

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO. 95 OF 2004
IN
WRIT PETITION NO. 1712 OF 2003

Khatib Adnan Gohar s/o.
Mohammad Sujauddin,
Age 31 years, Occu. Nil,
R/o. C/o. Isa Chaush Gadi Galli,
Ahmedpur, Tq. Ahmadpur,
Dist. Latur.

....Appellant.

Versus

1. Dr. Zaker Hussain Urdu Education Society, through its Secretary, Lashkari Azmat Ali Ahmed Ali, Age 51 years, R/o. Gadi Galli, Ahmedpur, Dist. Latur.
2. The Head Master, Dr. Zaker Husai Urdu Primary School, Ahmedpur, Dist. Latur.
3. Education Officer (Primary) Zilla Parishad, Latur.

....Respondents.

Mr. R.J. Godbole, Advocate for appellant.

Mr. M.S. Chaudhari, Advocate for respondent Nos. 1 and 2.

Mr. V.D. Hon, Senior Counsel for respondent No. 3.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : JANUARY 23, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) The appeal is filed to challenge the decision given by the learned Single Judge of this Court in Writ Petition No. 1712/2003 and also the judgment and order of School Tribunal dated 18.2.2003. Both

the sides are heard.

2) It is the case of appellant that he was appointed on probation against permanent vacancy in respondent No. 2 school, Primary School run by respondent No. 1. He was B.A., D.Ed. at the relevant time. According to him, though the appointment order was not issued in his favour, his appointment was approved as Assistant Teacher by respondent No. 3 for the year 1996-1997. It is contended that for the year 1997-1998 the matter was again sent for approval, but approval was not given. It is contended that in the year 1999 proposal was submitted by respondent Management for getting approval in respect of untrained teachers and he had also made representation to the Education Officer as approval was not granted in respect of his appointment for the year 1997-1998 and in subsequent year. It is contended that in the month of June 1999, he was prevented by the Management from entering the premises of the school and there was termination and so, he filed Appeal No. 129/1999 in School Tribunal. It is contended that the Management took the stand that the appellant was appointed for the years 1997-1998 and 1998-1999 as additional teacher and the appointment was not against sanctioned post and on that ground, the School Tribunal dismissed his appeal. It is his contention that on the same ground, the learned Single Judge of this Court has dismissed his writ petition.

3) It is the grievance of the appellant that the authority has protected the services of untrained teachers though they were appointed prior to appointment of appellant. It is his contention that as he was trained teacher, his service ought to have been protected.

4) This Court has carefully gone through the relevant record for ascertaining as to whether the procedure which is required to be followed for his appointment was followed. As per the record, he was appointed as additional teacher on fixed monthly pay of Rs.1600/- without following proper procedure for selection of teachers. Further, there was no such post sanctioned on the establishment of respondent school. The provision of section 5 of M.E.P.S. Act is considered by the Tribunal and also by the learned Single Judge of this Court. It is admitted by the appellant that letter of appointment was not issued in his favour and there are aforesaid circumstances. Thus, his appointment was not made as per the procedure laid down in the aforesaid Act and also as per the Rules. Some record was produced to the effect that his appointment was made in pay scale of Rs.1400-2600 on 24.6.1996, but it was shown as temporary appointment and it was made without following proper procedure. Though it can be said that the Management is at fault, but the probability is also there that to help the appellant, the Management had given him appointment, though

there was no clear vacancy, no post was available.

5) The contention of the appellant that he ought to have been preferred to untrained teachers cannot be accepted as untrained teachers were already in service prior to his appointment. Further, there was the scheme of the Government to allow the untrained teachers to complete D.Ed. course within prescribed time. If that time limit is considered, it can be said that there was no post available to the appellant. The learned counsel for the appellant placed reliance on the observations made by this Court in following two reported cases.

(i) 2010 (3) Bom.C.R. 604 [Sanjay Lalbahadur Divedi Vs. Shrikrishna Vyayam Shala, through its Secretary & Ors.], and

(ii) 1995 (1) Bom.C.R. 34 [Ms. Bilquis Wahab Quraishi Vs. Chikitsak Samuha S.S. & L.S. Patkar College and Ors.].

The observations made in the cases cited supra are of no use to the appellant as his appointment was not made by following the procedure laid down in the aforesaid Act. This Court holds that it is not possible to interfere in the decisions of the School Tribunal and the learned Single Judge. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/