

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

LETTERS PATENT APPEAL NO.353 OF 2010
IN
WRIT PETITION NO.3569 OF 2005

Hemchandra Ramdas Jadhav
Aged about 45 years,
Occupation Service as Clerk
R/o Bhooli, Tq. Manora,
Dist. Washim

... Appellant

-vs-

1. The State of Maharashtra,
Through its Secretary,
Department of Education,
Mantralaya, Mumbai 32
2. The Education Officer (Secondary)
Zilla Parishad, Washim,
Tq. And Dist. Amravati
(Earlier Dist. Akola)
3. Gajanan Maharaj Bahu Uddeshiya
Shikshan Sanstha, Wilegaon
which is running the School
Namely Jai Bajrang Vidyalaya,
Thr. its Director Sitaram Vasram Rothod,
R/o Pimpri (Modak) Tq. Karanja (Lad)
Dist. Washim
4. The Headmaster,
Jai Bajrang Vidyalaya, Bhooli,
Tq. Manora, Dist. Washim
(Earlier Dist. Akola)

... Respondents

Shri V. A. Kothale, Advocate for appellant.
Shri D. P. Thakare, Additional Government Pleader for respondent Nos.1 and 2.
Shri A. P. Tathod, Advocate for respondent Nos.3 and 4.

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

DATE : August 03, 2021

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

In this appeal the judgment of the learned Single Judge dated 07/06/2010 in Writ Petition No.3569/2009 is under challenge. The appellant claims that he was appointed on the post of Junior Clerk at the school run by respondent No.3. It is his grievance that after the school came on grant-in-aid basis the Management started harassing him and demanded amount of Rs.12,000/- for continuing him in service. By making a grievance that his services were orally terminated on 15/03/1994 he approached the School Tribunal by filing appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act). In the written statement filed by the Management it was denied that the services of the appellant were ever terminated. In paragraph 6 of the written statement it was pleaded as under :

‘ It is submitted that the appellant is still in service of these Respondents and there was no termination of the appellant as alleged by him.

It would be further pertinent to submit that the appellant has filed his appeal as it appears there from on 21/03/1994 and therefore, to bring it within limitation, an imaginary date of 15/03/1994 has been shown in the name of oral termination. In fact it is not the case of termination but it is a case of the appellant himself of remaining absent from his school duties, and in support whereof the Respondents have sent various communications to him time and again, copies of

some letters are annexed herewith.'

2. The learned Presiding Officer of the School Tribunal by his judgment dated 01/04/2005 was pleased to dismiss the said appeal by holding that the appointment of the appellant was not in accordance with Section 5 of the said Act. It must be noted that during pendency of that appeal there was an ad-interim stay granted by virtue of which the appellant continued in service till decision of the appeal. The appellant challenged the aforesaid judgment by filing Writ Petition No.3569/2005. While admitting the writ petition the interim relief which was already operating was continued. The learned Single Judge found that since the appointment of the appellant was not in accordance with the provisions of Section 5 of the said Act, the conclusion arrived at by the learned Presiding Officer was correct. On that ground the writ petition came to be dismissed. When this Letters Patent Appeal was admitted, interim relief was granted by virtue of which the appellant continues to be in service.

3. We have heard Shri V. A. Kothale, learned counsel for the appellant and Shri A. P. Tathod, learned counsel for respondent Nos.3 and 4 as well as Shri D.P Thakare, learned Additional Government Pleader for respondent Nos.1 and 2.

We find from the record that in the appeal filed by the appellant

under Section 9 of the said Act it was prayed that the oral termination dated 15/03/1994 be set aside. In the written statement it was the specific stand of the Management in paragraph 6 that the services of the appellant were never terminated and he was still in service. Once this position is clear it becomes obvious that in absence of there being any order of termination of service of the appellant, there was no reason to further continue with the adjudication of the appeal under Section 9(1)(a) of the said Act. An appeal under Section 9(1) of the said Act is maintainable only in case the services of an employee are terminated. When the Management came up with the stand that the services of the appellant were never terminated the appeal ought to have been disposed of on that premise that the Management had never terminated his services. There was no reason to go into the question as to whether the appellant was initially appointed by following the due procedure. In other words, since the services of the appellant were never terminated, there was no cause of action to further prosecute the appeal under Section 9 of the said Act.

4. Be that as it may, we find that since filing of the appeal before the School Tribunal there has been interim order operating by virtue of which the appellant continued in service for more than twenty five years. It is informed that the appellant is to superannuate within a year. In that view of the matter we are satisfied that since the services of the appellant were never

terminated as contended by the Management, the appellant is entitled to continue in service as before. In the light of the statements made in the written statement reproduced herein above it was not necessary for the learned Single Judge to have gone into the question as to whether the appellant was appointed after following due process of law especially when the appeal under Section 9(1) of the Act was not maintainable. Accordingly the judgment dated 07/06/2010 in Writ Petition No.3569/2005 is set aside. In the light of the averments made in the written statement reproduced herein above it is deemed that the appellant continued in service even after 15/03/1994.

The Letters Patent Appeal is allowed in aforesaid terms. Parties to bear their own costs.

JUDGE

JUDGE