

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**Misc. Civil Application (Review) No.1034 of 2019
In
Writ Petition No.6107 of 2019**

Vinod Madhukarrao Parhate

...Petitioner

Versus

Education Officer, (Secondary), Zilla Parishad, Washim
and others

...Respondent

Shri A. S. Deshpande, Advocate for the Petitioner

Mrs. K. R. Deshpande, AGP for the Respondent No.1 - State

None appears for the Respondent No.3.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 01 FEBRUARY 2021

P.C.:

Misc. Civil Application (Review) No.1034 of 2019

Heard learned Counsel for the parties.

2. This application is filed seeking review of the order passed by the Division Bench (Coram: R.K. Deshpande & Vinay Joshi, JJ) on 30 August 2019. Since the learned Judges are not available, the review application is placed before us.

3. The Petitioner challenged the order dated 14 August 2019 by the Education Officer, Secondary, Zilla Parishad, Washim. The Petition was disposed of on 30 August 2019 by the following order:

“ *Heard.*

2. *The order of supersession of petitioner in the matter of promotion to the post of Headmaster of the school, can be made subject matter of challenge in Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal. Merely because the approval to appointment to the post of Headmaster has been granted by the Education Officer by itself would not denude the Tribunal from adjudicating the matter on merits.*

3. *If the order of supersession goes, consequently, the order of grant of approval would also not survive. Hence, the petitioner is granted permission to withdraw the present petition with liberty to file appeal before the Tribunal. All questions are left open. No costs.”*

4. Review Application is filed on the ground that though the Petitioner was permitted to withdraw the Petition with a liberty to file an appeal before the School Tribunal, in law such appeal is not maintainable against an order granting charge to a higher post. Reliance is also placed on a decision in the case of *Nagpur Shikshan Mandal and Another Vs. Prabhakar Natthuji Mohod and others*¹.

5. This decision took a note that appeal challenging grant of additional charge to a higher post will not amount to supersession and therefore appeal will not be maintainable before the School Tribunal. We

1 2008 (3) ALL MR 171

note that the review came up before the same Division Bench on 06 December 2019 and notice was issued to the respondent, observing as under:

“Issue notice to the respondents, returnable on 31.01.2020.

2] Mr. Amit Madiwale, learned A.G.P. waives service of notice for respondent No.1.

3] Writ Petition challenging the order of appointment of respondent No.3 to the post of Headmistress on temporary basis was the subject matter of challenge. This Court permitted the petition to be withdrawn with liberty to file an appeal before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

4] It was not the regular appointment by promotion but it is merely a temporary appointment which cannot be made subject matter of challenge before the School Tribunal. In support of this argument, learned counsel for the applicant placed reliance upon the decision of Division Bench of this Court in case of Nagpur Shikshan Mandal and Another .v/s. Prabhakar Natthuji Mohod and others, reported in 2008 (3) ALL MR 171.”

6. The Division Bench at that time did not pass the order, since the Respondent No.3 was not represented. The Registry has endorsed that the Respondent No.3 is served, however, none appears for the Respondent No.3.

7. In view of the fact that the appeal is not maintainable, the Writ Petition will have to be heard on its own merits. Therefore, the order dated 30 August 2019 in Writ Petition No.6107 of 2019 is recalled. The Writ Petition is restored to file to be listed for admission on 16 February 2021.

8. The Misc. Civil Application(Review) is accordingly disposed of.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]