

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

LETTERS PATENT APPEAL NO.288/2011 IN
WRIT PETITION NO.3399/2010(D)

Rajesh Ramesh Joshi

Vs.

Sadanand U. Hivrale and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.G.Kavimandan, Advocate for petitioner.

Shri P. B. Patil, Advocate for respondent no.1.

Shri A.S. Fulzele, Additional Government Pleader for respondent nos. 2 and 3.

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

DATED :- OCTOBER 11, 2021.

The order passed by the Grievance Committee dated 25.06.2010 allowing the appeal preferred by the respondent no.1 and directing issuance of an order of appointment in favour of the respondent no.1 was the subject matter of challenge in Writ Petition No.3399/2010. By the judgment impugned in this appeal dated 06.10.2010 the challenge to the order of the Grievance Committee was turned down. Hence this Letters Patent Appeal.

Shri P. B. Patil, learned counsel for the respondent no.1 raised a preliminary objection to the maintainability of the appeal on the ground that since the adjudication by the Grievance Committee was in the nature of a recommendation which was pursuant to an administrative grievance redressal mechanism, the same was not an "order" within the meaning of that expression as defined in explanation to Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960. In that regard, he has referred to the decision in *Panchasheela d/o Vajjnath Patil Vs. President/Secretary Yavatmal and others [2021(4) Mh.L.J. 514]* and submitted that a similar controversy was considered thereunder to hold so. On this count, it is submitted that the Letters Patent Appeal is not

maintainable.

Shri R.G.Kavimandan, learned counsel for the appellant however submits that since it was the respondent no.1 who had approached the Grievance Committee and the adjudication therein was accordingly done, it is not now open for the respondent no.1 to contend that such adjudication is only recommendatory in nature. He further urges that this Court may consider the challenge to the adjudication by the Grievance Committee under Article 226 of the Constitution of India. He has also referred to the decisions in *Binayak Swain Vs. Ramesh Chandra Panigrahi and anr.* [AIR 1966 SC 948] and *State of Orissa and anr. Vs. Mamata Mohanty* [2011 AIR SCW 1332] to substantiate his contentions.

We find that the Division Bench of this Court in *Panchasheela Vajjnath Patil* (supra) has considered a similar issue and has held that since the adjudication by the Grievance Committee does not partake the character of an “order”, the adjudication made by the learned Single Judge would be a nullity. The Division Bench has considered the judgment of the Hon’ble Supreme Court in *Secretary, A. P. D. Jain Pathshala and ors. Vs. Shivaji Bhagwat More*, [(2011) 13 SCC 99] for arriving at that conclusion. We are in agreement with the aforesaid view and we accordingly find that the Letters Patent Appeal would not be maintainable. The contentions ought to be raised that this Court should therefore consider the challenge to the order of the Grievance Committee was also raised in the aforesaid case and has been negatived therein. Similarly the submission that the appellant is entitled to the benefit of doctrine of restitution cannot be accepted in view of the fact that the adjudication by the learned Single Judge being nullity, the order passed by the Grievance Committee would have to be independently challenged in accordance with law.

In view of aforesaid it is held that Writ Petition No.3399/2010 as filed before the learned Single Judge was not maintainable. The order passed therein on 06.10.2010 is thus

rendered a nullity having been passed without jurisdiction. Consequently, the Letters Patent Appeal is also held to be not maintainable. It is open for the appellant to invoke appropriate jurisdiction if he is still aggrieved by the order passed by the Grievance Committee on 25.06.2010.

All points raised before the learned Single Judge as well as in this appeal are kept open. Pending civil applications are also disposed of.

Order accordingly.

JUDGE

JUDGE

Andurkar.