

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

LETTERS PATENT APPEAL NO.270 OF 2011 IN
WRIT PETITION NO. 3405/2006(D)

APPELLANT : Jaideo s/o Ganpatrao Lokhande,
Aged about 57 years, Occ. Retired.
R/o. Kailash Nagar, Behind Tiripati Balaji Apartment
Near Gopal Nagar, Badnera Road,
Amravati, District Amravati.

//versus//

RESPONDENTS : 1. The Presiding Officer,
School Tribunal, Nagpur.

2. Navjiwan Society, Amravati.
Through its Secretary,
Jog Bungalow, Amravati Camp, Amravati.

3. The Headmaster,
Deepshikha Gurukul Sainik School,
Chikaldara, District Amravati.

4. The Education Officer(Secondary)
Zilla Parishad, Amravati.

Shri P.P.Thakre, Advocate for petitioner.

Shri V.P.Marpakwar, Advocate for respondent nos. 2 and 3.

Mrs. Sangeeta S. Jachak, Assistant Government Pleader for respondent no.4

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

DATED : 20th August, 2021

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

A limited challenge raised by the appellant to the order dated 11th and 15th April 2011 passed by the learned Single Judge in Writ Petition No.3405/2006 is that the monetary compensation of Rs.25,000/- awarded to the appellant in lieu of reinstatement on account of his superannuation is on a lower side.

2. Shri P.P.Thakre, learned counsel for the appellant submits that the appellant was appointed as an Instructor on 28.06.1996 on consolidated pay of Rs.5,000/- per month. His initial appointment came to an end on 30.06.1997 prior to which a fresh order of appointment dated 16.06.1997 was issued to him. However by the order dated 23.04.1999 the services of the appellant were terminated with effect from 31.05.1999. He submits that the appeal filed before the School Tribunal came to be dismissed. In the writ petition challenging the order of termination, the learned Single Judge found that the appointment of the appellant was made in accordance with the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act) On that premise after recording a finding that there was no material to hold that the services of the appellant were unsatisfactory, the judgment of the School Tribunal was set aside. In view of the fact that the appellant had attained the age of superannuation on 04.05.2004, the learned Single awarded compensation of Rs.25,000/- for wrongful termination of services of the petitioner. It is submitted that considering the fact that the appellant had a right to hold the post in question, the amount of compensation as awarded is on a lower side and the same deserves to be enhanced.

3. Shri V.P.Marpakwar, learned counsel for the respondent nos. 2 and 3 opposed the aforesaid submissions. According to him, the appellant served for a period of less than two years after which his services came to an end. Considering the fact that the appellant had attained the age of superannuation on 04.05.2004 his total service, if the same was not terminated, would have been less than ten years.

Hence the amount of compensation of Rs.25,000/- as awarded was reasonable not requiring any enhancement.

4. We have heard the learned counsel for the parties and we have perused the material placed on record. It may be noted that the finding recorded by the learned Single Judge as to the entitlement of the appellant to hold the post in question is not challenged by the respondent nos. 2 and 3. That finding has thus attained finality. The only question to be determined is the amount of compensation to which the appellant could be held entitled. In this regard reference can be made to the provisions of Section 11 (2)(e) of the said Act. As per that provision in any appropriate case where it is not possible to reinstate the employee, he can be granted salary of six months along with allowances if he had been in services of the school for a period of less than ten years.

5. As noted above, the entire service of the appellant with the respondent nos. 2 and 3 from 28.06.1996 to 04.05.2004 would be less than ten years and hence we find that the appellant can be given benefit of aforesaid provision. The amount of compensation would be liable to be paid as per Section 11 (2)(e) of the said Act to the appellant.

6. In that view of the matter, the following order is passed :

(i) The judgment of the learned Single Judge dated 11th & 15th April, 2011 in Writ Petition No.3405/2006 is partly modified. Instead of the amount of compensation of Rs.25,000/-, it is held that the appellant is entitled to receive compensation in accordance with the provisions of Section 11 (2) (e) of the said Act

read with Schedule C of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981. If the amount of Rs.25,000/- has already been received by the appellant, the same shall be deducted from the total entitlement of compensation as per the provisions of Section 11(2)(e) of the said Act. The balance payment be made by the respondent no.2 within six weeks from today.

(ii). Letters Patent Appeal No.270/2011 is partly allowed in aforesaid terms. There shall be no orders as to costs.

JUDGE

JUDGE

Andurkar..