

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***SECOND APPEAL NO.362 OF 2017
WITH
CIVIL APPLICATION NO.474 OF 2016***

Irfan Vali Ahmed Tinwala ... Appellant
Vs
The State of Maharashtra & Ors. ... Respondents

...
Mr. I.M.Khairdi for the Appellant.
Mr. Y.Y.Dabke, AGP for Respondent No.1-State.
Mr. Jagdish G. Aradwad with Mr. Arvind Aswani for the
Respondent No.5.

CORAM : SANDEEP K. SHINDE J.
DATE : 22 FEBRUARY, 2019

P.C. :

Heard learned counsel for the parties.

2 The appellant who is the original plaintiff was working as a 'Assistant Teacher' in the respondent-school since July, 1997. He was appointed as graduate teacher in the pay-scale of Rs.5,500/- to Rs.9,000/- by the respondent-management in January, 2001 and his scale was approved by the Education Officer on 2nd February, 2001. In July, 2007 Education Officer cancelled the pay-scale of the

appellant on complaint of Respondent-Bodhale, who was admittedly senior to the plaintiff. This order was challenged by the appellant in Regular Civil Suit No.708 of 2007 before the Joint Civil Judge, Senior Division, Solapur. The suit was dismissed and the Regular Civil Appeal No. 349 of 2013 preferred by the appellant/plaintiff met with the same fate. It is against the judgment in Regular Civil Appeal No.349 of 2013 dated 4th March, 2015, this appeal is preferred.

3 The learned counsel for the parties have brought to my notice judgment of the full bench of this Court in the case of **St. Ulai High School and Anr. v. Devendraprasad Jagannath Singh and Anr. 2007(1) Mh.L.J. 597** wherein it is held that in respect of those matters upon which an appeal lies to the School Tribunal under Clauses (a) and (b) of sub-section (1) of section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the jurisdiction of the Civil Court is impliedly barred.

4 Thus, in my view, the appellant ought to have invoked the remedy which was available to him under Section 9 of the M.E.P.S. Act against the order passed by the Education Officer.

5 After going through the judgments of the Courts below and the pleadings, prima-facie, it appears that the appellant was labouring under the impression that the Civil Court has had jurisdiction under Section 9 of the Civil Procedure Code, 1908 for redressal of his grievance and thus, had filed suit in October, 2007 and since then he is litigating till date. In view of the facts aforesaid, appellant is granted liberty to withdraw the Second Appeal with liberty to file appeal as may be advised before the appropriate forum. If such an appeal is filed, the learned Judge shall consider issue independently as to whether the appellant was prosecuting his remedy in good faith or not.

6 That with the aforesaid observations, appeal is allowed to be withdrawn and disposed of accordingly. The Civil Application is disposed of accordingly as rendered infructuous.

(SANDEEP K. SHINDE, J.)