

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.171 OF 2007
IN
WRIT PETITION NO.2824 OF 2007

Shri Prakash Vishnu Zende .. Appellant

Vs

Sangrul Education Society
(Through its Secretary) & Ors. .. Respondents

...

Mr. S.S. Pakale for the Appellant.

Mr. N.V. Bandiwadekar for Respondent No.2.

Mr. K.S. Thorat, A.G.P. for Respondent No.3.

**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 13TH NOVEMBER, 2019.

P.C:-

1. It would be futile to decide on the legality of the direction issued in paragraph 6 of the impugned order dated 26th July, 2007 for the reason the Appellant has superannuated from service under the first Respondent on 30th November, 2017.

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2. The Appellant was reverted while holding the post of the Head Master to that of a Teacher. An enquiry was held and the reversion was by way of a penalty.

3. The Appeal filed by the Appellant before the School Tribunal was allowed on 29th January, 2007. The reason being the enquiry found to be vitiated.

4. In the Writ Petition filed by the Respondents challenging the order passed by the School Tribunal on 29th January, 2007, the learned Single Judge has concurred with the view taken by the School Tribunal but has permitted the Respondents to hold fresh enquiry in consonance with the provisions of law, principles of natural justice and fair play.

5. In Appeal, the said direction has been stayed and continues to be stayed till date, meaning thereby, it would be futile to conduct the enquiry post superannuation of the Appellant.

6. Thus, we dispose of the Appeal setting aside the permission granted by the learned Single Judge to the Respondents to continue with the enquiry notwithstanding under the pension rules, a penalty can be imposed post superannuation but the same has to be on proof of grave misconduct. The fact that at the enquiry, which held the Appellant guilty resulted in penalty of

reversion being passed is proof of the fact that even the Respondents did not treat the misdemeanor to be a grave misconduct.

7. Needless to state that the terminal dues of the Appellant shall be paid as per law.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)