

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

LETTERS PATENT APPEAL NO.163/2011 IN WRIT PETITION NO. 3176/2000 (D)

Kishor Narayanrao Bodhe,
aged 49 years, resident of and post Maregaon,
behind Gramin Rugnalaya, District Yavatmal.

APPELLANT

.....VERSUS.....

1. The Presiding Officer,
College Tribunal, Nagpur.
2. Amravati University, Amravati,
through its Registrar.
3. Sadhak Ashram Ardhawan Society,
Tah. Zari (Jamuni) District Yavatmal.
4. Shri Gajanan Maharaj Mahavidyalaya,
Mukutban, Taluka Zari, District Yavatmal
Through its Principal.
5. S.K. Munde, through Shri Gajanan
Mahavidyalaya, Mukutban,
Taluka Zari, District Yavatmal.

RESPONDENTS

Shri P.R. Parsodkar, counsel for the appellant.
Ms S.S. Jachak, Assistant Government Pleader for the respondent no.1.
Shri S.A. Marathe, counsel for the respondent no.2.
Shri V.P. Ingle, counsel for the respondent nos.3 and 4.
Shri A. De, counsel for the respondent no.5.

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

DATE : 24TH AUGUST, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

This letters patent appeal filed under Clause 15 of the letters patent takes exception to the judgment of the learned Single Judge dated 06.05.2010 in Writ Petition No.3176 of 2000. By that judgment, the aforesaid writ petition filed by the appellant came to be dismissed and the judgment passed by the learned Presiding Officer, University and College Tribunal Nagpur on 06.07.2000 came to be upheld.

2. The facts relevant for adjudicating the appeal are that it is the case of the appellant that on 05.08.1995 the respondent nos.3 and 4-Management issued an advertisement inviting applications from candidates seeking appointment on the post of Junior College Teacher. The appellant applied for the post of Junior College Teacher in the subject of History. In the advertisement it was stated that the said post was reserved for Scheduled Tribe candidate. On 25.01.1996 an appointment order was issued to the appellant which was made subject to approval of the Amravati University. This appointment was for the academic session 1995-96. Thereafter on 23.11.1996 another order of appointment for the academic year 1996-97 came to be issued. Another order of appointment on 26.12.1997 for the academic year 1997-98 was issued to the appellant. These orders of appointment were approved by Amravati University initially for the sessions 1995-96, 1996-97 and 1997-98. The last approval granted was for the academic year 1997-98 against the reserved post. It is the case of the appellant that on 01.05.1999 his services came to be orally terminated by the Management. Being aggrieved the appellant preferred an appeal under Section 59 of the Maharashtra Universities Act, 1994. The respondents filed their written statement and the learned Presiding Officer by his judgment dated 06.07.2000 held that the appellant had no right to hold the post of Junior College Teacher and that his services came to an end by efflux of time at the end of academic session 1997-98. On

that premise the appeal came to be dismissed. Being aggrieved the appellant filed Writ Petition No.3176 of 2000. The learned Single Judge found that the post of Junior College Teacher in the subject of History was reserved for Scheduled Tribe candidate. However the Management ought to have published the advertisement keeping the said post open. It was held that as the advertisement itself was bad in law there was no legal right with the petitioner to seek reinstatement. On that count, the writ petition came to be dismissed. Hence, this appeal.

3. Shri P.R. Parsodkar, learned counsel for the appellant submits that in the advertisement dated 05.08.1995 there was only one post advertised for the subject of History and hence the same could not have been kept reserved. According to him it being an isolated post the same was required to be filled in by keeping it open. Placing reliance on the decision in *State of Karnataka & Others K. Govindappa & Another [(2009) 1 SCC 1]*, it was submitted that since the post in the subject of History was not interchangeable with the post with regard to any other subject it was an isolated post. Despite that the entitlement of the appellant has been refused and the approval had been granted by treating the said post as reserved. It was further contended that the oral termination of the services of the appellant was illegal being based only on that count. Since the appellant had acquired all necessary qualifications he was

entitled to continue on that post. The judgments passed by the learned Presiding Officer, University and College Tribunal as well as by the learned Single Judge were therefore liable to be set aside.

4. Shri S.A. Marathe, learned counsel for the respondent no.2, Shri V.P. Ingle, learned counsel appearing for the respondent nos.3 and 4 and Shri A.De, learned counsel appearing for the respondent no.5 supported the impugned judgment. According to them the appellant was lastly appointed on 26.12.1997 and in the academic session 1998-99 there was no order of appointment issued to him. Having applied pursuant to the advertisement dated 05.08.1995 it was not open for the appellant to contend that the advertisement issued was illegal. It was thus submitted that all relevant aspects were considered while denying relief to the appellant. Hence, no interference with the impugned orders was called for.

5. We have heard the learned counsel for the parties at length and we have given due consideration to their respective submissions. It is not in dispute that in the advertisement one post in the subject of History was shown reserved for Scheduled Tribe candidates. Pursuant to the same, the appellant had applied and he was appointed for the academic session 1995-96. Same course was followed in the academic sessions

1996-97 and 1997-98. On the aspect of the post in question being shown as reserved the learned Single Judge has observed that in view of the provisions of Ordinance No.25 and Statute No.53 the post ought to have been kept in the open category and there could have been no reservation against the isolated post in the subject of History. This finding is in accordance with the ratio of the decision in *K.Govindappa & Another* (supra) on which reliance was placed by the learned counsel for the appellant. To that extent the contention raised on behalf of the appellant deserves to be upheld.

6. We however find that for various reasons the appellant would not be entitled for the relief as sought by him. Firstly, the appellant has not shown his appointment for the academic session 1998-99 as it is his case that his services were orally terminated on 01.05.1999. No doubt the petitioner has sought to rely upon the communication dated 30.03.1999 issued by the University by which he was given the work of invigilation. However in absence of any order of appointment for the relevant session it would be difficult to hold that the appellant was also appointed in the academic session 1998-99. Observations to that effect can be found in the judgment of the learned Presiding Officer. Yet another reason is that in response to the advertisement dated 05.08.1995 the appellant had sought the appointment on the post of Junior College

Teacher in the subject of History. Having secured appointment thereto it was not open for the appellant to turn around and contend that the advertisement itself was illegal and the post in the subject of History should have been kept for open category candidates. It is not permissible for the appellant to approbate and reprobate in the same matter. Moreover each order of appointment issued to the appellant in the earlier sessions is for those relevant academic sessions. In absence of any order of appointment in the academic session 1998-99 the relief of setting aside the order of oral termination dated 01.05.1999 cannot be granted. A specific stand to this effect was taken by the respondent nos.2 and 3 that after 30.04.1998 the appellant was not in service. In the light of this specific stand, the burden was on the appellant to show his engagement as Junior College Teacher in the academic session 1998-99. The appellant has however failed to do so.

7. In the light of aforesaid position on record we do not find any scope to interfere in the adjudication by the learned Single Judge and to grant relief to the appellant. The orders passed do not suffer from any illegality warranting interference. The letters patent appeal is therefore dismissed leaving the parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)