

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

LETTERS PATENT APPEAL NO. 65/2009 IN WRIT PETITION NO. 60/1996 (D)

Sudhir Sharadchandra Muley,
aged about 42 years, Occupation – Nil,
Resident of Akot, Kesharaj Vetal,
Taluka Akot, Distt. Akola.

APPELLANT

.....VERSUS.....

1. The Management,
Shri Gajanan Junior College, Akoli Jahagir,
Taluka Akot, Distt. Akola. Through it's
Secretary, Jairam Sitaram Kannade.
&
President, Gunwantrao Thakare,
Both Residents of Akoli Jahagir,
Taluka Akot, Distt. Akola.
2. The Principal,
Shri Gajanan Junior College, Akoli Jahagir,
Taluka Akot, Distt. Akola.
3. The Education Officer,
Zilla Parishad, Akola.
4. The Deputy Director,
Education Department, Amravati Division,
Amravati.
5. The Presiding Officer, School Tribunal,
Amravati Division, Amravati.

RESPONDENTS

Shri R.L. Khapre, Senior Advocate with Shri D.R. Khapre and Shri Abhishek
Shukla, counsel for the appellant.

Shri A.J. Thakkar, counsel for the respondent nos.1 and 2.

Ms S.S. Jachak, Assistant Government Pleader for the respondent nos.3 to 5.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 17TH AUGUST, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised in this letters patent appeal is to the judgment dated 20.12.2005 in Writ Petition No.60 of 1996. By the said judgment the learned Single Judge was pleased to dismiss the writ petition preferred by the appellant thereby confirming the order passed by the learned Presiding Officer, School Tribunal, Amravati on 30.11.1995. By that order the appeal preferred by the appellant under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service)

Regulation Act, 1977 (for short, 'the said Act') challenging the order of termination dated 15.09.1992 came to be dismissed.

2. Brief facts that are relevant to consider the challenges raised in this appeal are that it is the case of the appellant that he had obtained degrees of M.Com (1st Class), B.Ed., M.Phil. and additional B.A. in Co-operation. Pursuant to an advertisement issued by the Principal of the Junior College conducted by the respondent no.1-Society for filling in various posts including the post of Junior College Teacher, the appellant applied for the same. The post in question required the candidate to have the qualification of M.Com (2nd Division) and B.Ed. Pursuant to the interview held on 04.09.1990, the appellant was issued an order of appointment dated 22.09.1990 as a Junior College Teacher on probation for a period of two years. On 26.08.1991 another order of appointment came to be issued to the appellant in which it was stated that the appointment was subject to the same being approved by the Deputy Director of Education. It appears that on 29.05.1991 the appointment of the appellant as Junior College Teacher in the subjects of Economics and Co-operation was not approved by the Deputy Director of Education principally on the ground that the appellant was not duly qualified to hold the said post. Thereafter on 15.09.1992 a relieving order came to be issued to the appellant in which it was stated that since his appointment had not been approved by the Deputy Director of Education he was being relieved from the post of Junior College Teacher. The appellant preferred an appeal before the School Tribunal but that appeal was dismissed on the ground

that the School Tribunal could not go into the question of legality of the order refusing to grant approval. The appellant approached this Court by filing Writ Petition No.3225 of 1994. On 16.03.1995 this Court set aside the order passed by the School Tribunal and remanded the proceedings to it with a direction to decide the appeal on merits including the legality of the order refusing approval. After the order dated 29.05.1991 was passed by the Deputy Director of Education refusing to approve the appellant's appointment, another request in that regard was made by the Management. However on 21.12.1992 the said position was reiterated by the Deputy Director of Education. In the appeal preferred by the appellant the School Tribunal on remand held that since the appellant was not duly qualified to hold the post of Junior College Teacher the approval was rightly rejected by the Deputy Director of Education. On that premise the order of termination was valid and hence said appeal came to be dismissed. This order of the School Tribunal was then challenged by the appellant in Writ Petition No.60 of 1996 and as stated above the order of the School Tribunal was confirmed by this Court on 20.12.2005. Hence this appeal.

3. Shri R.L. Khapre, learned Senior Advocate for the appellant submitted that the appellant had the necessary qualifications prescribed under the advertisement and as required by Schedule-B of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'the Rules of 1981) as well as that prescribed by

Appendix-B of the Secondary School Code. Referring to the subjects of instruction in M.Com Part-I it was submitted that the appellant was instructed in the subjects of Economics and Co-operation which indicated that he had necessary qualifications to hold the post of Junior College Teacher. Rejection of the approval by the Deputy Director of Education was incorrect. He referred to the order dated 21.12.1992 passed by the Deputy Director of Education to indicate that the appointment of one Shri D.S. Tohare who was having similar qualifications as the appellant had been duly approved by the Education Officer. All necessary documents to indicate the subjects in which instructions were imparted to the appellant while undertaking the degree in M.Com were placed on record and this indicated that the appellant was duly qualified and thus eligible to teach the subjects of Economics and Co-operation in the Junior College. The learned Single Judge without considering these documents and the fact that the qualifications stipulated in Schedule-B of the Rules of 1981 were possessed by the appellant proceeded to affirm the order passed by the School Tribunal. He then referred to paragraph 10 of the judgment of the Full Bench in *St.Ulai High School & Another Versus Devendraprasad Jagannath Singh & Another* [2007(1)Mh.L.J. 597] to urge that lack of grant of approval could not be the reason for issuing the order of termination. He further referred to the Government Resolution dated 14.03.1978 and the decision in *Educational Society, Tumsar & Others Versus State of Maharashtra & Others* [(2016) 3 SCC 512] to urge that when the services of an employee are wrongly terminated by the

Competent Authority such employee is entitled to be reimbursed by the Education Officer subject to such salary and allowances not being paid to the substitute employee appointed in the subjects of the employee whose services are terminated. It was thus submitted that considering this position the appellant was entitled for necessary reliefs that were denied by the School Tribunal and the learned Single Judge. He also placed reliance on the decisions in *Harlal Harchand Pardeshi Versus State of Maharashtra & Others* [2001(1) Mh.L.J. 859] and *Shyamsunder Eknath Hadke Versus Deputy Director of Education, Nagpur & Others* [2018(4) Mh.L.J. 591] in that regard. It was then submitted that the appellant was now employed as a lecturer in another institution and if this Court finds that the services of the appellant were not liable to be terminated on account of wrongful rejection of the approval, the appellant be granted notional reinstatement with continuity in services to enable him to seek pensionary benefits. In that regard he referred to the decisions in *Murlidhar Narayan Nangare Versus State of Maharashtra & Others* [2003(1) Mh.L.J. 992] and *Homraj Hansaram Bisen & Others Versus State of Maharashtra & Others* [2013(2) Mh.L.J. 401]. He therefore submitted that the appellant was entitled to the reliefs as prayed for.

4. Shri A.J. Thakkar, learned counsel for the respondent nos.1 and 2 while opposing aforesaid submissions submitted that the services of the appellant were required to be terminated in view of the order dated 29.05.1991 passed by the Deputy Director of Education refusing to

approve the same. The respondent nos.1 and 2 were duty bound to abide by the directions as issued. He further submitted that the Deputy Director of Education was justified in holding that the appellant did not possess requisite qualifications as prescribed. According to him the learned Single Judge had rightly found that the appellant did not have the necessary qualifications and it was not pointed out to the School Tribunal that he had Masters Degree in Economics when he was appointed on 22.09.1990. Without prejudice to the aforesaid contentions he submitted that if it is found that the Deputy Director of Education was not justified in refusing to grant approval to the appointment of the petitioner the liability to pay back wages should be saddled on the said Office in view of the fact that the respondent nos.1 and 2 had merely abided by the directions issued to them. For the fault of Deputy Director of Education, the respondent nos.1 and 2 should not be penalised. He submitted that during the relevant period the post on which the appellant was appointed was not filled in by appointing any other junior college teacher. He therefore submitted that the Court may pass appropriate orders in this regard.

The learned Assistant Government Pleader for the respondent nos.3 to 5 submitted that the Deputy Director of Education rightly refused to grant approval to the appointment of the appellant on finding that the appellant was not possessing the requisite qualifications. The School Tribunal as well as the learned Single Judge had rightly considered the contentions of the appellant and had refused to grant any relief to him. No interference in that regard was called for.

5. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents placed on record. The principal ground on which the writ petition filed by the appellant came to be dismissed was that the appellant was not in a position to demonstrate on the basis of his pleadings or the material relied upon by him that he was duly qualified to hold the post of Junior College Teacher. At the outset we may note that the appellant had sought to challenge the judgment of the School Tribunal dated 30.11.1995 by seeking issuance of writ of certiorari. One of the grounds of challenge raised was that the judgment of the School Tribunal suffered from an error of jurisdiction especially while considering challenge to the order dated 29.05.1991 passed by the Deputy Director of Education refusing to grant approval to the appointment of the petitioner. If the appellant is in a position to indicate that the judgment of the learned Single Judge suffers from an error apparent on the face of record on account of non-consideration of relevant material and statutory provisions applicable which in turn has resulted in causing manifest injustice to the appellant, a case for interference would be made out. This exercise would however be permissible without re-appreciating the material on record and without disturbing any findings of fact. Keeping the aforesaid parameters in mind the contentions as raised by the parties could be examined.

6. The issuance of advertisement for filling in the post of Teacher in Junior College is not in dispute. The appellant had applied pursuant to

the said advertisement. With regard to the post for which he had applied, the qualifications prescribed were M.Com.-2nd Division with B.Ed. This advertisement was issued some time in the first week of September-1990. As per the documents filed on record it can be seen that the appellant completed his M.Com. in Ist Division by standing fourth in Summer-1986. While completing his Bachelor of Arts course, he had chosen the additional subject of Co-operation and passed the said examination that was held in Winter-1989 of which the results were declared on 29.05.1990. With regard to the B.Ed. Examination held in March-1987 the appellant passed in second division, the results of which were declared on 30.04.1987. The appellant also appeared in Summer-1990 in the M.Phil examination and passed the same on 17.09.1990. It thus becomes clear that when the appellant was interviewed on 04.09.1990 he had the qualifications of B.Ed., M.Com. (Ist Division) and M.Phil.

7. The qualifications of a teacher in Junior College are prescribed in Schedule-B of the Rules of 1981. As per Part-III when a teacher in the Junior College is to be appointed after the appointed date, the requirement is a Master's Degree of a statutory university at least in second class in Commerce or any other higher qualification. As per Appendix-B in the Secondary School Code the classification of subjects under the streams of Arts, Commerce and Science for the purposes of introducing an optional subject have been stipulated. In the Arts stream the subjects of Economics and Co-operation find place. Similarly in the

Commerce stream also the subjects of Economic and Co-operation can be seen. In Appendix-C of the Secondary School Code are certain clarifications given with regard to Junior College classes attached to the Secondary Schools/Higher Secondary Schools. At Serial Number 21 clarification has been issued that the principle of one teacher for one subject should be followed as far as possible while allotting the teaching subjects. In case of difficulty teachers can be appointed to teach two subjects which they had offered for graduation. On 25.06.1991, the Deputy Director of Education, Amravati issued a clarificatory letter in which it was stated that if a graduate with M.Com. in Second Division had taken instructions in Co-operation as an optional subject, he would be qualified to teach the subject of Co-operation. This letter was placed on record before the School Tribunal.

8. In the aforesaid backdrop of the statutory provisions prescribing necessary qualifications, if the order dated 29.05.1991 issued by the Deputy Director of Education, Amravati by which the approval to the appointment of the appellant was refused is perused, it is seen that though the appellant was appointed for teaching the subjects of Economics and Co-operation. It was observed by the Deputy Director of Education that the appellant was not eligible to teach both the subjects and hence his appointment could not be approved. It is also relevant to note that on 21.12.1992 the appointment of Shri D.S. Tohare who also had qualifications of M.Com. (second division) and B.Ed. and who was

teaching the subjects of Secretarial Practise and Accountancy came to be approved. It is on the basis of this refusal on the part of the Deputy Director of Education to approve the appointment of the appellant on 29.05.1991 that the Management proceeded to proceed to terminate the services of the appellant. It is also material to note that on 16.11.1995 the proposal for approving the appointment of Shri D.S. Tohare on the post of Junior College Teacher was approved. As stated earlier Shri D.S. Tohare had qualifications of M.Com. (second division) with Co-operation and B.Ed. and his appointment from 05.07.1992 in the subjects of Secretarial Practise and Accountancy came to be approved.

9. From the aforesaid it becomes clear that in the advertisement pursuant to which the appellant came to be appointed as Teacher in the Junior College the qualifications prescribed were M.Com (second division) with B.Ed. The appellant was duly qualified having qualifications of M.Com (First Class), B.Ed. with M.Phil. Though approval to the appointment of the petitioner was refused on 29.05.1991 on the ground that the appellant was not possessing the requisite qualifications, Shri D.S. Tohare who had similar qualifications and who was also appointed to teach the subjects of Secretarial Practise and Accountancy had his appointment approved. We find that in the light of the statutory requirements referred to hereinabove the appellant was duly qualified to hold the post of Teacher in Junior College in the subjects of Co-operation and Economics and hence there was no reason for the Deputy Director of

Education to refuse to grant approval to his appointment. Moreover the approval had been granted to another appointee who had similar qualifications as the appellant.

10. Perusal of the judgment of the learned Single Judge indicates that a finding has been recorded that the appellant had failed to mention that he had post-graduate degree either in Arts or Commerce in the subjects of Economics or Co-operation. Further it was merely stated that the appellant had a post-graduate degree in Commerce in first division but it was not mentioned that he had secured post-graduate degree in the subjects of Economics and Co-operation. In that context if the memorandum of appeal preferred by the appellant under Section 9 of the said Act is considered it can be seen that it was specifically pleaded by him that he was duly qualified to hold the post of Junior College Teacher and that he was holding the requisite qualifications that were required for the post as advertised. Paragraph 2 of the memorandum of appeal reads as under:-

“2. The appellant is qualified with a Post-graduation Degree in Commerce and had secured First Class and he was 4th in the Merit List of the University of Amravati, wherefrom he completed his studies. He has qualified as Bachelor of Education from University of Aurangabad. The appellant has also obtained post-graduation in Philosophy. He has secured Additional Graduation in subject of Co-operation.”

In the reply filed by respondent nos.1 and 2 before the School Tribunal, the qualifications of the appellant were not specifically denied. It is also to be noted that the Deputy Director of Education, Amravati and the Education Officer (Secondary) did not file any reply before the School Tribunal. Thus the qualifications of the appellant were not in dispute before the School Tribunal. The averments in the memorandum of appeal to the effect that the appellant was duly qualified had to be read alongwith the supporting documents and as his qualifications were not disputed by the respondents, the only question was whether the same were requisite or not. As stated above in the light of the requirements prescribed in Schedule-B of the Rules of 1981 as well as Appendix-B of the Secondary School Code the appellant did possess the requisite qualification for the post as advertised. We have also perused the records of the proceedings before the School Tribunal and we find that all the relevant material was placed on record by the appellant. It therefore cannot be said that the appellant was not duly qualified to hold the post of Teacher in the Junior College for teaching the subjects of Economics and Co-operation.

11. The judgment of the learned Single Judge is based on the premise that the appellant had failed to show that he held post-graduate degree in the subject of Economics and graduation degree in the subject of Co-operation. In the advertisement, the qualification prescribed was M.Com. in IInd division with B.Ed. As can be seen from Schedule-B of the Rules of

1981, this requirement was fulfilled by the appellant. It was sufficient as per the communication dated 25.06.1991 issued by the Director of Education that the candidate received instructions in the subject of Co-operation as an optional subject. Similarly, as per Appendix-B and the mark-sheets of the appellant he also received instructions in the subject of Economics. It was not necessary to have Master's degree in Economics as observed by the learned Single Judge. On a conjoint reading of the advertisement, qualifications of the appellant alongwith Schedule-B of the Rules of 1981 and Appendix-B of the Secondary School Code it is clear that the appellant was duly qualified to teach the subjects of Economics and Co-operation in the Junior College. In the light of the fact that the qualifications of the appellant were not disputed by the Management, the only aspect to be considered was whether the said qualifications satisfied the statutory requirements. It has been found that the same were duly satisfied. While the School Tribunal failed to go into this aspect, the learned Single Judge relied on the pleadings of the appellant to non-suit him. On an overall reading of the pleadings of the parties, the qualifications of the appellant and the statutory requirements in that regard the appellant is found entitled to relief. The learned Single Judge having failed to exercise jurisdiction, the same has resulted in manifest injustice to the appellant. Hence, a case for interference has been made out in favour of the appellant.

12. Once it is found that the order dated 29.05.1991 passed by the Deputy Director of Education, Amravati treating the appellant as not qualified is not sustainable in law, it becomes clear that the action on the part of the Management in terminating the services of the appellant only on that count is also unsustainable. This is clear in view of the decision of the Full Bench in *St. Ulai* (supra) that want of approval to the order of appointment cannot be a reason to terminate the services of an employee. It is thus held that the order dated 29.05.1991 passed by the Deputy Director of Education, Amravati is liable to be set aside and consequently the order of termination dated 15.09.1992 which is based solely on the order dated 29.05.1991 is also liable to be set aside.

It is in this context that the effect of the Government Resolution dated 14.03.1978 will have to be considered. As per that resolution if the services of an employee are erroneously terminated on account of refusal of approval by the Education Officer/Deputy Director of Education, on the setting aside of that order the employee would be entitled to be paid salary for the requisite period provided there is no other appointment made on that post. The decision relied upon by the learned Senior Advocate for the appellant in that context supports his contention. As stated above, Shri D.S. Tohare was teaching the subjects of Secretarial Practise and Accountancy. There was no other appointment made on the post held by the appellant. In these facts therefore as it is found that the services of the appellant were terminated only due to the passing of the order dated 29.05.1991 by the Deputy Director of Education refusing to

approve the appointment which refusal was bad in law coupled with the fact that no other appointee replaced the appellant, he is entitled to receive back wages from the respondent nos.3 and 4 as per Government Resolution dated 14.03.1978.

13. It has been submitted on behalf of the appellant that since the academic year 2003-04 the appellant has secured employment elsewhere. This fact is also clear from the certificate dated 21.11.2009 issued by the appellant's present employer. Since it has been found that the services of the appellant were illegally terminated due to rejection of the proposal to grant approval coupled with the fact that the appellant has subsequently secured employment, we are inclined to grant 30% back wages to the appellant from 15.09.1992 to 31.05.2003. The burden to pay these back wages would be on the respondent nos.3 and 4 in the light of the Government Resolution dated 14.03.1978. It is also found that the appellant would be entitled to be notionally reinstated on the post of Junior College Teacher with continuity in service for all purposes including computation of qualifying service under the relevant rules.

14. In the light of aforesaid discussion, the following order is passed:-

- I. The judgment of learned Single Judge in Writ Petition No.60 of 1996 dated 20.12.2005 is set aside. The order dated 29.05.1991 passed by the respondent no.4 is quashed. Consequently, the order of termination dated 15.09.1992 is also quashed and set aside.

II. It is declared that the appellant is entitled to be notionally reinstated on the post of Junior College Teacher at the respondent no.2-College with continuity in service for all purposes. The appellant is entitled to 30% back wages from 15.09.1992 to 31.05.2003. The back wages shall be paid by the respondent nos.3 and 4 as per Government Resolution dated 14.03.1978 within a period of eight weeks failing which the back wages shall be paid with interest at the rate of 5% per annum till realization. The interest if required to be paid shall be so due on expiry of aforesaid period of eight weeks. The respondent nos.1 and 2 shall co-operate with the appellant and the respondent nos.3 and 4 in submitting the pay-bills of the appellant.

15. Letters Patent Appeal is allowed in aforesaid terms. No costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)