

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

LETTERS PATENT APPEAL NO.53 OF 2011.

IN

WRIT PETITION NO. 1155 OF 2006

Laxman S/o. Mahadeo Titirmare,
Aged about 46 years,
R/o Tamaswadi, Post Khapa,
Tah. Tumsar, Distt. Bhandara

..... **APPELLANT**

...V E R S U S...

1. Gram Vikas Shikshan Sanstha,
Khapa, Tah. Tumsar, District Bhandara,
through its Secretary Shri. Gonmode.
2. Shri Dinesh Bajirao Pikalmunde,
Joint Secretary, Vikas Shikshan Sanstha,
Khapa and then Head Master of the
School.
3. The Education Officer [Secondary]
Zilla Parishad, Bhandara
4. Ku. Gaya Mahadeo Daire,
Assistant Teacher, (Middle),
Saraswati High School, Khapa,
Tah. Tumsar, District Bhandara.
5. The Head Master, Saraswati
High School Khapa, Tah. Tumsar,
District Bhandara.

...RESPONDENTS

Shri R. S. Parasodkar, Advocate for appellant
Shri R. M. Bhangde, Advocate for respondent No.1
Ms S. S. Jachak, AGP for respondent No.3/State.

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

DATED : 30.08.2021

O R A L J U D G M E N T (Per : G. A. Sanap, J.)

In this Letters Patent Appeal the appellant has challenged the Judgment and order dated 13.10.2010, passed by the learned Single Judge, in Writ Petition No. 1155 of 2006, whereby the learned Single Judge dismissed the Writ Petition filed by the appellant and upheld the order dated 22.12.2005 passed by the learned Presiding Officer of the School Tribunal, Nagpur in Appeal No. STC/51/1999. The learned Presiding Officer of the School Tribunal had rejected the appeal filed by the appellant challenging his termination from service with effect from 29.04.1999.

2] The facts leading to this appeal are as follows:

It is the case of the appellant that vide appointment order dated 01.08.1997 he was appointed as an 'Assistant Teacher' in the school run by the respondent No.1. The appellant was again appointed by order dated 14.06.1998 for one year commencing from 23.06.1998 up to the end of the academic session. It is the case of the appellant that on 26.04.1999 when he went to attend his duty he was informed about his termination

from 29.04.1999. According to the appellant, he was appointed in a clear vacancy as 'Assistant Teacher'. He worked for two years in the School though under two different appointment orders. It is his case that after completion of two years service he became the confirmed employee. According to him, the order of termination was illegal and bad in law.

3] The respondent/Management filed the written statement and opposed the claim of the appellant. The respondent denied the material facts pleaded by the appellant. It is contended that the appointment of the appellant by order dated 01.08.1997 was by the respondent No.2-the Headmaster of the school. The Headmaster was not competent and empowered to make the appointment. The initial appointment was illegal and bad in law. The appointment was on temporary basis for a fixed period of one year. It was not an order on probation. The appointment order did not confer any right upon the appellant for continuation as an 'Assistant Teacher'. The second appointment order was also for one year.

4] The learned Presiding Officer of the School Tribunal dismissed the appeal filed by the appellant on the ground that the initial order of the appointment of the appellant was illegal in as much as the same was not issued by the School Committee by following due process and procedure. The case of the appellant seeking the benefit of the Government Resolution dated 30.10.1996 for his permanency was rejected.

5] Being aggrieved by the order of the learned Presiding Officer, School Tribunal, the appellant filed the Writ Petition bearing No.1155 of 2006. The learned Single Judge as mentioned above dismissed the writ petition and upheld the order passed by the School Tribunal. Being aggrieved and dis-satisfied by this order passed by the learned Single Judge the appellant has come in Letters Patent Appeal before this Court. The grounds of challenge to the impugned order have been set out in the memo of appeal. It is contended that the initial order of the appointment was legal and valid and therefore, on completion of two years service in a clear vacancy the appellant became the permanent

employee. It is contended that the appellant would be entitled to get the benefit of Government Resolution dated 30.10.1996.

6] We have heard the learned Advocate for the appellant and the learned Advocate for the respondent No.1. Perused the record and proceedings.

7] The learned Advocate for the appellant submitted that appellant has been made scapegoat in the dispute between the Members of the Managing Committee of the respondent No.1. The learned Advocate submitted that initial appointment dated 01.08.1997 was made by the Headmaster on the basis of the Government Resolution dated 30.10.1996. The learned Advocate submitted that since the Managing Committee was not in existence due to the dispute amongst the members, the second order of the appointment was also issued by the Headmaster, who is also the Secretary of the School Committee. The learned Advocate submitted that after completion of two years service in clear vacancy the appellant became the permanent employee. In

the submission of the learned Advocate for the appellant neither the School Tribunal nor the learned Single Judge has considered the admitted facts and evidence in proper prospective. The learned Advocate submitted that by setting aside the order passed by the learned Single Judge, the appeal filed by the appellant before the School Tribunal deserves to be allowed.

8] The learned Advocate for the respondent No.1 submitted that at the given point of time there was dispute between the Members of the Managing Committee and therefore, it was not in existence. The learned Advocate pointed out that therefore, for the purpose of smooth running of the school, the then Headmaster by taking assistance of the Government Resolution dated 30.10.1996 appointed the appellant for a period of one year on temporary basis. The learned Advocate submitted that even at the time of issuance of the second appointment order, albeit by the incompetent person, the dispute amongst the members of the Managing Committee was not resolved. The learned Advocate pointed out that the second order was also

issued by the Headmaster, who was not competent to issue the same, relying upon the Government Resolution dated 30.10.1996. The learned Advocate submitted that for the purpose of issuance of second order the Headmaster could not rely upon this Government Resolution. In short learned Advocate submitted that the appointment of the appellant, made without following the procedure, cannot be legalized. In the submission of the learned Advocate, since the two orders were for one year each and on temporary basis the appellant could not have attained the status of permanent employee.

9] In order to appreciate the rival submissions we have gone through the record and proceedings. We have minutely perused the Judgment and Order passed by the learned Single Judge as well as by the Presiding Officer of the School Tribunal. The perusal of the Government Resolution dated 30.10.1996 would show that it empowers the Headmaster being the Secretary of the School Committee to appoint the employee for a period of one year, when the School Committee is not in existence or the

School Committee is not completely constituted. The Government Resolution further provides that within a period of one year the Management must constitute the School Committee and for the second year the appointment must be made by the School Committee. In this case, it is seen that at the time of the issuance of the second order of the appointment the School Committee was not constituted. Without constituting the School Committee the Headmaster who happens to be the Secretary of the School Committee issued the appointment order for a period of one year. It is undisputed that the first order was for a period of one year and on temporary basis. It is therefore apparent that on the basis of the said temporary order, the appellant was not entitled to get any benefit.

10] It is undisputed that at the relevant time the School Committee was not in existence. The second order of the appointment could not have been issued by the Headmaster being the Secretary of the School Committee, by relying upon the Government Resolution dated 30.10.1996. The perusal of the

second order dated 14.06.1998 would show that it was from 23.06.1998 upto the end of the session. The perusal of this order would further show that this order was for a temporary period of one year. It therefore goes without saying that at the relevant time, the School Committee was not in existence. The Headmaster was not competent to make the appointment. Before making the appointment, the advertisement was not published. The procedure required to be followed under Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981. As per Rule 9(2) the appointment of teaching staff shall made by the School Committee. Rule 9(2A) provides that the Management is required to advertise the vacancies for the post of teacher with details of subjects. Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'MEPS Act') empowers the Management to fill in every permanent vacancy in the manner prescribed, in a Private School. In our opinion if the case of the appellant is appreciated in the context of Rule 9 (2) and 9(2A) as well as Section 5 of the MEPS Act, it would show that the

appellant would not be entitled to get the benefit of Section 5(2) of the MEPS Act.

11] It is further pertinent to note that the appellant has pleaded before the School Tribunal that there was dispute between the two groups of the Management and as a result of the dispute his services were terminated. The perusal of the pleadings would show that the appellant did not specifically plead that the second order of appointment issued in his favour was by a person duly authorized by the School Committee. In view of the pending dispute at the relevant time it was incumbent upon the appellant to plead the same. We therefore, conclude that the learned Single Judge has not committed any mistake while dismissing the writ petition.

12] The learned Advocate for the appellant tried to make good his submissions by relying upon two decisions. In the case of *Maharashtra Shikshan Sanstha and Anr. .v/s. Dilip Ganpatrao Lanjewar and Anr.* reported in (2017)14SCC298 it was

established that discontinuance of the employee from service was illegal. The reinstatement of the employee was allowed without back-wages with all service benefits. In this case before the Hon'ble Supreme Court the employee was appointed by the Management for few months each year for 2-3 years. It is seen that in this case the competence of the appointing person/ authority was not an issue. In the case at hand the initial appointment for one year was as per the mandate of the Government Resolution dated 30.10.1996. The second order of appointment was again by the Headmaster without constituting or re-constituting the School Committee.

13] The learned Advocate for the respondent No.1 relied upon the decision of the Full Bench of this Court in the case of *Ramkrishna Chauhan .v/s. Seth D. M. High School and Oths.* reported in *2013 (2) Mh.L.J. 713*. In this case the Full Bench has held that the School Tribunal cannot disregard the terms and conditions of the letter of appointment. It is held that if it expressly provides that the appointment is on temporary basis and

for a limited period, it is not open to the employee to assume that he was appointed on a probation against the permanent vacancy, nor it is not open to the School Tribunal or the Court of Law to assume that fact.

14] In view of the facts established in this appeal, law laid down in the case of *Ramkrishna Chauhan .v/s. Seth D. M. High School and Oths. (cited supra)* would be squarely applicable to this case. The decision relied upon by the learned Advocate for the appellant is of no help and assistance to the case of the appellant in view of the proved facts in this case. As a result of above, we conclude that there is no substance in the appeal. The Letters Patent Appeal therefore, deserves to be dismissed. Hence following order.

ORDER

- i] The Letters Patent Appeal is dismissed.
- ii] No order as to costs.

JUDGE

JUDGE