

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

LETTERS PATENT APPEAL NO.403 OF 2011
IN
WRIT PETITION NO. 922 OF 2010

APPELLANT : Shri Rupdas Chintaman Ghugguskar,
Aged 40 Years, Occupation - Nil,
R/o Kanhalgaon (sonali),
Tah - Nagbhid, Dist - Chandrapur.

V E R S U S

RESPONDENTS :

1. National Education Society
Gangasagar (Heti), Tah - Nagbhid,
Dist - Chandrapur, through its
President, Shri N. B. Barsagade.
2. The Headmaster, Milind Vidyalaya,
Bhuj, Post - Mudza, Tah - Bramhapuri,
Dist - Chandrapur.
3. Education Officer (Sec.),
Zilla Parishad, Chandrapur.

Ms. Riya Baghul, Advocate h/f Shri S. P. Bhandarkar, Advocate for
appellant.

Shri M. P. Khajanchi, Advocate for respondent Nos.1 and 2.

Ms. S. S. Jachak, AGP for respondent No.3.

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

DATED : 24/08/2021

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

1. In this Letters Patent Appeal, challenge is to the
Judgment and order dated 21/03/2011 passed by the learned
Single Judge in Writ Petition No.922/2011, whereby the learned

Single Judge dismissed the writ petition and upheld the order dated 16/09/2010 passed by the learned Presiding Officer of the School Tribunal, Chandrapur in Appeal No.STC/31/2003.

2. The respondent No.1 - Society administered and managed the respondent No.2 - School which is recognized private school. It is the case of the appellant that on 26/06/1995, he was appointed as an Assistant Teacher in the respondent No.2 - School. At that time, he possessed B.Sc. Degree in the subject of Mathematics. He was appointed in a clear, permanent and reserved vacancy as per the Rule 6 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (Hereinafter referred to as "the M.E.P.S. Rules"). The first appointment order was issued in the year 1996-1997. The fresh appointment order was issued on 15/06/1997 for a period of two years namely; 1997-1998 and 1998-1999. The appellant completed his B.Ed. in May, 2003. It is stated that despite an undertaking that he would be continued after completion of B.Ed., his services were discontinued. On these averments, he prayed for reinstatement and back-wages.

3. The respondent Nos.1 and 2 opposed the claim of the appellant. It is denied that the appellant was appointed on probation for two years. The appellant was untrained teacher and therefore, he was appointed on temporary basis. Vide notice dated 28/04/2000, the services of the appellant came to be terminated. The appellant was not qualified for being appointed as an Assistant Teacher. He did not possess the qualification of B.Ed. till May, 2003.

4. The learned Presiding Officer of the School Tribunal held that the appellant did not acquire deemed confirmation. The Presiding Officer further held that the services of the appellant were legally terminated. The appellant being dissatisfied with this Judgment and order passed by the learned Presiding Officer of the School Tribunal, preferred the writ petition. The learned Single Judge vide order dated 21/03/2011 dismissed the writ petition and upheld the order passed by the School Tribunal.

5. Being aggrieved and dissatisfied with the Judgment and order passed by the learned Single Judge, the appellant has filed this Letters Patent Appeal. The main grievance of the

appellant is that he was appointed by following due procedure laid down under the law and therefore, on completion of two years service, he became deemed confirmed teacher.

6. We have heard learned advocate for the appellant, learned advocate for the respondent Nos.1 and 2 and learned Assistant Government Pleader for the respondent No.3. Perused the record and proceedings.

7. The learned advocate submitted that the appellant was appointed vide order dated 15/06/1997 on probation for two years. The learned advocate submitted that therefore, the appellant acquired the status of the deemed confirmed teacher. The learned advocate submitted that later on, the appellant obtained B.Ed. qualification. The learned advocate submitted that the respondents wrongly terminated the services of the appellant.

8. The learned advocate for the respondents submitted that the appointment of the appellant as an untrained teacher was temporary on year to year basis. The learned advocate submitted that the appellant had given an undertaking dated 24/06/2000 and stated that he was appointed on temporary basis and after completion of his B.Ed., he would not claim any right

over the post of Assistant Teacher. The learned advocate submitted that the appointment of the appellant, being unqualified teacher was, on year to year basis. The learned advocate submitted that the appellant did not possess requisite qualification to get the status of the deemed confirmed teacher.

9. In order to appreciate the submissions, it would be necessary to consider the provisions of Rule 6 of the M.E.P.S. Rules. It reads thus -

Rule 6 : Qualification of Teachers :- The minimum qualification for the post of teachers and the non-teaching staff in the primary schools, secondary schools, Jr. Colleges of Education, shall be as specified in schedule-B.

Provided that the Education Officer may allow Management to appoint untrained science graduate teachers for teaching Mathematics and science subjects or untrained Arts or Commerce graduates for teaching other subjects in secondary schools, in exceptional circumstances, such as non-availability of trained Graduates. Such appointments shall however, be allowed on year to year basis on the clear understanding that they shall have to obtain training qualification at their own expenses and further subject to the condition that their services shall be liable

for termination as soon as trained Graduate teachers become available."

As per the proviso to Rule 6 of the M.E.P.S. Rules, an untrained teacher can be appointed in Secondary School. However, such appointment can be made only on year to year basis. It would, therefore, be apparent that the untrained teacher cannot be appointed on probation and cannot attain deemed confirmation. The appellant as can be seen from the record was appointed on year to year basis. His appointment for two years, was not strictly according to the provisions of Rule 6 of the M.E.P.S. Rules. In the given set of facts, length of service was not material. It is, therefore, apparent on the face of record that the services of the appellant were not illegally terminated inasmuch as the appellant had failed to acquire the training qualification within the period specified by him, in his undertaking. The appellant completed his B.Ed. Course in May, 2003. The services of the appellant were terminated two years prior to May, 2003. It, therefore, goes without saying that till the date of his termination and even by the end of Academic Session 2000-2001, he did not acquire B.Ed. qualification. The learned Single Judge taking note of the above stated facts, upheld the order passed by the Presiding

Officer of the School Tribunal. On going through the record and proceedings, we are of the view that the learned Single Judge has not committed any mistake. The view taken by the learned Single Judge is the only possible view in the matter.

10. The learned advocate for the appellant relied upon the following four reported decisions:-

i] **2015(1) Mh.L.J. 194**
(Ujwal Shikshan Sanstha, Amgaon (Dighori) and another Vrs. Presiding Officer, Additional School Tribunal, Nagpur (Chandrapur) and others).

ii] **(2017) 11 Supreme Court Cases 244**
(Jayant Vasantrao Hiwarkar Vrs. Anoop Ganpatrao Bobde and others).

iii] **2016-III-LLJ-700 (Guj)**
(Mukundbhai Mangaldas Shrimali Vrs. State of Gujarat).

iv] **(2005) 13 Supreme Court Cases 638**
(Kankavali Shikshan Sanstha and others Vrs. M. R. Gavali and others).

11. We have minutely perused the law laid down in the abovesaid decisions. In our view, in view of the finding of fact recorded by us that the termination of the appellant was not illegal, the proposition in the decisions relied upon by the learned

advocate for the appellant would not be applicable to the case of the appellant. In the case at hand, the appointment of the appellant was on year to year basis because he was untrained teacher. The law does not confer the benefit of permanency on the untrained teacher on completion of any number of service. In the result, there is no substance in the appeal. The appeal deserves to be dismissed. Hence, the following order :-

ORDER

- I] The Letters Patent Appeal stands dismissed.
- II] In the peculiar facts and circumstances of the case, the parties shall bear their own costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)