

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

LETTERS PATENT APPEAL NO. 5 OF 2013
IN
WRIT PETITION NO. 3470 OF 2006(D)

Savitri Pushpashil Patel
Resident of Lala Lachpat Rai Ward,
Tahsil and District Bhandara

... **Appellant**

-versus-

1. The President,
Shri Ganesh Shikshan Sanstha,
Bhandara, Tahsil and District Bhandara

2. The Secretary,
School Committee,
Shri Ganesh High School, Bhandara,
Tahsil and District Bhandara

3. Ganesh High School, Bhandara
Tahsil and District Bhandara
Through its Head Master,
resident of Takiya Ward,
Near Rajiv Gandhi Chowk,
Bhandara

4. The Education Officer (Secondary)
Zilla Parishad, Bhandara,
Tahsil and District Bhandara

... **Respondents.**

Shri Ram Heda, Advocate for Appellant.

Shri S.S.Ghate, Advocate for respondent nos. 1 to 3.

Ms N. P. Mehta, Assistant Government Pleader for respondent no. 4.

CORAM : A.S.CHANDURKAR and URMILA S.JOSHI-PHALKE, JJ.
DATE : 7th JUNE, 2022.

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

Heard.

2. The challenge raised in this Letters Patent Appeal is to the judgment of learned Single Judge in Writ Petition No. 3470 of 2006 dated 11.06.2012. By that judgment the writ petition preferred by the respondent Nos. 1 to 3- Management challenging the order dated 24.04.2006 passed by the learned Presiding Officer, Chandrapur under Section 11(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act) came to be allowed and the order impugned came to be set aside. The School Tribunal had held that the appellant herein was entitled to back wages from 07.05.1988 till her superannuation.

3. When the Letters Patent Appeal came up for hearing, the learned counsel for the appellant by relying upon the judgment of the Division Bench in *Mohammedi Fida Hussain vs. State of Maharashtra 1986 (88) Bom. L R 557* had submitted that the remedy provided under Section 11 (3) of the said Act was independent in nature and the School Tribunal had jurisdiction to grant such relief. Hence, the learned Single Judge was not justified in setting aside the order passed by the School Tribunal.

4. On the other hand, the learned counsel for the respondent nos. 1 to 3 had contended otherwise and urged that the remedy under Section 11(3) of the said Act was not independently provided for being enforced before the School Tribunal. The Division Bench by its order dated 28.10.2021 had referred the following question for being determined by a larger bench.

“ Do the provisions of Section 11(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 provide an independent remedy to a successful employee to approach the School Tribunal for seeking enforcement of the order passed by the School Tribunal in his favour or are the said provisions merely recommendatory in nature and in aid of directions issued by the School Tribunal under Section 11(2) while deciding an appeal under Section 9 ?”

5. Thereafter the Full Bench by its order dated 15.03.2022 while answering the reference has held that the provisions of Section 11(3) of the said Act do not provide for any independent remedy to an employee for being enforced by instituting separate proceedings before the School Tribunal. It was further held that the provisions of Section 11(3) of the said Act were recommendatory in nature and in aid of directions issued by the School Tribunal under Section 11(2) of the said Act while dismissing an appeal under Section 9 of the said Act.

6. Perusal of the order passed by the learned Single Judge indicates that it has been held that the School Tribunal did not grant the relief of back wages to the appellant on reinstatement. Such direction therefore could not have been issued under Section 11(3) of the said Act. On that premise, the order passed by the School Tribunal dated 24.04.2006 came to be set aside. We find that in the light of the answers given in the reference decided on 15.03.2022, the order passed by the learned Single Judge would not require any interference. Since the provisions of Section 11(3) of the said Act do not provide for any independent remedy, the School Tribunal erred in directing the payment of back wages by invoking the provisions of Section 11(3) of the said Act especially when such relief was not granted in the appeal under Section 9 of the said Act.

7. In that view of the matter, the Letters Patent Appeal is without any merit and the same is accordingly dismissed with no order as to costs.

(URMILA S. JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..