

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

901 LETTERS PATENT APPEAL NO.79 OF 2009
WITH CA/4793/2009 IN LPA/79/2009

1. Nagaon Education Society's **...APPELLANTS**
Nagaon,
Tq. And District Dhule
Through it's Chairman
Shri. D. V. Patil,
Age-Major, Occ-Agriculture,
R/o. Nagaon, Dhule,
Dist. Dhule
2. Gangamai College of Engineering
Nagaon, Dhule,
Dist. Dhule
Through its Principal

VERSUS

1. The North Maharashtra University, **...RESPONDENTS**
Jalgaon, through its Registrar
2. Yuvraj Ramrao Pathak,
Age-39 years, Occu-Service,
R/o. Nandane, Tq. Dhule,
Dist. Dhule
3. Nirmal Madhavrao Patil,
Age-43 years, Occu-Service,
R/o. 60, Satsang Colony,
Deopur, Dhule,
Dist. Dhule
4. Chandrakant Shripat Patil,
Age-41 years, Occu-Service,

R/o. Annasaheb P.K. Patil,
Colony, Plot No.54,
Shahada, Dist. Nandurbar

Mr. A.V.Hon, Advocate h/f Mr.V.D.Hon, Advocate for the appellant
Mr.Y.B.Bolkar, Advocate h/f Mr.A.B.Girase, Advocate for respondent
No.1
Mr.M.K. Deshpande, Advocate for respondent Nos. 2 to 4

**CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.**

DATE : 01-08-2019

JUDGMENT: [PER: SUNIL P. DESHMUKH, J.]

. This Letters Patent Appeal purports to take exception to order of learned single judge dated 20-04-2009 in writ petition No. 4891 of 2007.

2. Learned counsel Mr. Ashvin Hon contends that respondents No. 2 to 4 herein have all along been contractual employees from 1999 to cessation of their employment in 2001. While joining service they had entered into contract with the petitioner and accepted consolidated salary as a specific term of employment. In the circumstances, parity sought in respect of pay scale with that of permanent employees, particularly when their employment with the petitioner cannot be regarded as regular employment by following due procedure, therefore, would not be tenable. Along side, he also contends that once having accepted appointment on specific term with regard to consolidated contractual pay referred to in the terms, respondents No. 2 to 4 are *estopped* from claiming regular pay scale on par with permanent

employees. He further submits that circular/ communication dated 29-09-1995, on which reliance is placed by grievance committee as well as by learned single judge, would not be said to cover the case of non-regular/non-permanent employees.

3. In support of his contention learned counsel refers to a decision of the Supreme Court in the case of the *State of Maharashtra and others Vs Anita and another* 2016 (8) SCC 293 putting emphasis on paragraphs No. 14 and 15 wherein the Supreme Court had been considering the case of appointment of legal advisors, law officers and law instructors on contractual basis and had considered that while the government had taken a policy decision to fill up posts on contractual basis, tribunal and high court ought not to have interfered with it to hold that the appointments were permanent in nature and in the circumstances had observed that after having accepted contractual appointment, respondents are *estopped* from challenging terms of their appointment. It appears that said citation does not specifically deal with the compensation/salary or the scale of salary to be paid to the incumbents.

4. Other judgment cited by the learned counsel is in the case of *State of Rajasthan and others Vs Dayalal and others* 2011 (2) SCC 429 which appears to be a case wherein aided institution employees were seeking parity with the pay scale with that of the government employees. In that context, it is observed by the Supreme Court that aided hostel employees could not be termed as

regular government employees and as such relief granted by the high court was considered to be unsustainable. Thus, it appears that the situation in said matter would not be said to be analogous to the one involved in present letters patent appeal.

5. While grievance committee after direction of high court to decide the matter appears to have found dispute be in favour of respondents No. 2 to 4 and writ petition had been moved by the present appellant before this court. Learned counsel Mr. Ashvin Hon further refers to a decision in the case of the *State of Punjab and another Vs Surjit Singh and others 2009 (9) SCC 514* wherein it appears to have been observed that recruitment rules were not followed and cases of respondents were directed to be examined by expert committee with further direction to examine whether respondents satisfy factors for invocation of *Charanjit Singh case, (2006) 9 SCC 321* in its entirety, *interalia*, proper recruitment procedure.

6. On the other hand learned counsel Mr. Deshpande, purports to draw attention to, two decisions rendered by division benches of this court, one reported in *2003 (Supp.) Bom C.R. 846* in the case of *Teachers Association for non-aided Polytechnics Vs Hindi Seva Mandal, Bhusawal* as well as *Teachers Association for non-aided polytechnic Vs Hindi Seva Mandal, Bhusawal decided on 25-07-2003 in writ petition No. 3208 of 1999*. He refers to that while it comes to payment of salary and other service benefits, consent of petitioner to work on consolidated salary as set out in

the appointment letters would not estop him from asking legitimate benefits. He points out that the division bench in the case of *Teachers Association for non-aided Polytechnics Vs Hindi Seva Nabdham Bhusawal, 2003 (Supp.) Bom. C.R. 846* (supra) has particularly referred to that there is no estoppel against statutory provision especially when service conditions are governed by set of rules and laws. He also draws attention to that the division bench in the case of *Teachers Association* in the writ petition No. 3208 of 1999 (supra) has held that employees are entitled for payment of salary in the pay scale applicable to the post in aided institution.

7. So far as facts in present matter are concerned, there is no dispute over the same. Respondents No. 2 to 4 were appointed on consolidated pay on contractual basis. Subsequent to their appointments, the government had issued communication dated 29-09-1995 protecting pay scales as per the rules.

8. Respondents No. 2 to 4 had filed writ petition bearing No. 3570 of 2001, 3568 of 2001 and 3596 of 2001 and a division bench of this court had referred them to grievance committee. Before the grievance committee, it appears that said respondents had given up their claim for reinstatement in service, however, had claimed monetary benefits. Grievance committee had directed to pay to respondents No. 2 to 4 the difference of pay and to give certain other benefits.

9. Learned single judge, while high court had been

approached by present appellant against the decision of grievance committee, had observed, it is explicitly clear that respondents No. 2 to 4 were not paid amount of salary as per admissible pay scale. Learned single judge referring to, two decisions in the case of *Teachers Association for Non-aided Polytechnics; 2003 (Supp.) Bom. C.R. 846 (supra)* had in his judgment considered that challenge to decision by grievance committee would be unsustainable. While aforesaid is the situation learned single judge in discretion had declined to set aside the order of the grievance committee.

10. Interference in exercise of such a discretion while exercise of discretion does not appear to be in any way improper or non adhering to judicial process, we do not think it appropriate to interfere with such a decision. Additionally, learned counsel Mr. Deshpande during submissions has referred to a decision of the Supreme Court in the case of *State of Punjab and others Vs Jagjit Singh and others; 2017 (1) SCC 148* wherein head note A & C to large extent would govern the present state of affairs, particularly, when it is not the case of appellants that the discharge of duty and nature of duties performed by respondents No. 2 to 4 was in any way different from the ones of permanent employees.

11. Letters Patent Appeal, therefore, fails and is dismissed. We, however, would like to take note of and appreciate the efforts taken by learned counsel Mr. Ashvin Hon.

12. In view of dismissal of the Letters Patent Appeal, the civil application does not survive and is disposed of.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]