

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

LETTERS PATENT APPEAL NO.377 OF 2011
IN
WRIT PETITION NO.2153 OF 2010(Decided)

Suresh s/o Shamraoji Gajare
Aged about 51 years,
Occ. Presently Nil,
R/o Dhadi, Post : Sahur, Taq. Ashti
Dist. Wardha

... Appellant

-vs-

1. Dnyaneshwar Vidya Prasarak Mandal
through its President, office at Sahur
Taq. Ashti, Dist. Wardha
2. Sant Akre Maharaj Vidyalaya,
Through its Head Master, Office at
Manikwada, Taq. Ashti, Dist. Wardha
3. The Education Officer (Secondary),
Zilla Parishad, Wardha

... Respondents

Shri B. G. Kulkarni, Advocate for appellant.
Shri Anand Parchure, Advocate with Shri K. Shiwardkar, Advocate for respondent
Nos.1 and 2.
Shri D. P. Thakare, Additional Government Pleader for respondent No.3.

CORAM : A. S. CHANDURKAR AND G. A. SANAP JJ.
DATE : August 26, 2021

Oral Judgment : (Per A. S. Chandurkar, J.)

The appellant being aggrieved by the judgment of learned Single Judge dated 21/09/2010 in Writ Petition No.2153/2010 has impugned the same in this appeal filed under Clause 15 of the Charter of Letters Patent.

2. The facts in issue are undisputed and may be stated as under :

The appellant claims to hold the qualifications of BA B.Ed and was appointed on probation for a period of two years on 30/06/1991. Thereafter on 30/06/1993 he was issued with another order of appointment from 01/07/1993 which was to operate until further orders. His appointment was duly approved by the Education Officer from 01/07/1995 onwards by order dated 15/10/1996. The management proceeded to conduct an enquiry against the appellant by framing charges. On conclusion of the same by an order dated 22/03/1999 the services of the appellant came to be terminated. The appellant thus filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act). In the said appeal it was the case of the appellant that the enquiry proceedings held against him were illegal and not in accordance with the procedure prescribed. In the written statement filed on behalf of the Management it was denied that the enquiry was held in an illegal manner. The learned Presiding Officer of the School Tribunal framed preliminary issues amongst which Issue No.2 was with regard to the validity of the appointment of the appellant as per provisions of Section 5 of the said Act. On finding that the appellant was not appointed by following the prescribed procedure the appeal came to be dismissed. The appellant challenged that adjudication in Writ Petition No.2153/2010 and as stated above that writ petition came to be dismissed holding that the appellant was

not duly qualified when he was initially appointed in the year 1986.

3. Shri B. G. Kulkarni, learned counsel for the appellant submitted that in the light of the fact that the appellant was initially appointed on probation and thereafter by issuing fresh order of appointment his services were confirmed, it was not open for the School Tribunal to dismiss the appeal by holding that the appellant's appointment was not in accordance with Section 5 of the said Act. He submitted that in the written statement there were no pleadings raised by the Management to challenge the validity of the appellant's appointment. Having held an enquiry against the appellant the conduct of the Management indicated that the appellant was a permanent teacher and hence could have been removed only by holding an enquiry. Placing reliance on the decision in *Sadhana Janardhan Jadhav vs. Pratibha Patil Mahila Mahamandal 2013(2) Mh.L.J. 484* it was submitted that in view of the fact that the appellant was sought to be removed after holding an enquiry, the question of validity of his appointment did not arise. The learned Single Judge erred in going into that question in absence of any pleadings to that effect. He thus submitted that the appeal ought to be decided on merits by the School Tribunal by setting aside the judgment of learned Single Judge.

4. On the other hand Shri K. Chiwarkar, learned counsel for the respondent No.1 supported the impugned order. It was submitted that in

view of the decision in *Anna Manikrao Pethe vs. Presiding Officer, School Tribunal Amravati and Aurangabad Division, Amravati and ors. 1997 (3)Mh.L.J. 697* the School Tribunal was bound to frame the preliminary issue regarding appointment of the appellant being made after complying with the provisions of Section 5 of the said Act. No fault could be found with the order of School Tribunal in that regard. Since the appellant was not qualified when he was initially appointed in the year 1986 the learned Single Judge rightly dismissed the writ petition. He had no reason to go into the merits of such adjudication. The learned counsel sought to place reliance on the decision in *Priyadarshini Education Trust and ors. vs. Ratis (Rafia) Bano d/o Abdul Rasheed and ors. 2007 (6) Mh.L.J. 667* and *Sanjay Lalbahadur Divedi vs. Shrikrishna Vyayam Shala, Amravati and ors. 2020 (3) Mh.L.J. 666*. Hence no interference in the impugned order was required.

Shri D. P. Thakare, learned Additional Government Pleader appeared for respondent No.3.

5. We have heard the learned counsel for the parties and we have given due consideration to their respective submissions. At the outset it would be necessary to examine the pleadings of the parties in the appeal as filed by the appellant under Section 9 of the said Act. It was pleaded by the appellant that after being appointed on probation his services came to be confirmed and thereafter the Management proceeded to hold an enquiry against him. In the reply filed on behalf of the Management it was

contended that the enquiry was held after following due process of law. There were no averments in the written statement to indicate that the Management was disputing the validity of the appellant's appointment. In other words, in absence of any pleadings the validity of the appointment of the appellant was not in issue. Be that as it may, the learned Presiding Officer framed preliminary issues in view of the judgment of the Division Bench in *Anna Manikrao Pethe* (supra). The practice of framing preliminary issues even in absence of pleadings in that regard has been noticed by the Division Bench in *Sadhana Janardhan Jadhav* (supra). In paragraph 16 it has been observed as under :

“16. In cases where employees of private school have been terminated after holding departmental enquiry or otherwise, when such employees have become permanent in service or have completed requisite number of years of service, the said issue regarding appointment is being casually raised by the management and framed by the Tribunal. It has been found that large number of appeals have been dismissed by the Tribunals on the said preliminary issue when the same was not at all justified and this Court was required to send back the appeals for decision on merits. Thus, the school Tribunals have been adopting a shortcut method of dismissing the appeals on the ground that the appointment was not made as per Section 5 of the MEPS Act and the Rules, to earn disposal of cases at their credit, which not only causes serious injustice to the litigating parties but give rise to multiplicity of litigations between the parties.....”

It was then held that in the light of the law laid down by the Honourable Supreme Court the preliminary issue with regard to validity of

the appointment of the appellant being made in accordance with Section 5 of the said Act should not be framed mechanically and the said issue ought to be framed only if the same arises in the light of pleadings of the parties. Further the School Tribunal ought to decide all issues at the same time without trying any or some of them as the case may be.

The framing of issues in absence of necessary pleadings has been noticed by the learned Single Judge in *Manohar Mahadeo Bhajikhaye vs. Presiding Officer, School Tribunal Chandrapur and ors. 2011 (4) Mh.L.J. 312* .

6. As stated above the Management in its written statement neither disputed the validity of appointment of the appellant. Rather it proceeded to conduct an enquiry before seeking to terminate his services. The School Tribunal had decided the appeal only by framing preliminary issues that too in absence of pleadings in that regard. We find that in the light of the observations of the Division Bench in *Sadhana Janardhan Jadhav* (supra) the same was impermissible. This aspect was lost sight of by the learned Single Judge while affirming the order of the School Tribunal. We find that it would be necessary for the School Tribunal to decide the appeal afresh in the light of the observations of the Division Bench referred herein above. The appeal was not liable to be dismissed in a summary manner as was done by the learned Presiding Officer. Since we have not entered into the merits of the rival claims, it is not necessary to refer to the decisions cited by the

learned counsel for the Management.

7. In the light of aforesaid discussion the following order is passed :
- (i) The judgment of learned Single Judge dated 21/09/2010 in Writ Petition No.2154/2010 as well as judgment of the learned Presiding Officer, School Tribunal, Chandrapur dated 19/03/2010 are set aside.
 - (ii) Appeal No. STN-32/1999 is restored for its adjudication on merits in the light of observations made hereinabove. As held by the Division Bench in *Sadhana Janardhan Jadhav* (supra) the preliminary issues as well as other issues arising between the parties shall be decided together.
 - (iii) The appeal be decided expeditiously on its own merits without being influenced by any observations made in this judgment. To enable the adjudication of the appeal, the parties shall appear before the School Tribunal, Chandrapur on 13/09/2021.
 - (iv) All contentions of the parties are kept open.
 - (v) The Letters Patent Appeal is allowed in aforesaid terms.

JUDGE

JUDGE