

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

**LETER PATENTS APPEAL NO. 283 OF 2010
IN WRIT PETITION NO. 3930 OF 2009
WITH CA/13871/2010 IN LPA/283/2010**

Kaviraj Bhagirath Wagh

Age : 30 years, occu.: service

R/o Belapur, Tal. Shrirampur,

District Ahmednagar.

Appellant.

Versus

1. Anna Dada Ohal

Age : 43 years, occu.: service

R/o Umbargaon, Tal. Shrirampur,

District Ahmednagar.

2. Belapur Education Society

Tal. Shrirampur, Dist. Ahmednagar,

Through its Chairman,

Pralhad Dnyandeo Kolse-Patil,

Office at Belapur,

Tal. Shrirampur, Dist. Ahmednagar.

3. The Principal,

Arts & Commerce College,

Belapur, Tal. Shrirampur,

District Ahmednagar.

4. The Joint Director of Education,

Central Building, Pune.

Respondents.

Mr. A.S. Kale, Advocate holding for
Mr. S.B. Talekar, Advocate for the appellant.

Mr. A.B. Chate, A.G.P. for the State.

Ms. Salunke, Advocate holding for
Mr. V.D. Salunke, Advocate for respondent No.1.
Mr. B.N. Patil, Advocate for respondent Nos.2 to 3.

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

Dated : 30 January 2019.

ORAL JUDGMENT :-

. The proceeding is filed to challenge the decision of learned Single Judge of this Court given in Writ Petition No.3930 of 2009 (Anna Ohal Vs. Kaviraj Wagh) dated 27.09.2010. Both the sides are heard.

2. The submissions made and the record show that recruitment process for filling the post of Peon was started by present respondent Nos.2 and 3. Present appellant Kaviraj and respondent Anna Ohal had applied for the said post. Anna Ohal was already working with the College on *Ad hoc* basis on the post of Peon. The Selection Committee selected present appellant for the said post. Anna Ohal made representation to Director of Education that he was already working on *Ad hoc* basis on the post of Peon and he was entitled to get the said post. The Director gave directions to the Institution to see that Anna Ohal

was appointed on the said post. The present appellant had joined service, but in view of the directions given by the Director, the Management terminated the services of the appellant and gave appointment to Ohal.

3. The aforesaid decision of the Management was challenged by present appellant before College and University Tribunal. The proceeding filed by present appellant was allowed by the Tribunal and appointment of Ohal was set aside. This decision was challenged by Ohal by filing Writ Petition No.3930 of 2009. Learned Single Judge has allowed the petition and the decision given by Tribunal is set aside.

4. In view of the aforesaid circumstances and Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules., the matter was placed before the learned Single Judge. This Rule shows that the High Court has supervisory jurisdiction in respect of the Tribunals. As a query was made by this Court about tenability of Letters Patent Appeal, learned Counsel for the appellant placed reliance on the observations made by the Apex Court in the case reported as **(2015) 9 SCC 1, (Jogendrasinhji Vijaysinghji Vs. State of Gujrat and others).**

5. This Court has carefully gone through the observations made by the Apex Court. The Apex Court considered many cases decided by the Apex Court in the past. The Apex Court has laid down that only because the matter is decided by the Single Judge in respect of the decision given by the Tribunal, it cannot be said that Letters Patent Appeal is not tenable. The Apex Court has laid down that it needs to be ascertained as to whether the Letters Patent Appeal is tenable and that would depend upon the nature, contour and character of the order made by the learned single Judge. It is laid down by the Apex Court that even if the order made by learned single Judge falls partly under Article 226 and partly under Article 227 of the Constitution of India, then also Letters Patent Appeal would be tenable.

6. If the aforesaid ratio is kept in mind, then also it can not be said that the learned Single Judge exercised power under Article 226 of the Constitution of India. This Court has supervisory jurisdiction in respect of the College and University Tribunal and the order made by the Tribunal was amenable to challenge in this Court and it needs to be presumed that

supervisory jurisdiction was exercised. This Court is not expected to go through the wording of the order. By allowing Writ Petition simply the decision given by Tribunal could have been set aside and that would have been sufficient to restore the initial position like decision taken by Management on the basis of directions given by the Authority. If the learned Single Judge had made some observations with regard to entitlement of Ohal in respect of his salary, dispute can be raised by the Management about that and it is not open to the present appellant to raise dispute in that regard. In any case, the appointment will be on the basis of procedure of the recruitment and not much can be made about it by anybody. In view of these circumstances, this Court holds that Letters Patent Appeal is not tenable.

7. The appeal stands dismissed. Civil Application is disposed of accordingly.

8. Learned Counsel for the appellant requested for continuation of interim relief by four weeks. The interim relief, if any is granted already, it is continued for four weeks from today.

(SUNIL K. KOTWAL)
JUDGE

vdd/

(T.V. NALAWADE)
JUDGE