

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

LETTERS PATENT APPEAL NO.143/2011
IN
WRIT PETITION NO.3253/2009(D)

APPELLANT : Ku. Panchasheela d/o Vajinath Patil,
PETITIONER Aged about 30 years, Occupation - Nil,
R/o Dhanki, Tq. Umarched, Distt. Yavatmal.

...VERSUS....

- RESPONDENTS :** 1) The President/Secretary, Yavatmal
Akhil Bharatiya, Zilla Akhil
Kunbi Samaj, Head Office at Umarched,
Tq. Umarched, Distt. Yavatmal.
- (Amended as per Court's order
dt. 06/2/12)
- 2) The Headmistress, Savitribai
Phule Junior College, Mahagaon,
Tq. Mahagaon, Distt. Yavatmal.
- 3) Deepak S. Chaphale,
Aged about 32 years, Occupation – Service,
C/o Savitribai Phule Jr. College,
Mahagaon, Tq. Mahagaon, Distt. Yavatmal.
- 4) The Deputy Director of Education,
Amravati Division, Amravati.

WITH

LETTERS PATENT APPEAL NO.79/2011
IN
WRIT PETITION NO.3253/2009(D)

APPELLANT : Deepak S/o Shriram Chaphale
Aged about 32 years, Occ. Service,
C/o. Savitribai Phule Jr. College,
Mahagaon, Tq. Mahagaon,
Distt. Yavatmal.

...VERSUS....

RESPONDENTS : 1) The President/Secretary, Yavatmal
Akhil Bharatiya, Zilla Akhil
Kunbi Samaj, Head Office at Umarkhed,
Tq. Umarkhed, Distt. Yavatmal.

(Amended as per Court's order
dt. 6/2/12)

- 2) The Headmistress, Savitribai
Phule Jr. College, Mahagaon,
Tq. Mahagaon, Distt. Yavatmal.
- 3) Ku. Panchasheela D/o. Baijnath Patil,
aged about 30 years, Occ. Nil,
R/o. Dhanki, Tq. Umarkhed,
Distt. Yavatmal.
- 4) Deputy Director of Education, Amravati
Division, Amravati.

Mr. Shekhar S. Dhengale, Advocate for appellant in LPA No.143/2011
Mr. Kailash S. Narwade, Advocate for respondent nos.1 and 2 in LPA
No.143/2011
Mr. Kapil V. Deshmukh, Advocate for respondent no.3 in LPA No.143/2011
Ms H.N. Jaipurkar, AGP for respondent no.4 in LPA No.143/2011
Mr. Kapil V. Deshmukh, Advocate for appellant in LPA No.79/2011.
Mr. Kailash S. Narwade, Advocate for respondent nos.1 & 2 in LPA No.79/2011
Mr. Shekhar S. Dhengale, Advocate for respondent no.3 in LPA No.79/2011
Ms H.N. Jaipurkar, AGP for respondent no.4 in LPA No.79/2011

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

Judgment reserved on : 04/03/2021

Judgment pronounced on : 17/03/2021

J U D G M E N T : (PER : AVINASH G. GHAROTE, J.)

1. A preliminary objection has been raised by Mr. Kapil Deshmukh, learned Counsel, who appears for respondent no.3 in L.P.A. No.143/2011 and for appellant in L.P.A. No.79/2011, contending that a writ petition before a learned Single Judge of this Court, was not maintainable at all, in view of which, the present letter patent appeals would also not be tenable.

2. Mr. Kapil Deshmukh, learned Counsel submits, that in Writ Petition No.3253/2009, preferred by Ku. Panchasheela Patil, the decision rendered on 26/6/2009, by the Grievance Committee, in Appeal No.21/2007, was challenged along with the appointment order dated 16/3/2007, whereunder the appellant Deepak Chaphale, was appointed. It is submitted that both these orders, were administrative orders and not judicial or quasi-judicial orders. By placing reliance upon Rule 18 Chapter XVII of the Bombay High

Court Appellate Side Rules, 1960 (for short, “the Appellate Side Rules” hereinafter), he contends that, that only judicial and quasi-judicial orders and not administrative orders can be challenged under Articles 226 and 227 of the Constitution before the learned Single Judge, in view of which, the petition before the learned Single Judge itself was not maintainable. Relying upon ***Secretary, A.P.D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others, (2011) 13 SCC 99***, he submits, that the very constitution of the Grievance Committee was put in question and it was held that the orders/decisions of the Grievance Committee, as constituted under the Government Resolution dated 27/4/2000 by the State of Maharashtra were not enforceable or executable, but only recommendatory in nature, in view of which, the challenge to the same, was clearly not amenable to the jurisdiction of the learned Single Judge under Rule 18 of Chapter XVII of the Appellate Side Rules. Learned Counsel Mr. Kapil Deshmukh also places reliance upon ***Pandurang Vs. State of Maharashtra, AIR 1987 SC 535***, to contend that when a matter is required to be decided by the Division Bench of the High Court, but is decided by a Single Judge, the judgment would be a nullity. He further submits, that a pure

question of law can be raised at any stage of the proceedings, for which reliance is placed upon ***Bhagyashreeraje Shivajirao Dhanwatey and another Vs. State of Maharashtra and another, 2007 (1) Bom. C.R. 219; State of Uttar Pradesh and others Vs. Dr. Anupam Gupta etc., AIR 1992 SC 932; Union of India and others Vs. Upper Ganges Sugar and Industries Ltd., (2005) 1 SCC 750.*** Learned Counsel Mr. Kapil Deshmukh therefore submits, that since the writ petition itself was not maintainable, the resultant letters patent appeals on these grounds, would also not be maintainable.

3. Mr. Kailash Narwade, learned Counsel for the respondent nos.1 and 2 in L.P.A. No.143/2011 also relies upon ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and another, (2005) 7 SCC 791*** and also supports the submissions canvassed by Mr. Kapil Deshmukh, learned Counsel.

4. Mr. Shekhar Dhengale, learned Counsel for the appellant Ku. Panchasheela Patil, the appellant in L.P.A. No.143/2011 and respondent no.3 in L.P.A. No.79/2011, opposes the submissions. He contends that Writ Petition No.3253/2009, was

decided on 14/1/2011, whereas the judgment in ***Secretary, A.P.D. Jain Pathshala*** (supra), came on 4/11/2011 and therefore, would not have any applicability upon the present matter. By relying upon ***Mohammad Swalleh and others Vs. Third Additional District Judge, Meerut and another, (1988) 1 SCC 40***, he contends that even if it is construed that the petition before the learned Single Judge was not maintainable, since the matter was now before the Division Bench, it was permissible to consider the merits of the matter and decide the same.

5. In rebuttal, Mr. Kapil Deshmukh, learned Counsel, places reliance upon ***State of Orissa and others Vs. Md. Illiyas, (2006) 1 SCC 275*** and ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and another, (2005) 7 SCC 791***, to contend, that the judgment, in ***Mohammad Swalleh*** (supra), has to be construed in the background of the facts on the basis of which it was decided, and not otherwise.

6. We have heard learned Counsels for the parties on preliminary objection.

7. Though we are not concerned with the merits of the matter here, certain facts are necessary to be noted. The appellant – Ku. Panchasheela Patil had challenged the appointment of Mr. Deepak Chaphale, as a Shikshan Sevak, before the Grievance Committee, by way of the proceedings styled as Appeal No.21/2007, which came to be rejected on 26/6/2009. Against this rejection, Writ Petition No.3253/2009 (*Ku. Panchasheela D/o Vajinath Patil Vs. The President/Secretary, Yavatmal Akhil Bharatiya Kunbi Samaj, Tq. Umarkhed, Distt. Yavatmal and others*) came to be filed, which came to be partly allowed by judgment dated 14/1/2011, whereby the order dated 26/6/2009 passed in Appeal No.21/2007 by the Grievance Committee was quashed and set aside and so also the appointment of the respondent no.3 therein (Deepak Chaphale) as made on the post of Shikshan Sevak in Junior College on 16/3/2007 was set aside and it was held that it would be open for the respondent -Management to readvertise the post in question and make fresh selection pursuant to the advertisement in accordance with law.

8. It is not in dispute that what was in challenge before the learned Single Judge in Writ Petition No.3253 of 2009 was the judgment dated 26/6/2009 in Appeal No.21/2007 (***Ku. Panchasheela D/o Vajjnath Patil Vs. The Dy. Director of Education, Amravati Division, Amravati and others***) passed by the one member Grievance Committee for entertaining complaints of Shikshan Sevaks at Nagpur, constituted under the Government Resolution dated 27/4/2000, by the State of Maharashtra, to hear the grievances of Shikshan Sevaks. The Hon'ble Apex Court in ***Secretary, A.P.D. Jain Pathshala*** (supra) held that the Grievance Committee so constituted was not a public quasi-judicial Forum nor could its decisions be made final and binding on the parties, in dispute relating to Shikshan Sevaks. It was further held that if a Grievance Committee opines that the termination or cancellation of appointment of a Shikshan Sevak was bad, the State Government may consider such opinion/recommendation and if it decides to accept it, take appropriate action by directing the school to take back the Shikshan Sevak, and if the school failed to comply, take action as was permissible including stoppage of the grant. It was also held that an opinion by the Grievance Committee that the termination of

the services of a Shikshan Sevak was illegal, cannot however, have the effect of either reinstating the employee in service nor deemed to be a declaration that the Shikshan Sevak continued to be an employee of the school. It was also held that the decision of the Grievance Committee, therefore, was not an enforceable or executable order, but only a recommendation that can be made the basis by the Education Department to issue appropriate directions and it is only such directions by the State Government, which would give cause to an aggrieved person to challenge such directions either before the Civil Court or in a writ proceeding. It is thus apparent, that the decision of the Grievance Committee as rendered on 26/6/2009 in the instant matter, was not a decision by a judicial or quasi-judicial authority, but was merely a recommendation, on the basis of which, directions could have been issued by the State Government in the concerned department.

9. Rule 18 of Chapter XVII of the Appellate Sides Rules, lays down the learned Single Judges powers to finally dispose off applications under Articles 226 and 227 of the Constitution. Clause 1 to 46 in Rule 18 above, delineates the various decrees and orders,

which can form the subject matter of a challenge in a petition before the learned Single Judge. It is necessary to note, that the explanation to Rule 18 above, defines the expression “order”, as appearing in Clauses 1 to 46 of Rule 18, to mean any order passed by any judicial or quasi-judicial authority empowered to adjudicate under the Statutes mentioned therein. Considering what has been held in ***Secretary, A.P.D. Jain Pathshala*** (supra) that the order passed by the Grievance Committee, was only recommendatory in nature, and that the Grievance Committee was not a public quasi-judicial Forum, the order/recommendation of the Grievance Committee cannot be said to fall within the definition of “order” as defined in Explanation to Rule 18 of Chapter XVII of the Appellate Side Rules, consequently, a challenge to the same, was not maintainable before the learned Single Judge of this Court, and any challenge to the same, if at all it was so permissible, could only have been laid before the Division Bench of this Court, in view of Rule 1 of Chapter I of the Appellate Side Rules. This being so, the statement of law, as enunciated in ***Pandurang*** (supra), which states that when a matter required to be decided by Division Bench of the High Court is decided by a learned Single Judge, the judgment would be a nullity, the matter having

been heard by Court, which had no competence to hear the matter, it being a matter of total lack of jurisdiction, clearly becomes applicable.

10. The plea of non-maintainability of the petition before the learned Single Judge, is based purely upon undisputed factual position on record, and though the same was not raised earlier, it cannot be said that the same would not be available now. Reliance upon *Bhagyashreeraje Dhanwatey* (supra); *Dr. Anupam Gupta* (supra) and *Upper Ganges Sugar and Industries Ltd.* (supra) by Mr. Kapil Deshmukh, learned Counsel for the appellant in LPA No.79/2011 is well founded.

11. The contention of Mr. Shekhar Dhengale, learned Counsel for appellant in LPA No.143/2011, that the Writ Petition No.3253/2009 came to be decided on 14/1/2011, however, since *Secretary, A.P.D. Jain Pathshala* (supra) was decided on 4/7/2011, and therefore the petition as filed ought to be held as maintainable, in our considered opinion, does not hold any water, for the reason, that lack of jurisdiction, would go to the root of the matter, and any

decision rendered without jurisdiction, would be a nullity. The Grievance Redressal Committee, as constituted under the Government Resolution dated 27/4/2000, could never have been constituted as a quasi-judicial forum, as it was created under a Government Resolution, and always remained an administrative grievance redressal mechanism. That being so, the decision in *Secretary, A.P.D. Jain Pathshala* (supra), being rendered later in point of time, than that in Writ Petition No.3253/2009, would be of no avail.

12. The reliance upon *Mohammad Swalleh* (supra), by learned Counsel Mr. Shekhar Dhengale, is misplaced, for the reason that in *Mohammad Swalleh* (supra) the High Court exercising its jurisdiction under Article 226 of the Constitution, in exercise of which, it had come to the conclusion that the order of the prescribed authority was invalid and improper and could itself have set it aside, though technically the same having been done by the District Judge, could be considered to be illegal and improper, as no appeal lay before him. In the instant matter, however, we are not exercising our jurisdiction under Article 226 of the Constitution, but appellate

jurisdiction under Clause 15 of the Letters Patent and therefore, the decision in ***Mohammad Swalleh*** (supra), is of no assistance to the point being canvassed by Mr. Shekhar Dhengale, learned Counsel for the appellant in LPA No.143/2011. In light of the above, it is not necessary to consider ***Md. Illiyas***,(supra) and ***Harshad Chiman Lal Modi*** (supra).

13. In view of what has been discussed above, we hold that Writ Petition No.3253/2009, was not maintainable before the learned Single Judge, as a result of which, the judgment dated 14/1/2011 would be rendered a nullity being without jurisdiction, resultant to which, the present Letters Patent Appeals would also not be maintainable, and accordingly are dismissed as such. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar

Shailendra
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