

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 734 OF 2022

Chhabildas Pundalik Shirsath,
Age : 44 years, Occu. : Nil,
R/o. : Village Pashte, Tq. Shindekheda,
Dist. Dhule

... Appellant
(Orig. Defendant)

VERSUS

1. Zilla Parishad Dhule,
Through Chief Executive Officer,
Zilla Parishad Dhule.
2. The Education Officer (Primary)
Zilla Parishad Dhule.

... Respondents
(Orig. Plaintiffs)

...

Ms. A.S. Jadhav h/f. Mr. P.R. Katneshwarkar – Advocate for Appellant
Mr. R.S. Pawar – Advocate for Respondent No.1

....

CORAM : RAJESH S. PATIL, J.
RESERVED ON : 06.12.2022
PRONOUNCED ON : 23.12.2022

JUDGMENT :

1. The present Second Appeal has been filed against concurrent finding of both the Courts below by the appellants who are original defendants in the suit. The suit was for a recovery of amount of Rs.2,94,688/- towards illegal salary and allowances received by the defendant (appellant herein).

2. The appellant was appointed as a Primary Teacher by appointment letter issued by the respondents letter dated 29.09.1997. As per the terms and conditions of the appointment letter Condition No. 9 states that, if the information furnished by the employee to the employer is found incorrect or false his services will be terminated forthwith. The appellant worked with the respondents for a period from 03.10.1997 till 13.08.2001. The services of the appellant was terminated from 13.08.2001.

3. The Director of Maharashtra State Examination Board, Pune had intimated to the respondents certificate of passing of D.Ed. furnished by the appellant is fabricated. Therefore, the services of the appellant was terminated. Challenge to the same was made by the appellant till the High Court. The proceedings of the High Court were also dismissed. A suit was thereafter lodged by the respondents for recovery of the illegal salary received by the appellant. After leading evidence both oral and documentary, the trial Court allowed the suit and directed that the sum of Rs.2,94,688/- be recovered from the present appellant.

4. The appellant filed a Regular Civil Appeal before the District Judge challenging the said judgment and order of the trial Court. Even the said appeal before the District Court was dismissed.

Hence, the present Second Appeal has been filed. It has been argued before me by the appellant that, only because the services are terminated on the ground of bogus certificate, recovery of the salary amount for services tendered to the respondents cannot be recovered. It is also the defence of the appellant that, there is no cause of action to file a suit for recovery of amount because the conditions of appointment letter did not states that, services rendered and the work done and salary paid for that work can be recovered. So also it has been argued that, the criminal proceedings lodged by the respondents have been in favour of the appellant as the appellant has been acquitted from the criminal proceedings.

5. I have gone through the impugned judgment and so also I have heard the advocates for both the parties. As far as the acquittal of the appellant is concerned by the Criminal Court the judgment passed therein is not helpful in the present appeal as held by the Hon'ble Supreme Court in Shanti Kumar panda Vs. Shakuntala Devi reported in **(2004) 1 SCC 438** - the decision passed in Criminal Court does not bind a Civil Court while decision passed in Civil Court binds a Criminal Court.

6. The ratio laid down by the above Hon'ble Supreme Court

judgment binds this Court. So also it is well settled that, the standard of proof in a criminal trial is beyond reasonable doubt. Whereas the standard of proof in the civil cases is the preponderance of probabilities.

7. The Government of Maharashtra by circular (Exh.45) issued by the Primary Education Department dated 2nd June, 2000, stated that, the Government of Maharashtra has received complaint that some of the primary teachers have obtained employment on the basis of fabricated and bogus D.Ed. examination certificate. The Government of Maharashtra has issued directions to the Zilla Parishad that the educational qualification of the primary teacher should be verified. Pursuant to which it has been seen the respondents acted and issued such notices to 116 candidates, for checking their certificates. Out of such candidates four candidates certificates were found to be bogus, which included the appellant herein. Three out of this four candidates have return back the money to the respondents, as per the case of the respondents. Therefore it is the appellant who has only challenged such recovery amount by filing suit.

8. Both the Courts below have taken into consideration the oral and documentary evidence produced before them. And they have

concurrently held that, the appellant is liable to return back the moneys illegally received by him.

9. According to me no substantial question of law arises, hence the Second Appeal is dismissed.

10. Pending Civil Applications, if any, do not survive and same stand disposed off.

[RAJESH S. PATIL]
JUDGE

LATER ON

11. After pronouncement of this judgment, learned Counsel for the appellant submits that since the recovery proceedings are going on, the instant judgment may be stayed for a period of four (4) weeks from today.

12. In view of the request made by the learned Counsel for appellant, the instant judgment and order is stayed for a period of four (4) weeks from today.

[RAJESH S. PATIL]
JUDGE