unwary of situation, Hon'ble Single Judge passed the order dated 06-06-2001 in the writ petition.

13. In the circumstances, it appears that the petition filed by present appellant would be better dealt with along with writ petition filed by the management. It would be pertinent to refer to that there has been interim relief operating hitherto in the letters patent appeal, protecting appellant's services.

14. Since order passed in writ petition does not reflect upon the various considerations, it appears to be expedient to restore writ petition no. 1026 of 2001, for hearing along with writ petition no. 4511 of 2001. The order in review as well, appears to be a non-speaking order.

15. In the circumstances, Letters Patent Appeal is allowed. Impugned orders dated 06-06-2001 and 14-01-2002 are set aside. Writ petition no. 1026 of 2001 is restored to its position, as had been subsisting before 06-06-2001. Interim relief as operating hitherto to continue to operate during pendency of the writ petition.

16. Writ petitions no. 1026 of 2001 and 4511 of 2001 accordingly be heard together and placed for hearing, as expeditiously as possible.

17. Needless to refer to that observations appearing in the order, shall not be deemed to be observations on merits of the case. Those have efficacy only to the extent of decision in Letters Patent Appeal and shall not be deemed influence or affect claims on merits.

18. It is made clear that all the points are kept open on merits for the parties.

19. At this stage, Mr. Awate submits that amount which has been deposited pursuant to the order passed by this court, be allowed to be withdrawn.

20. It is for respondent no. 5, to decide how to go about the same.

[K.K. SONAWANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/