

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

LETTERS PATENT APPEAL NO.535 OF 2010
IN
MISC. CIVIL APPLICATION NO.5865 OF 2006
IN
WRIT PETITION NO.5865 OF 2006

Amrapali d/o Anandrao Kalbande
(nee) Amrapali w/o Arun Shirsat
Age 40 years, R/o Mangalmurti Apartment,
Commissioner Colony, Camp-Amravati
Tq. and District Amravati

... Appellant

-vs-

1. Vidyabharati Shaikshinik Mandal
C. K. Naidu Road, Camp- Amravati
Through its Secretary
2. Shri Shivchandji Laddha Junior College
(M.C.V. C.) Shivangaon, Tq. Tiosa,
District Amravati, Through its Principal
3. Deputy Director, Vocational Education and
Training, Divisional Office, Morshi Road,
Amravati, Tq. and District Amravati
4. ~~Kum. Kiran D. Waghmare~~
(Deleted)
5. Presiding Officer,
School Tribunal, Amravati
6. State of Maharashtra,
Through the Secretary,
Higher Technical Education,
Mantralaya, Mumbai

... Respondents

Shri P. A. Kadu, Advocate for appellant.

Shri D. P. Thakare, Additional Government Pleader for respondent Nos.3,5 and 7.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.
DATE : JULY 15, 2021

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

The challenge in this Letters Patent Appeal is to the judgment of the learned Single Judge dated 06/04/2010 in Writ Petition No.5865/2006 as well as the order passed in Misc. Civil Application No.472/2010 dated 03/05/2010.

The writ petition preferred by the appellant challenging the judgment of the School Tribunal, Amravati in Appeal No.131/1998 came to be dismissed. As a result, dismissal of the appeal that was preferred by the appellant challenging the termination of her services came to be confirmed.

2. The facts in brief are that it is the case of the appellant that pursuant to an advertisement issued by the respondent Nos.1 and 2 the appellant came to be appointed as a full time Instructor in the M.C.V.C. course conducted by the respondent No.2. The order of appointment was dated 08/08/1994 and it was till the end of academic session 1994-95. Approval to the appellant's appointment was also granted. Thereafter on 22/04/1995 the appointment of the appellant came to be continued and that appointment was further approved till the end of session 1995-96. It is then the case of the appellant that a fresh order of appointment was issued to her on 30/11/1995 which order of appointment was on probation. Approval

was again granted on 13/11/1996 which was to operate till the end of academic session 1996-97. Yet another order of appointment was issued to the appellant on 10/12/1997 appointing her till the end of academic session 1997-98. The academic session 1997-98 came to an end on 30/04/1998 and the appellant on 03/06/1998 made an application seeking grant of maternity leave. It is her case that further applications to the same effect were made on 14/07/1998 and 25/08/1998. The appellant sought to report for duty on 14/09/1998 but she was not permitted to join her duties and hence in November 1998 she preferred an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act). Alongwith the appeal she also filed an application for condonation of delay on the premise that her services were sought to be terminated with effect from 30/04/1998.

3. Reply was filed on behalf of the respondents opposing the appeal. It was stated by the respondent Nos.1 and 2 that the services of the appellant came to an end at the end of academic session 1997-98. The appellant had handed over the charge of her post on 04/05/1998. Thereafter a fresh advertisement was issued pursuant to which the appellant as well as respondent No.4 had applied. The respondent No.4 was duly selected and she was holding the said post. It was further pleaded that the appellant had no right to hold the post in question inasmuch as she was not having the

requisite experience for being appointed permanently.

The learned Presiding Officer of the School Tribunal held that the appointment of the appellant was only till the end of academic session 1997-98 and that her services were terminated after giving one month's notice. Thereafter the appellant had handed over the charge of her post on 04/05/1998. The appellant had also responded to the subsequent advertisement but it was the respondent No.4 who came to be appointed. It was further held that the appointment of the appellant on 10/12/1997 was without following the prescribed procedure and hence there was no right to claim relief in that regard. On these grounds the appeal filed by the appellant came to be dismissed.

4. As stated above the appellant preferred Writ Petition No.5865/2006 challenging the judgment of the School Tribunal. After considering the entire material on record the learned Single Judge found that the School Tribunal was justified in recording a finding that the appointment of the appellant was not after following the prescribed procedure. Hence it was held that she had no right to seek reinstatement and accordingly the writ petition was dismissed on 06/04/2010. The review application preferred by the appellant was also rejected on 03/05/2010 and these orders are challenged in the present Letters Patent Appeal.

5. Shri P. A. Kadu, learned counsel for the appellant submitted that the learned Presiding Officer and thereafter the learned Single Judge failed to give due consideration to the documentary material on record which resulted in the appeal filed by the appellant being dismissed. He submitted that various appointment orders and the continuation orders issued by the Management clearly indicated that the appellant had duly served as full time Instructor since 1994. The approval to her appointment was granted on each occasion till the end of the relevant academic year. There was no basis to conclude that her services came to an end on 30/04/1998. Though the appellant had made various applications for grant of maternity leave the same were neither granted nor rejected. The appellant despite reporting for duty on 14/09/1998 was not permitted to discharge her duties. Though the appellant had preferred an application for condonation of delay for filing the appeal that application was not decided by the learned Presiding Officer. There was sufficient material on record to indicate that as the appellant was initially appointed by following the due procedure it was not necessary that the same procedure ought to have been followed subsequently. The learned Presiding Officer and the learned Single Judge did not correctly apply the relevant legal provisions thereby depriving the appellant from getting necessary relief in the proceedings filed by her. It was thus submitted that on a proper consideration of the entire material on record the appeal filed by the appellant under Section 9 of the said Act ought to have been allowed and

the appellant ought to have been reinstated in service. He thus prayed for allowing the Letters Patent Appeal.

6. We have heard the learned counsel for the appellant at length and we have perused the material placed on record. It is seen from the material on record that the appellant was issued various orders of appointment from time to time as full time Instructor in the M.C.V.C. course conducted by respondent No.2. The appointment on each occasion was upto the end of the relevant academic year and the appointment was also approved for that period. It can be seen that the appellant accepted these orders of appointment for a specified period as well as her re-appointment from time to time. The appellant was lastly appointed on 10/12/1997 and as per that order of appointment the same was till the end of academic year 1997-98. She was given a month's notice and her services came to an end on 30/04/1998. The further material on record indicates that the appellant handed over the charge to the Head of the Department on 04/05/1998. Thereafter when a fresh advertisement was issued by the Management on 01/08/1998 the appellant as well as the respondent No.4 applied pursuant to the said advertisement. The appellant however did not appear for the interview on 10/08/1998 but the respondent No.4 appeared for the same. The respondent No.4 was then appointed on 11/08/1998. It is on this premise that a finding has been recorded that the services of the appellant

had been terminated from 30/04/1998 and that she was not in service thereafter.

7. The learned Presiding Officer has recorded a finding that prior to being appointed on 10/12/1997 prior permission of the Deputy Director of Vocational Education and Training had not been obtained. There was no advertisement issued and hence that appointment was not in accordance with the provisions of Section 5(1) of the said Act. This finding has been affirmed by the learned Single Judge and by relying upon the decision in *Priyadarshini Education Trust vs. Ratis Bano 2007(6) MH.L.J. 667* it was held that the appellant had no right to hold the post in question. We find that this finding recorded as regards absence of the prescribed procedure being followed as contemplated by Section 5(1) of the said Act is based on the material on record and the same does not call for any interference.

8. It was sought to be urged on behalf of the appellant that since the appellant was initially appointed on 08/08/1994 it ought to be held that her services were deemed to be confirmed. In this regard it may be noted that the appellant was not having the requisite experience prescribed and hence was appointed on year to year basis. She was given break in service and was thereafter again re-employed. The approval granted by respondent No.3 is therefore only for a limited period which was till the end of academic

session. The appellant having accepted the earlier termination of service and her re-employment which was without following the prescribed procedure, no right accrued in her favour. When the advertisement was ultimately issued on 01/08/1998 she did not appear before the interview committee. It thus becomes clear that the learned Presiding Officer has rightly held that the petitioner was not appointed on 10/12/1997 after following the prescribed procedure and her services were rightly put to an end on 30/04/1998 by giving one month's notice. That finding has been affirmed by the learned Single Judge. Once this conclusion is arrived at the other aspects regarding moving application for grant of maternity leave and the same not being sanctioned do not have much relevance. All this is after 30/04/1998 on which date the services of the appellant stood terminated. Similarly even if the application for condonation of delay was not decided by the School Tribunal, the case of appellant has been considered on merits and it has been found that her services were rightly terminated on 30/04/1998. No prejudice has been pointed out which could have resulted by not deciding the application for condonation of delay. Hence nothing much would turn on this aspect.

9. In the light of the aforesaid discussion we do not find that the learned Single Judge committed any error in dismissing the writ petition preferred by the appellant thereby confirming the judgment of the School

Tribunal. There is no case made out for interference. In that view of the matter the Letters Patent Appeal stands dismissed with no order as to costs.

JUDGE

JUDGE