

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

LETTERS PATENT APPEAL NO.173 OF 2012

IN

WRIT PETITION NO. 3871 OF 2011 (D)

APPELLANTS :

1. Sarvodaya Mahila Mandal Baghirath Bhawan, Main Road through its working President Smt. Yeshodara Bajaj, R/o Chandrapur, District Chandrapur.
2. The Principal, Chandrapur Polytechnic, Chandrapur, Ekor Ward, Near Machhi Market, Chandrapur.

V E R S U S

RESPONDENTS :

1. Bhaskar Tatobaji Katkar, Aged Major, R/o M. J. Patrakar, Opp. Veterinary Hospital, Chandrapur.
2. Joint Director of Technical Education, Sadar, Nagpur.

Shri Manish Shukla, Advocate h/f Shri S. P. Bhandarkar, Advocate for appellants.

Shri P. N. Shende, Advocate for respondent No.1.

Shri A. M. Kadukar, AGP for respondent No.2.

CORAM: A.S. CHANDURKAR AND

G. A. SANAP, JJ.

DATED : 15/11/2021

JUDGMENT : (PER G. A. SANAP, J.)

1. In this Letters Patent Appeal, challenge is to the order dated 07/12/2011 passed by the learned Single Judge in

Writ Petition No.3871/2011 whereby the learned Single Judge upheld the order passed by the learned Member of the School Tribunal directing the reinstatement of respondent No.1 as Instructor (Plumber Trade) with continuity of service and set aside the order of payment of 30% back-wages to the respondent No.1 and to that extent remanded the matter back to the School Tribunal for deciding the question of payment of back-wages afresh.

The facts leading to the filing of this Letters Patent Appeal are as follows :-

2. The respondent No.1 was appointed in a clear and permanent vacancy as Instructor (Plumber Trade) vide order dated 19/12/1987 in the Appellant No.2 - College by its President-Appellant No.1. On 15/06/1988, the services of respondent No.1 were terminated. The respondent No.1 was again appointed in a clear vacancy by the Appellant No.2 vide order dated 08/08/1988. The Appellant No.2 confirmed the services of the respondent No.1 from 15/08/1988. The respondent No.1 continued to serve as Instructor from 19/12/1987 to 31/05/1990.

According to the respondent No.1 in view of the specific confirmation of the services by the Appellant No.2 and on completion of requisite service, he became the deemed confirmed employee of the Appellant - College as per the provisions of Sub-section (2) of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "MEPS Act"). The respondent No.1 rendered unblemished continuous service. However, to the utter surprise of the respondent No.1, the Appellant No.2 vide order dated 31/05/1990 terminated his services w.e.f. 01/06/1990. The respondent No.1, therefore, challenged his termination by filing an appeal before the School Tribunal under Section 9 of the MEPS Act.

3. The appellants filed their reply and opposed the appeal filed by the respondent No.1. In sum and substance, the appellants denied the material facts pleaded by the respondent No.1 *vis-a-vis* his appointment in a clear vacancy and his attaining the status of deemed confirmed employee. According to the appellants, the respondent No.1 was appointed on temporary basis. There was no clear vacancy. The appointment of the

respondent No.1 was not according to law. The permission was granted to the Appellant No.1 - College for running classes of various courses on year to year basis by the Government. The appointment of the Instructors for each trade was made on year to year basis.

4. The learned Member of the School Tribunal did not agree with the defence of the appellants. The learned Member of the School Tribunal found that the appellants had failed to adduce the evidence to discharge the burden placed on them in view of the fact in issue. The learned Member of the School Tribunal granted the order of reinstatement with 30% back-wages. As above, the learned Single Judge partly allowed the writ petition and upheld the order of reinstatement with continuity in service and remanded the matter back for deciding the point of back-wages afresh. Being aggrieved by this order, the appellants have come before this Court by filing Letters Patent Appeal under Clause 15 of the Letters Patent.

5. We have heard the learned Advocate for the appellants and the learned Advocate for the respondent No.1. We have perused the record and proceedings.

6. The learned Advocate for the appellants submitted that the initial burden to prove that the respondent No.1 was appointed in a permanent and clear vacancy and also by following the provisions of the MEPS Act and the MEPS Rules was wrongly placed on the shoulder of the appellants. The learned Advocate submitted that the burden to prove the above facts was on the respondent No.1. He further pointed out on the basis of record that there is no evidence to discharge the burden placed on the shoulder of the respondent No.1. The learned Advocate submitted that the appointment orders issued to the respondent No.1 were by the Principal who was not authorized to issue the same under the law. In the submission of the learned Advocate for the appellants, the learned Single Judge by placing burden on the shoulder of the appellants to prove the facts alleged by the respondent No.1 has committed a mistake. In order to substantiate his submissions, the learned Advocate for the appellants has placed reliance on the following decisions :-

- 1] **2008(3) Mh.L.J. 274**
[Chandramani Devraj Tiwari Vrs. Secretary, Smt. R. B. Tiwari Sanskrutik Kendra and others).
- 2] **2008(4) Mh.L.J. 682**
[Jaysingpur Shikshan Prasarak Mandal and others Vrs. Balasaheb Yashwant Sapkal and others].

- 3] **2007 (6) Mh.L.J. 667**
[Priyadarshini Education Trust and others Vrs. Ratis (Rafia)
Bano d/o Abdul Rasheed and others].

7. The learned Advocate for the respondent No.1 submitted that neither the School Tribunal nor the learned Single Judge has committed mistake while appreciating the material placed on record and the provisions of law. The learned Advocate for the respondent No.1 took us through the material oral and documentary evidence and pointed out that the appellants have categorically admitted the appointment of the respondent No.1 and the confirmation of the said appointment. He submitted that in view of the evidence on record, the appellants were required to prove the facts with regard to the nature of the appointment and non-compliance of the provisions of law while issuing the appointment. The learned Advocate submitted that the learned Single Judge has taken the entire evidence into consideration and found that there was no substance in the grievance made by the appellants.

8. In order to appreciate the rival submissions, we have minutely perused record and proceedings and the order passed by the learned Single Judge. It is undisputed that the

School Tribunal granted the prayer made by the respondent No.1 for his reinstatement with benefit of continuity in service. The School Tribunal granted 30% back-wages. The learned Single Judge found that the order awarding 30 % back-wages was without considering the material evidence placed on record. It is undisputed that the respondent No.1 has not challenged this part of the order passed by the learned Single Judge remanding the matter back to the School Tribunal for afresh decision on this point. In our opinion, therefore, this order of remand of the matter back to the School Tribunal does not warrant interference. The only question that needs to be addressed is with regard to the confirmation of the order of the School Tribunal on the point of reinstatement of the respondent No.1 in the service with the benefit of continuity in service. The learned Single Judge as can be seen from the order, in view of the material evidence on record, came to the conclusion that in this case, the burden to prove disputed facts could not be cast on respondent No.1. The learned Single Judge held that the burden in the teeth of the undisputed evidence would be on the appellants to prove that initial appointment was not in a clear vacancy and it was on a temporary basis.

9. In order to satisfy ourselves about the correct factual position, we have perused the appointment orders. The first appointment order is dated 19/12/1987. Perusal of this order would show that the copy of this order was forwarded to the District Employment Officer, Chandrapur. This fact would clearly show that before appointment, the appellants would have sought the names of the eligible candidates registered with the Employment Exchange. It is necessary to mention that in the absence of undertaking such exercise, there was no need to forward the copy of the order dated 19/12/1987 to the District Employment Officer, Chandrapur. This in our view is indicative of the fact that being a part of the recruitment process, the required procedure of calling the names from the Employment Exchange was duly followed. This order was for one year. He was terminated on 15/06/1988. The second appointment order is dated 08/08/1988. This appointment order was signed by the Principal - Appellant No.2. Perusal of this order would show that this was not in the proper form provided in Schedule-D of the MEPS Act. No reasons have been placed on record by the appellants for issuing the order in this form. Perusal of this order

would show that the appointment of the respondent No.1 on the post of Instructor had been confirmed from 15/08/1988 for further session. On the basis of the contents of this order, it is sought to be argued that this order was for one session only and therefore, the question of conferment of status of deemed employee would not arise. In our opinion, the submission cannot be accepted in the teeth of the documentary evidence signed by the Appellant No.2 placed on record in this proceeding. Annexure R-4 is an Experience Certificate issued by the Principal of the Appellant No.1. It was issued on 16/03/1990. In this Certificate, it was stated that the respondent No.1 worked as Instructor in the Appellant No.1 from 19/12/1987 to 16/03/1990. The second Experience Certificate is dated 30/06/1990. In this Certificate, it was categorically stated that the respondent No.1 worked in the Appellant No.1 as Instructor from 19/12/1987 to 31/05/1990. Perusal of the pleadings and the evidence adduced by the appellants would show that there is no explanation of this documentary evidence.

10. The termination order is dated 31/05/1990. According to the appellants, as per this order, the services of the

respondent No.1 were terminated from 31/05/1990. In our opinion, this termination order dated 31/05/1990 would prove beyond doubt that the appointment order dated 08/08/1988 with a confirmation from 15/08/1988 was not for a period of one session but it was for two sessions. It is pertinent to mention that the appellants are silent about the order of appointment for the academic session 1989 - 1990. If the appointment order dated 08/08/1988 had been for one session, then there ought to have been another order for academic session 1989-1990. Even if it is assumed for the sake of argument that for some reason or the other, the appointment order in writing was not issued, in that event, there ought to have been a plausible explanation on record in the form of pleadings and evidence. The pleadings of the appellants are conspicuously silent on this aspect.

11. The learned Member of the School Tribunal as well as the learned Single Judge based on this documentary evidence, came to the conclusion that the burden cannot be cast on the respondent No.1 to prove that he was appointed in a clear and permanent vacancy. It is pertinent to note that the fact with regard to year to year approval to the courses by the Government must be

within the exclusive knowledge of the appellants. It is sought to be argued that since the approval for running the courses was on year to year basis, there was no question of existence of any clear and permanent vacancy and as such the appointment of the respondent No.1 being against a clear and permanent vacancy. It is pertinent to note that there is no iota of evidence placed on record by the appellants to substantiate this point. The appellants could have placed on record voluminous documentary evidence, if they had any in this regard. The only inference possible in the fact situation is that there was no such evidence and therefore, it was not produced. The learned Single Judge in view of this factual position and the evidence on record came to the conclusion that the burden was on the appellants to establish that the appointment of the respondent No.1 was not against the permanent and clear vacancy and was contrary to the provisions of the MEPS Act and the MEPS Rules. On considering of the evidence on record, we are not persuaded to accept the submissions advanced by the learned Advocate for the appellants. We are in full agreement with the learned Single Judge. In our opinion, on the basis of the undisputed facts and the evidence on record, the conclusion arrived at by the learned Single Judge is

the only possible conclusion. In view of this, we do not find any reason to interfere with the findings recorded by the learned Single Judge.

12. In our opinion, the applicability of law laid down in the Judgments cited supra by the learned Advocate for the appellants would be required to be considered in view of the above stated facts.

In the case of Chandramani Tiwari (supra), it is held that the benefit of a deemed permanency cannot be granted unless it is proved that the candidate was selected in the manner prescribed.

In the case of Priyadarshini Education Trust (supra), it is held that in order to claim benefit of deemed permanency, a teacher must be duly selected, he must be appointed in clear permanent vacancy, his appointment must not be for a fixed / limited period and preferably it ought to indicate that the appointment is on probation.

In the case of Jaysingpur Shikshan Prasarak Mandal (supra), it is held that in case of the appointment of teacher made on a part-time basis, the question of appointing the teacher on probation does not arise.

13. In this case, the proposition laid down in the Judgments (supra) is of no help and assistance to the case of the appellants. In this case on the basis of evidence, it has been found that the appointment was in the clear land permanent vacancy. It has also been found that the appellants have failed to discharge the burden, in the backdrop of the admitted and undisputed facts and proved that the required procedure had not been followed before making the appointment of respondent No.1. In view of this position, we are of the view that there is no substance in the appeal. Hence, the following order :

ORDER

- i] The Letters Patent Appeal stands dismissed.
- ii] The School Tribunal is directed to decide the appeal expeditiously on its own merits within period of four months from the first date of appearance of the parties.
- iii] In the peculiar facts and circumstances of the case, the parties shall bear their own costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)