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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO.271 OF 2010 IN
WRIT PETITION NO.249 OF 2010

1. Late Manikrao Guruji Samajik
Vikas Sanstha, Katkalamba,
Tq. Kandhar, District Nanded,
through its Secretary

2. Manik Secondary School,
Chikhali (Bk.). Tq. Kinwat,
District Nanded,
through its Head Master

...APPELLANTS

(Orig. Respondents in appeal)

VERSUS

1. Shri Govindrao s/o Sheshrao Wakore,
Age 31 years, Occu. Nil,
R/o Katkalamba, Tq. Kandhar,
District Nanded.

Orig. Appellant

2. The Education Officer (Secondary),
Zilla Parishad, Nanded.

3. Shri Uttam s/o Kondiba Bhujbale,
Age 29 years, Occu. Service as
Physical Education Teacher,
R/o C/o Manik Secondary School,
Chikhali (Bk.), Tq. Kinwat,
District Nanded.

...RESPONDENTS

(Nos.2 & 3 Orig.
Respdts.No.4 & 3)

...
Shri R.N. Dhorde, Senior Counsel with
Shri V.P. Golewar, Advocate for the appellants
S/Shri R.J. Godbole and R.J. Wakade,
Advocates for respondent No.1
Shri S.S. Dande, A.G.P. for respondent No.2
Shri A.V. Patil, Advocate for Respondent No.3
...

:: 2 ::

WITH

LETTERS PATENT APPEAL NO.269 OF 2010 IN
WRIT PETITION NO.7782 OF 2009

Shri Uttam s/o Kondiba Bhujbale,
Age 29 years, Occu. Physical
Education Teacher,
R/o C/o Manik Secondary School,
Chikhali (Bk.), Tq. Kinwat,
District Nanded.

...APPELLANT
(Orig. Petitioner in
W.P. No.7782/2009)

VERSUS

1. Shri Wakore Govindrao s/o Sheshrao
Age 32 years, Occu. Nil,
R/o Katkalamba, Tq. Kandhar,
District Nanded.
2. Late Manikrao Guruji Samajik
Vikas Sanstha, Katkalamba,
Tq. Kandhar, District Nanded,
through its Secretary
3. Manik Secondary School,
Chikhali (Bk.). Tq. Kinwat,
District Nanded,
through its Head Master
4. The Education Officer (Secondary),
Zilla Parishad, Nanded.

...RESPONDENTS

...
S/Shri A.V. Patil (Indrale) & S.C. Bhosale,
Advocates for the appellant
S/Shri R.J. Godbole & R.J. Wakade,
Advocates for respondent No.1
Shri R.N. Dhorde, Senior Counsel with
Shri V.P. Golewar, Advocate for Respondents No.2 and 3
Shri S.S. Dande, A.G.P. for respondent No.4
...

WITH

:: 3 ::

CIVIL APPLICATION NO.2264 OF 2011 WITH
CIVIL APPLICATION NO.2265 OF 2011 IN
LETTERS PATENT APPEAL ST. NO.37090 OF 2010
(LETTERS PATENT APPEAL NO.1 OF 2019) IN
WRIT PETITION NO.249 OF 2010

Shri Govindrao s/o Sheshrao Wakore,
Age 34 years, Occu. Service (T)
R/o Katkalamba, Tq. Kandhar,
District Nanded.

...APPLICANT
(Orig. Respdt.No.1)

VERSUS

1. Late Manikrao Guruji Samajik
Vikas Sanstha, Katkalamba,
Tq. Kandhar, District Nanded,
through its Secretary
2. Manik Secondary School,
Chikhali (Bk.). Tq. Kinwat,
District Nanded,
through its Head Master
3. Shri Uttam s/o Kondiba Bhujbale,
Age 29 years, Occu. Service as
Assistant Teacher,
R/o C/o Manik Secondary School,
Chikhali (Bk.), Tq. Kinwat,
District Nanded.
4. The Education Officer (Secondary),
Zilla Parishad, Nanded.

...RESPONDENTS
(Resp.No.1 & 2 Orig.
Petitioners & Resp.No.3 & 4
Orig.Resp.No.3 & 4 in W.P.)

...
S/Shri R.J. Godbole & R.J. Wakade,
Advocates for applicant
Shri R.N. Dhorde, Senior Counsel with
Shri V.P. Golewar, Advocate for respondents No.1 & 2
Shri S.S. Dande, A.G.P. for respondent No.3
Shri A.V. Patil, Advocate for Respondent No.4
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:: 4 ::

**CORAM : SUNIL P. DESHMUKH &
R.G. AVACHAT, JJ.**

DATE : 27th March, 2019.

JUDGMENT (PER R.G. AVACHAT, J.) :

Civil Application No.2264 of 2011 in Letters Patent Appeal, Stamp No.37090 of 2010 is allowed. Delay condoned. Letters Patent Appeal be registered.

2. These Letters Patent Appeals have been filed against the common judgment and order dated 3.9.2010, passed by learned Single Judge of this Court in Writ Petition No.249/2010. These appeals, since arise from one and the same proceedings, namely, the Appeal decided by the School Tribunal, Latur in Appeal No.74/2007, were heard together and are being decided by this common judgment.

For the sake of convenience, the pleadings and the parties, as arrayed in Letters Patent Appeal No.271/2010 are referred to.

3. The appellants are original respondents in the Appeal before the School Tribunal. The appellant No.1 is an educational institution. The appellant No.2 is the school run by the appellant No.1 institution (the appellants are hereinafter referred to as

:: 5 ::

“educational institution”). The respondent No.1 is the original appellant. Respondent No.2 is the Education Officer (Secondary), Zilla Parishad, Nanded and respondent No.3 is the original respondent No.3 in appeal before the School Tribunal. He has been a Physical Education Teacher, serving with the educational institution.

4. The respondent No.1 claimed to have been in permanent employment as a Physical Education Teacher with the educational institution. He had filed an appeal, being No.74/2007, (District Nanded), challenging termination of his service, before the School Tribunal, Latur Region, Latur against the educational institution and respondents No.3 and 4. The Presiding Officer of the School Tribunal by his judgment and order dated 26.10.2009, allowed the appeal in terms of the following order :-

1. *Appeal is allowed.*
2. *The termination order dated 5.12.2007 terminating appellant's services w.e.f. 5.1.2008 passed by the respondent No.1 is hereby quashed and set aside.*
3. *The respondent Nos.1, 2 & 4 are directed to reinstate the appellant forthwith as physical education teacher in respondent No.2 school with continuity of service.*
4. *The respondent Nos.1 & 2 are directed to pay full backwages*

:: 6 ::

and other consequential benefits to the appellant from the date of his termination to the date of his reinstatement and respondent No.4 is directed to pay the further salary of the appellant since the date of his reinstatement as per law.

5. *If the respondent Nos.1 & 2 failed to pay the full backwages as ordered above, the respondent No.4 shall withhold the non salary grant of the respondent school and pay from it the arrears of salary of the appellant, directly to the appellant.*
6. *The respondent Nos.1 & 2 shall pay the costs of this proceeding of Rs.5,000/- to the appellant within 30 days from the order.*

5. Being aggrieved by and dissatisfied with the aforesaid order, the educational institution and the respondent No.3 filed two separate Writ Petitions under Articles 226/227 of the Constitution of India. Learned Single Judge decided both the Writ Petitions by common judgment and order dated 3.9.2010, whereby the order in Appeal No.74/2007, passed by the School Tribunal came to be modified, deleting direction No.5 therefrom, confirming the remaining part of the judgment and order.

6. The respondent No.1 had approached the School Tribunal with the following case :-

He claimed to have been B.A. B.P.Ed. and was appointed as a Physical Education Teacher by the educational

∴ 7 ∴

institution w.e.f. 18.6.2001. He has, however, not been issued an appointment order. Respondent No.1 claimed to have had also worked as Incharge Head Master of the very school for long time. The educational institution insisted him to acquire B.Ed. qualification. He was, therefore, sanctioned leave to pursue B.Ed. The respondent No.1 had been assured to get him back as Teacher on his completion of B.Ed. Course. The educational institution kept its word. It, however, transferred him to its unaided school – Manik Madhyamik Vidyalaya, Chikhali (Bk.) (No.2) on 15.6.2007. The educational institution forwarded the proposal of its staff and the respondent No.3 to the Education Officer for approval. The respondent No.3 is graduate from physical education stream. His name was sent for approval albeit he was junior to the respondent No.1. The educational institution, citing reason of indiscipline, terminated the respondent No.1's services by an order dated 5.12.2007 w.e.f. 5.1.2008. The respondent No.1 had, therefore, approached the School Tribunal against the order of termination of his service by filing the Appeal (74/2007).

7. The educational institution appeared before the School Tribunal. It did not file written statement, however, participated in the proceedings and filed written arguments. The respondent No.1's appeal was allowed. The educational institution preferred Writ Petition, being No.747/2009 against the decision of the School

:: 8 ::

Tribunal. The Writ Petition came to be allowed, remanding the matter for deciding it afresh. On the second round of hearing before the School Tribunal, the appellants filed written statement, contending that the respondent No.1 was not appointed as a Teacher by following due procedure of law. The respondent No.1 was, in fact, appointed as an honorary teacher in June, 2003. With a view to make out a case before the School Tribunal, the respondent No.1 filed false and fabricated documents. He ultimately put in his papers on 1.7.2006 and went for pursuing B.Ed. The educational institution accepted the resignation. Thus, the respondent No.1 has not been in service since 1.7.2006.

8. The respondent No.3 had filed his separate writ petition. He was apprehensive of there being an axe on his job, if the respondent No.1 is successful in appeal.

9. It appears that, the parties reiterated their stand in the Writ Petitions before the learned Single Judge. In these Letters Patent Appeals as well, the parties, as they have to, stuck up to their stand.

10. Mr. R.N. Dhorde, learned Senior Counsel appearing for the educational institution would submit that, the School Tribunal was oblivious of law relating to burden of proof. In view of learned Senior Counsel, photo copies of documents came to be admitted

and read in evidence, in gross violation of provisions of Section 63 of the Evidence Act. According to learned Senior Counsel, most of the findings/ observations recorded by learned Single Judge did not have factual foundation. The respondent No.1 failed to make out a case for his reinstatement in service. The School Tribunal, therefore, ought to have dismissed his appeal. According to learned Senior Counsel, the respondent No.1 has all along been gainfully employed. The same indicates him to have not been in employment with the educational institution. Learned Senior Counsel ultimately urged for allowing the appeal.

11. Dr. Mr. R.J. Godbole, learned counsel for the respondent No.1 would, on the other hand, submit that, there was voluminous documentary evidence to make out the respondent No.1 to have been in continuous service with the educational institution since June, 2001. Learned counsel took us through the documentary evidence on record to ultimately submit that the order dated 26.10.2009, passed by the School Tribunal needs to be restored in toto.

12. Mr. A.V. Patil, learned counsel for respondent No.3 would submit that the respondent No.3 had been appointed as a Physical Education Teacher on clear vacancy in 2002. Learned counsel meant to say that, whatever may be the decision, in the

:: 10 ::

proceedings initiated by the respondent No.1, the respondent No.3 should not be affected thereby. Learned counsel took us through the observations and findings recorded by learned Single Judge, which may affect the respondent No.3's service prospects with the educational institution.

13. On consideration of the rival contentions and perusal of the evidence in the matter, we have reached a conclusion that the order dated 26.10.2009, passed by the School Tribunal in the Appeal (No.47/2007) has been borne out of the evidence in the matter. The educational institution, although came out with a case of fraud and forgery, allegedly committed by the respondent No.1, failed to prove the same. True, respondent No.1 did not produce his appointment order nor could he show that his appointment was made by following due process of law. Although the respondent No.1 may not have made out his case in consonance with the observations of a Division Bench in the case of **Priyardarhini Education Trust and others Vs. Ratis (Rafia) Bano Abdul Rasheed and others** reported in **2007 (6) Bom.C.R. 79**, fact remains that, the evidence in the case undoubtedly suggests the respondent No.1 to have been appointed as a Physical Education Teacher in June 2001 when the school was established and started functioning as well. There is no dearth of documents to suggest the respondent No.1 to have continued in service unabated. On

:: 11 ::

completion of his two years continuous service, he acquired status of deemed permanency. The Nirgam Register (Exhibit R-1) contained record of admission of students in the school. The entries in the register have been endorsed and countersigned by the Education Officer. The respondent No.1 has signed the entries in the register in the capacity as an Incharge Head Master of the school for the period from June, 2001 to 2006. True, the Nirgam register is in the form of photo copy. The original Nirgam Register has to be in the custody of the educational institution. The original ought to have been produced by the educational institution before the School Tribunal. It appears that, when the photo copy of Nirgam register was being admitted in evidence, the educational institution did not raise any objection. Learned Senior Counsel, therefore, could not be heard to say that a photo copy of Nirgam Register should not have been acted upon.

14. The case of educational institution that the respondent No.1 tendered resignation of his post on 1.7.2006 and did not return to the school, gets deflated in view of the entries in the Nirgam Register, which indicate the respondent No.1 to have continued in his job post tender of alleged resignation.

15. The case of the educational institution that the respondent No.1 was appointed for a temporary period in 2003 and

:: 12 ::

his appointment was not made after following due procedure, also runs counter to the evidence in the matter. The educational institution was established way back in 2001. It opened its another School Manik Vidyalaya, at Katkalamba in 2003. If the respondent No.1 was really appointed in 2003, the educational institution should have produced on record some evidence to suggest who was serving as a Physical Education teacher from 2001 to the date of appointment of the respondent No.1, when admittedly there was one post of Physical Education Teacher sanctioned for the institution.

16. The record indicates the respondent No.1 went to Pune to pursue B.Ed., one year course, after 28.6.2006. He, however, took little over two years for completing the course. Being Incharge Head Master, he appears to have been controlling administrative affairs of the educational institution. Though there was letter shown to have been issued by the Secretary of the institution to the Principal, Spycer Memorial College, informing that the respondent No.1 was being relieved to pursue B.Ed. and he will be allowed to resume his duties on completion of the course, the said letter has not been duly proved. May be respondent No.1 could not produce on record any evidence to show that he had in fact been granted leave to pursue B.Ed., and it was the educational institution that deputed him for the same, yet there is voluminous

:: 13 ::

evidence in support of the respondent No.1's case. The Nirgam Register referred to above is one of such documentary evidences. The muster rolls of the employees of the school bear signature of the respondent No.1 in the capacity as Incharge Head Master. Annual school inspection report dated 20.10.2004 does bear the respondent No.1's signature as an Incharge Head Master. The inspection report has been endorsed by the Education Officer and Extension Officer as well.

17. On 25.8.2003, Manik Madhyamik Vidyalaya, Chikhli took on lease a piece of agricultural land from one Uddhav Baswade. The lease deed is on record. The respondent No.1 is a party to the lease deed. He has signed the lease deed in a capacity as a Incharge Head Master of the lessee - School. There are other documents in the nature of circulars/ letters issued by him in the capacity as Incharge Head Master, to the school staff, including the teachers.

18. The case of the educational institution that the respondent No.1 tendered resignation of his post on 1.7.2006 and thereafter did not turn back to the school, is also found to be erroneous. Even after the alleged tendering of the resignation, the record indicates the respondent No.1 to have served with the educational institution. The case that the respondent No.1

:: 14 ::

fabricated false documents such as his temporary transfer dated 15.6.2007, to school at Totamba, and order dated 5.12.2007 terminating his services, has not been proved. The School Tribunal, on appreciation of the evidence in the matter, rightly ordered reinstatement of the respondent No.1 with full back wages.

19. The learned Single Judge affirmed the decision of the School Tribunal with minor modifications. We have perused the impugned judgment passed by the learned Single Judge to find a few of the observations made therein to be incongruous. There was no evidence to indicate the mother of the respondent No.1 had ever been a Vice President or even an office bearer of the management of the educational institution. The observations in the judgment of the learned Single Judge that it appears that mother of respondent No.1 was Vice President of the school during the relevant period and, therefore, certain concession was given to the respondent No.1 and then same came to be withdrawn on change in the management, need to be expunged.

20. The respondent No.1 has not given on lease any of his landed properties to the educational institution. There was, therefore, no question of the educational institution appointing him as a Physical Education Teacher in consideration thereof. The learned Single Judge appears to have misread the lease deed

:: 15 ::

dated 25.8.2003, to observe, the respondent No.1 to have been appointed a Teacher in consideration for the lease.

21. The another observation of the learned Single Judge is also not borne out of the evidence in the case. The learned Single Judge observed that the respondent No.3 was appointed on the post allegedly vacated by the respondent No.1.

The record is other way round. The respondent No.1 is alleged to have vacated his post in the year 2006 / 2007. Admittedly, the respondent No.3 has been appointed in the year 2003 in clear vacancy. The respondent No.3, therefore, could not have any apprehension of losing his job in the event of respondent No.1 being successful before the School Tribunal.

Shri Dhorde, learned Senior Counsel has also made a statement that decisions in these Letters Patent Appeals would not affect the respondent No.3.

22. Learned Single Judge modified the School Tribunal's order to the extent of grant of full back wages. In view of the learned Single Judge, "What appears from the record is that after the respondent No.1- Govindrao Wakore resumed the duty, he was transferred to non-aided school. It was due to such a reason that he was aggrieved because his employment was in jeopardy. He

:: 16 ::

therefore made representation to the Education Officer and later on preferred Appeal before the School Tribunal. Under these circumstances, the School Tribunal ought not to have granted full back wages to him.”

We do not find any reason obtainable from the evidence, to agree with the aforesaid observation of the learned Single Judge.

23. We are told that, in spite of the respondent No.1 having been armed with an order of reinstatement, the educational institution did not allow him to join. Needless to mention, there is no stay of the order of the School Tribunal. True, a document was tendered across to indicate the respondent No.1 to have been gainfully employed in Bangalore. What else he could do to eke-out his living. Besides, it gives indication of only a limited period engagement and does not cover entire period. We, however, could not read the said document in evidence. This is an appeal. Permission to produce additional evidence had not been obtained nor has it been proved in accordance with law.

24. We are, therefore, of the view that the order of the School Tribunal, granting the respondent No.1 full back wages need to be restored. We are, however, not inclined to interfere with the learned Single Judge's order withdrawing the School Tribunal's

:: 17 ::

direction to withhold non-salary grants of the institution.

25. In the result, the Letters Patent Appeals stand disposed of in terms of the following order :

ORDER

- (i) Letters Patent Appeals No.271 of 2010 and 269 of 2010 are dismissed.
- (ii) Letters Patent Appeal (Stamp No.37090 of 2010) is partly allowed. The order passed by learned Single Judge withdrawing order of the School Tribunal granting full back wages is set aside. The order of the School Tribunal granting full back wages to the respondent No.1 (appellant in Letters Patent Appeal (Stamp No.37090 of 2010) is restored.
- (iii) Civil Application No.2265 of 2011 is disposed of.

(R. G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/