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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO.58 OF 2010 IN
WRIT PETITION NO.771 OF 1991

1. Maharashtra Shikshan Prasarak
Mandal, Lakh, Tq. Aundha Nagnath,
District Hingoli, through its Secretary
Vasantrao Dattaraya Deshmukh
Aged 60 years, Occu. Agril.
2. The Head Master
Madhumati Vidyalaya, Lakh,
Tq. Aundha Nagnath,
District Hingoli ... APPELLANTS

VERSUS

1. Laxman s/o Maroti Turukmane
Age major, Occu. Nil,
R/o Kahakar (Bk.),
Post Kendra, Tq. Aundha,
District Hingoli
2. The State of Maharashtra
through its Secretary,
Education Department,
Mantralaya, Mumbai - 32
3. The Education Officer (Secondary),
Zilla Parishad, Parbhani
4. Shri A.K. Gadhe,
Aged major, Occu. Service as
Assistant Teacher, Madhumati
Vidyalaya, Lakh, Tq. Aundha
Nagnath, District Hingoli ... RESPONDENTS

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Shri Prashant Deshmukh, Advocate holding for
Shri P.K. Joshi, Advocate for appellants

Shri C.V. Dharurkar, Advocate for respondent No.1.

Shri M.B. Bharaswadkar, Advocate for respondent No.4

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CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED : 24th April, 2018.

JUDGMENT (PER SUNIL K. KOTWAL, J.):

1. By this Letters Patent Appeal, the original respondents No.2 and 4 have challenged the order dated 12.1.2010, passed by learned Single Judge of this Court, allowing the Writ Petition No.771/1991 and directing the respondents No.2 to 4 to reinstate the then petitioner in service as Assistant Teacher without granting the claim of back wages which was given up by the then petitioner. The respondent No.1 is original petitioner and respondents No.2 to 4 are original respondents No.1, 3 and 5 respectively. Undisputedly, the original petitioner being member of Scheduled Caste, having qualification B.A. B.P.Ed., was appointed on 20.6.1986 against clear and permanent vacancy as Assistant Teacher. His services were approved by Education Officer by his order dated 6.8.1986 as Physical Teacher against clear vacancy till academic year 1985-1986. After completion of every academic year, the original

petitioner was appointed by respondent No.2 up to 1987-88. The services of original petitioner were terminated w.e.f. 30.4.1988. Against that order, the petitioner filed appeal before School Tribunal, Aurangabad and by order dated 17.12.1990, Appeal No.75/1988 filed by the original petitioner was dismissed. Against that order, Writ Petition No.771/1999 was filed by him, which was allowed and direction of reinstatement was issued against the then respondents No.2 to 4. Therefore this appeal arises.

2. Learned counsel for the appellant challenged the legality of the order passed by learned School Tribunal on the ground that the petitioner was not duly qualified for the post of Assistant Teacher as she does not hold B.Ed. qualification. His next objection is that, no due procedure under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 was followed by the appellants at the time of appointment of petitioner. Contention of learned counsel for appellants is that, the termination of the respondent No.1 was legal for the reason that, his appointment was not approved by the Education Officer.

3. In reply, learned counsel for respondent No.1 pointed

out that, by order dated 6.3.1986, the appointment of the petitioner was approved by Education Officer and that approval was against clear vacancy. He also pointed out that, in the approval order, the designation of the respondent No.1 is not mentioned as Physical Teacher having qualification B.A. B.Ed. Thus, in view of this approval order, there remains no force in the objection raised by learned counsel for the appellants that, the appointment of the petitioner was not approved by Education Officer or the respondent No.1 did not acquire necessary qualification. Otherwise also, while allowing the Writ Petition, the learned Single Judge has assigned cogent reasons holding that the B.P.Ed. of Marathwada University are trained graduates on par with other candidates for the purpose of promotion etc. We do not find any illegality in the said finding of learned Single Judge.

4. So far as not following due procedure prescribed under M.E.P.S. Act at the time of appointment of respondent No.1 as Assistant Teacher is concerned, in **Hindi Vidya Bhavan, Mumbai & ors. Vs. Presiding Officer, School Tribunal, Mumbai & ors.**, reported in **[2007 (6) Mh.L.J. 563]**, learned Single Judge of this Court held that, every employee who holds required qualification, appointed in a school on permanent

vacancy, the management conducting private school cannot be permitted to defeat the provisions of the Act by stating that due procedure was not followed. Management cannot take advantage of its own wrong to contend that no procedure was followed in appointing said staff. In such case, only the school is not entitled for grant for the payment of wages of such appointed teacher. However, management cannot avoid its responsibility to pay the wages to such appointed teacher who worked for the management in the school as Assistant Teacher.

5. In the circumstances, we do not find any substance in the objection raised by learned counsel for the appellant. The respondent No.1 has already retired on 3.1.2014 and despite the decision of learned Single Judge of this Court on 12.1.2010, no salary has been paid by the appellants to the respondent No.1. The respondent No.1 has filed affidavit before this Court that since the order of reinstatement, passed by learned Single Judge of this Court on 12.1.2010, he was not reinstated and he has not engaged in any alternate employment. In the circumstances, the respondent No.1 is entitled to wages of the trained teacher's scale from 12.1.2010 to 3.1.2014 i.e. the date of retirement of respondent No.1. In the result, our conclusion is that, this Letters Patent Appeal being devoid of merit, deserves to be

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dismissed subject to following directions to the appellants.

Hence, we pass the following order :

ORDER

- (1) The Letters Patent Appeal is dismissed.
- (2) The appellant management shall pay wages of trained teacher's scale to the respondent No.1 teacher from 12.1.2010 to 3.1.2014 i.e. the date of retirement of the respondent No.1.
- (3) Fees of Mr. C.V. Dharurkar, learned counsel, who has argued the matter for respondent No.1, is quantified at Rs.5000/- (Rupees five thousand).

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/