

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

LETTERS PATENT APPEAL NO.213/2010 IN
WRIT PETITION NO.4989/2008(D)

Santosh Kumar s/o Bhanudas Dhaye,
R/o. Plot No.L17814, Near Sai Mandir,
V.H.B.Colony, Bajoriya Nagar,
Yavatmal.

..... **APPELLANT**

..V E R S U S..

- 1] State of Maharashtra through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
- 2] Presiding Officer,
School Tribunal, Amravati Division,
Amravati.
- 3] Shri Yashwant Ramekar Shikshan Sanstha,
Kamtwada (Chani),
Tahsil Darwa, District Yeotmal.
- 4] The Head Master,
Smt. Janabai Ramekar Vidyalaya,
Kamatwada (Chani), Tahsil Darwa,
District Yeotmal.
- 5] The Education Officer (Secondary),
Zilla Parishad, Godhni Road,
Yeotmal.

..... **RESPONDENTS**

Shri Santosh Dhaye, Appellant in person.

Mrs. S.S.Jachak, Assistant Government Pleader for respondent nos. 1 and 2.

Shri Amol Mardikar, Advocate for respondent nos. 3 and 4.

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

ARGUMENTS WERE HEARD ON 15.02.2022

JUDGMENT IS PRONOUNCED ON 25.03.2022

**(AS PER CHAPTER XI RULE 1 OF THE BOMBAY HIGH COURT APPELLATE SIDE RULES,
1960).**

JUDGMENT (Per A.S.CHANDURKAR, J.)

In this Letters Patent Appeal filed under Clause 15 of the Letters Patent the judgment of learned Single Judge in Writ Petition No.4989/2008 dated 15.02.2010 is under challenge. By that judgment the writ petition preferred by the appellant praying that the respondent nos. 3 and 4 be directed to reinstate the appellant on the post of 'Assistant Teacher' with back wages and all other consequential benefits as the Government Resolution dated 10.02.1994 was not applicable to the appellant has been dismissed.

2. The facts relevant for adjudication of the Letters Patent Appeal are that the appellant was appointed as an untrained teacher at the respondent no.4-School run by the respondent no.3-Society. His appointment was for session 1990-91. Thereafter on 29.06.1991 the appellant was again appointed as an untrained teacher for the session 1991-92. Since the appellant was an untrained teacher, he was permitted to acquire B.Ed training qualification on 05.05.1992. It is his case that on 25.06.1992 the appellant was not permitted to join duties and therefore he filed an appeal bearing No.110/1992 before the School Tribunal seeking reinstatement. On 22.07.1992 the School Tribunal directed interim reinstatement of the appellant. Since this order was not complied with, the appellant filed Contempt Petition No.220/1992. On 05.03.1993 the appellant was reinstated in service but thereafter on 30.03.1993 his services were again terminated. The appellant therefore filed an appeal bearing No.73/1993 before the School Tribunal challenging the order of termination. On 26.04.1994 the earlier appeal filed by the appellant was dismissed and thereafter on

20.10.1999 the subsequent appeal also came to be dismissed. The appellant acquired B.Ed. training qualification in May 1998. The appellant filed Writ Petition No.1833/1994 for challenging initial dismissal of his appeal on 26.04.1994. Since the other appeal filed by the appellant also dismissed on 20.10.1999, that order was also challenged in Writ Petition No.1833/1994 by amending the same. The learned Single Judge on 19.09.2005 decided that writ petition and held that the effect of acquisition of training qualification in May 1998 was required to be considered in the light of second proviso to Rule 6 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the Rules of 1981). It was noted that there was also a deed of compromise between the parties by which the respondent nos. 3 and 4 accepted the stand of the appellant of giving up his back wages, if he was reinstated in service. The learned Single Judge therefore directed the Education Officer (Secondary) to consider the effect of acquisition of training qualification in May 1998. On 27.10.2005 the Education Officer passed an order in the said proceedings. In Writ Petition No.5771/2005 preferred by the Management, the Division Bench on 23.11.2005 set aside that order as it was passed in breach of principles of natural justice. The proceedings were again remanded to the Education Officer. Ultimately, on 21.01.2006 the Education Officer (Secondary) passed an order holding that the period for acquiring training qualification was only upto 01.06.1995 and as the appellant had acquired training qualification after that date, he was not entitled to the benefit of the same. It is in that backdrop that Writ Petition No. 4989/2008 came to be filed. As noted above, the learned Single Judge dismissed that writ petition by observing that all challenges to the order of termination had been decided in Writ Petition No.1833/1994 including the effect of Government Resolution dated

10.02.1994. Hence this Letters Patent Appeal.

3. Since the appellant was appearing in person, by the order dated 15.11.2021 the parties were directed to place on record written notes of arguments. Accordingly the appellant as well as the respondent nos. 3 and 4 have placed on record their notes of arguments alongwith the decisions on which they seek to place reliance. We have thus perused the written notes of arguments filed by both the parties alongwith the decisions on which they seek to place reliance. We have also given due consideration to the rival submissions.

4. The respondent nos. 3 and 4 have raised an objection to the maintainability of the Letters Patent Appeal on the ground that Writ Petition No.4989/2008 was decided alongwith Writ Petition Nos. 3088/2005 and 5196/2009 by the common judgment dated 19.01.2010. Letters Patent Appeal No.268/2010 was filed for challenging the judgment in Writ Petition No.3088/2005 and a co-ordinate Bench on 25.01.2021 had held that the letters patent appeal was not maintainable on the ground that the learned Single Judge had decided that writ petition in exercise of jurisdiction under Article 227 of the Constitution of India. Thus, according to the respondent nos. 3 and 4, this Letters Patent Appeal also arising from the common judgment was not maintainable and it was liable to be dismissed. In that regard, reliance was sought to be placed on the decisions in *Jogendrasinhji Vijaysinghji vs. State of Gujrat (2015) 9 SCC 1*. In response the appellant has relied upon various decisions including the decisions in *Mangalbhai and ors. Vs. Radhyshyam AIR 1993 SC 806*, *Mavji C. Lakum vs. Central Bank of India (2008) 12 SCC 726*, *Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad AIR 1999 SC 2423* and *Umaji Keshao*

Meshram and ors vs. Radhikibai Anandrao Banapurkar and anr. AIR 1986 SC 1272 to urge that the jurisdiction exercised by learned Single Judge was under Articles 226 and 227 of the Constitution of India.

This aspect need not detain us for the reason that what was challenged in Writ Petition Nos. 3088/2005 and 5196/2009 was the judgment of the School Tribunal passed in the case of other employees under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the Act of 1977). In Writ Petition No.4989/2008 the prayer as made reads thus :

“It is most respectfully prayed to this Hon’ble Court :

(i) require the respondents to reinstate the petitioner to his original post with the back wages and consequential benefit and continuity of services in view of the judgment dated 19.09.2005 in Writ Petition No.1833/1994 as G.R.No.SSN-2690/(108)Secondary Education-2 dated 10.02.1994 is not applicable to the petitioner.”

5. It is thus clear that the relief sought in Writ Petition No.4989/2008 was distinct in nature from the relief that was sought in other two writ petitions. Since common issues arose in these three writ petitions they were decided together. On consideration of the nature of relief sought for in Writ Petition No.4989/2008, it becomes clear that the appellant had sought a declaration that the Government Resolution dated 10.02.1994 was not applicable to the facts of his case and therefore he should be reinstated in service in terms of earlier judgment in Writ Petition No. 1833/1994. The learned Single Judge also noted that Writ Petition No.4989/2008 was filed under Articles 226 and 227 of the Constitution of India. In that view of the matter, we find that the nature of relief sought by the appellant in Writ Petition No.4989/2008 was not in the nature of seeking a writ of certiorari. In view of the prayer made in Writ Petition No.4989/2008, we are satisfied that the Letter Patent

Appeal is maintainable and the same is liable to be entertained on merits.

6. While considering the prayer made in Writ Petition No.4989/2008, it would be necessary to note that in Writ Petition No.1833/1994 the appellant had challenged both the judgments of the School Tribunal dated 26.04.1994 and 20.10.1999. It is not in dispute that when the appellant was appointed on the post of 'Assistant Teacher' he did not possess the training qualification and he was deputed for obtaining such training qualification by certificate dated 05.05.1992. In that context, it was noted that the Management could not have terminated the services of the appellant in June 1992. After noticing that the appellant acquired B.Ed. Degree in May 1998, the question considered was whether the appellant could be reinstated in service as he had obtained training qualification after April 1994 which was the time stipulated for obtaining such training. After noting the compromise between the parties, the matter was sent to the Education Officer (Secondary) to examine whether the acquisition of training qualification by the appellant was within the time prescribed. On 21.01.2006 the Education Officer (Secondary) held that as per Government Resolution dated 10.02.1994 the time within which such training qualification could be obtained was only till 01.06.1995 and thereafter the State Government had not granted further extension. In the light of this order by the Education officer (Secondary), Writ Petition No.4989/.2008 came to be filed. In the impugned judgment the learned Single Judge has observed in paragraph 10 that the effect of said the Government Resolution was that the appellant had acquired the training qualification after 01.06.1995. Even the undertaking given by the Management to absorb the services of the appellant after he obtained B.Ed.

qualification was not accepted as it was contrary to the mandate of the proviso to Rule 6 of the Rules of 1981. It was therefore held that the appellant as an untrained teacher had no right to the post and by terminating the services of such employee the Management did not commit any error.

7. We find that the judgment in Writ Petition No.1833/1994 attained finality and the Education Officer (Secondary) pursuant to the directions issued in the writ petition had on 21.01.2006 found that the training qualification could have been obtained only till 01.06.1995. There was thus no scope in law for the learned Single Judge in Writ Petition No.4989/2008 to hold that the Government Resolution dated 10.02.1994 was not applicable to the case of the appellant. Besides the Government Resolution dated 10.02.1994 there is no other Government Resolution pointed out extending the time to acquire the training qualification till May 1998 when the appellant acquired the same. The conclusion recorded by the learned Single Judge that till the appellant acquired training qualification he had no right to hold the post in question is a proper conclusion in law and such right to hold the post would accrue only after the requisite training qualification which is B.Ed. was obtained by the appellant. Rule 6 of the Rules of 1981 is clear in that regard the appointment has to be made on year to year basis. Though in the written notes of arguments it is sought to be urged that the observations in the impugned judgment are contrary to the observations in the earlier judgment dated 19.09.2005 we do not find any such inconsistency as contended. The training qualification having been obtained after 01.06.1995, no relief can be granted to the appellant.

8. In that view of the matter we do not find any other conclusion than the one recorded by the learned Single Judge in the judgment dated 15.02.2010 can be recorded herein. The Letters Patent Appeal and civil applications therefore stand dismissed with no order as to costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)

Andurkar..