

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

LETTERS PATENT APPEAL NO. 316 OF 2011 IN
WRIT PETITION NO. 3885/2010 (D)

APPELLANT : Sanjay s/o Govindrao Ingle,
Aged about 45 years, Occ. Nil,
R/o. Mangrulpir, District Washim.

...V E R S U S...

RESPONDENTS : 1. State of Maharashtra, through the Secretary,
Education Department, Ministry of Education,
Mantralaya, Mumbai.

2. The Education Officer (Secondary),
Zilla Parishad, Akola.

Shri S.A.Marathe, Advocate for appellant.

Mrs. Sangeeta S. Jachak, Assistant Government Pleader for respondents.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.
DATED : 25th AUGUST, 2021

ORAL JUDGMENT (Per A.S.Chandurkar, J.)

The appellant is aggrieved by the order dated 06.12.2010 passed by the learned Single Judge in Writ Petition No.3885/2010. By the said order the learned Single Judge declined to interfere in writ jurisdiction on the ground that the appellant did not have necessary qualifications for being appointed as Assistant Teacher.

2. The facts giving rise to the present appeal are that it is the case of the appellant that he was appointed as Assistant Teacher at the school which

was being run by Dnyanakiran Shikshan Prasarak Mandal, Gavangaon, Tq. Patur, District Akola. His services were orally terminated on 21.07.1994. Being aggrieved, the appellant filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act). The School Tribunal by its judgment dated 18.03.1997 allowed that appeal and after setting aside the action of oral termination, directed reinstatement of the appellant along with continuity in service and back wages. This order of the School Tribunal attained finality. Since the directions issued by the School Tribunal were not complied with, the appellant filed Contempt Petition No.102/1997. On 22.06.1998 after recording the statement of the learned counsel for the Management that the appellant would be joined in service if he reported on duty, the contempt petition was disposed of. It appears that despite this assurance the directions issued by the School Tribunal were not complied. Hence on 06.07.2005 the appellant moved an application under Section 11 read with Section 13 of the said Act before the School Tribunal praying that appropriate action be taken against the Education Officer for non-compliance of the directions issued by the School Tribunal. The learned Presiding Officer by the order dated 07.09.2007 dismissed those proceedings on the ground that the same were not tenable. This order was therefore challenged by the appellant in Writ Petition No.3885/2010. The learned Single Judge declined to interfere in writ jurisdiction on the ground that the appellant did not possess requisite

qualification for holding the post of Assistant Teacher. It is in this backdrop the present appeal has been filed.

3. Shri S.A.Marathe, learned counsel for the appellant submits that the order of the School Tribunal dated 18.03.1997 having attained finality, it was not permissible for the learned Single Judge to have gone into the aspect of the qualification of the appellant for being appointed as 'Assistant Teacher'. The order of reinstatement had attained finality and in the proceedings seeking implementation of the order passed by the School Tribunal, the entire basis on which the relief of reinstatement was granted could not have been taken away. By virtue of the impugned order the effect of adjudication by the School Tribunal has been removed. He thus submits that the order dated 06.12.2010 was liable to be set aside and appropriate relief be granted to the appellant.

4. Mrs. Sangeeta Jachak, learned Assistant Government Pleader for the respondents supported the order passed by the learned Single Judge. She submitted that since the appellant was not having the requisite qualification, the relief was rightly refused in the writ petition.

5. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. At the outset, we may note the prayers that were made in Writ Petition No.3885/2010. The prayers

made therein are as under :

“Prayers : . It is most humbly prayed that this Hon’ble Court be pleased to call for the record of proceedings of Misc. Application No.13 of 2005 from the files of School Tribunal, Amravati and perusing the same be pleased to issue writ in the nature of certiorari and any other appropriate writ order of directions to the respondent to:

(i) Quash and set aside the impugned order dated 07.09.2007 passed by the School Tribunal, Amravati in Misc. Application No. 13 of 2005 (at Annexure II);

(ii) direct the Education Officer(Secondary), Zilla Parishad, Akola that employees of dereconized schools are also entitled for absorption in another school under Section 25(a) 2) of MEPS Act and direct to maintain petitioner’s name in the list maintained by it under rule 25(A)(2) of MEPS Rules and to absorb him in any other other school;

(iii) direct the Education Officer to grant him seniority and grant him all the service benefits including arrears of salary from the date his juniors got absorbed in another school;

(iv) during the pendency of this petition, by ad-interim order direct the Education Officer to absorb the petitioner in any other school, if there enlist any vacancy in the interest of justice;

(v) grant any other relief which this Hon’ble Court deems fit in the facts and circumstances of the case.”

6. Perusal of these prayers and especially prayer clauses (ii) and (iii) make it evident that the relief sought by virtue of those prayers could have considered only by the Division Bench in view of the provisions of Chapter XVII Rule 18 of the Bombay High Court Appellate Side Rules, 1960. By such prayers the appellant had sought direction to include his name in the list of surplus teachers to enable his absorption. Such relief could not have been

granted by the learned Single Judge in the writ petition as filed. We therefore find that the writ petition as filed ought to have been entertained by the Division Bench in view of prayer clauses (ii) and (iii) therein.

7. Be that as it may, as regards the order dated 06.12.2010 passed in Writ Petition No.3885/2010, it is to be noted that on 07.09.2007 the learned Presiding Officer of the School Tribunal did not entertain the application preferred under Sections 11 and 13 of the said Act. However while adjudicating the challenge to that order it has been observed that the appellant did not possess the qualification for holding the post of Assistant Teacher. The order of the School Tribunal dated 18.03.1997 passed in favour of the appellant had attained finality and therefore it was not permissible for the learned Single Judge to go into the correctness of the order passed by the School Tribunal on 18.03.1997 especially in the writ petition that was preferred by the successful appellant. The Management had not challenged the order of reinstatement of the appellant. In other words, in the writ petition filed by the appellant he has lost the basis of the order passed by the School Tribunal in his favour which had attained finality. It is well settled that the litigant cannot be put in worse position than that in which he was prior to initiation of the proceedings. In this regard reference can be made to the decision of the Hon'ble Supreme Court in *Pradeep Kumar Vs. Union of India and others (2005) 12 SCC 219* . On this ground therefore we find that

as the order passed by the School Tribunal on 18.03.1997 had attained finality, it would not be permissible to re-open those proceedings in the writ petition filed by the appellant. The order dated 06.12.2010 is liable to be set aside on this ground alone.

8. Since the aforesaid writ petition was entertained and adjudicated only in the context of prayer clause (i), we find that the interests of justice would be served if the said writ petition is restored to file for adjudication of all the prayers made therein.

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

- (i) The order dated 06.12.2010 passed in Writ Petition No.3885/2010 is set aside.
- (ii) Writ Petition No.3885/2010 is restored to file and the same shall now be placed before the Division Bench as per roster assignment for its adjudication on merits.
- (iii) Letters Patent Appeal No.316/2011 is allowed in aforesaid terms. The parties shall bear their own costs.

It is clarified that we have not examined the entitlement of the appellant to the reliefs sought in the writ petition. All points on merits are kept open.

JUDGE

JUDGE