

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.284 OF 2010
IN
WRIT PETITION NO.4716 OF 2000**

Mahatma Phule Krida Prasarak Mandal & Anr.Appellants
Vs.
S.T. Kashid and Ors.Respondents

Mr. N.V. Bandiwadekar for appellants.
Mr. A.I. Patel, Additional GP for respondent no.2.
Ms Anita Agarwal for Respondent No.1 (on 16th February 2023)

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.
DATED : 10th FEBRUARY 2023 &
16th FEBRUARY 2023**

PC. :

1 Appellants are impugning an order and judgment dated 21st October 2010 passed by a learned Single Judge of this Court dismissing appellants' writ petition.

2 Various grounds have been raised in the appeal but the main thrust of Mr. Bandiwadekar is that the Tribunal has set aside an order of termination dated 31st March 1997 though respondent no.1 in her appeal to the Tribunal had contended that there was an oral termination on 9th June 1997. Mr. Bandiwadekar submitted that the appeal before the Tribunal was impugning the oral termination dated 9th June 1997 and, therefore, the Tribunal could not have set aside an order dated 31st March 1997 which was not even impugned in the appeal before the Tribunal.

3 From the impugned judgment, it appears that the same point was

raised as recorded in paragraph 5, internal page 5 of the impugned judgment. Having considered the impugned judgment, we find that the learned Single Judge has not even dealt with this submission of appellants.

4 On 8th March 2011, when the appeal came to be admitted, the following order was passed :

Heard counsel for the parties.

2. Prima facie, we find force in the argument canvassed on behalf of the appellants that the Tribunal has clearly exceeded its jurisdiction. In that, in the appeal filed by respondent no.1 before Tribunal the relief claimed was specific to set aside termination order dated 9th June, 1997, whereas the relief granted by the Tribunal in favour of respondent No.1 is to set aside the order dated 31st March, 1997 which is not a prayer in the appeal preferred by respondent No.1. Besides, the order of otherwise termination dated 9th June, 1997 which was the case of the respondent No.1, has not been dealt with by the Tribunal at all.

3. In the circumstances, appeal is admitted. Operation of the order of the Tribunal shall remain stayed during the pendency of the appeal. Civil application for stay is disposed of in the above terms. Hearing of the appeal is expedited. Liberty to apply.

4. Smt. Agarwal waives service on behalf of respondent No.1.

5 We also find force in the submissions canvassed by Mr. Bandiwadekar that the Tribunal has clearly exceeded its jurisdiction. In the appeal filed by respondent no.1 before the Tribunal, the relief was specific to set aside the termination dated 9th June 1997, whereas the relief granted by the Tribunal in favour of respondent no.1 is to set aside the order dated 31st March 1997, which is not even a prayer in the appeal preferred by respondent no.1. Moreover, the Tribunal has not even dealt with the order of termination dated 9th June 1997, which was the case of

respondent no.1, in its order.

6 In the circumstances, we hereby quash and set aside the impugned order and judgment dated 21st October 2010. Consequently, the order of the Tribunal passed on 20th July 2000 is also quash and set aside.

7 Appeal disposed with no order as to costs.

16th FEBRUARY 2023

8 On 14th February 2023 counsel for respondent no.1 applied to the Court to rehear the matter since she was unable to remain present on 10th February 2023 due to personal difficulty and the junior, who was instructed to request the Court for time, was also stuck in another matter. Therefore, this Court stood over the matter today for directions.

9 We explained to the counsel for respondent no.1 the reason why we have passed the above order. Counsel for respondent no.1 requested that liberty be given to respondent no.1 to go back to the School Tribunal and re-agitate the issue. Mr. Bandiwadekar states that it cannot be permitted after 24 years but if, the Court is inclined to grant any liberty, then all rights and contentions of appellants including to object on the ground of limitation be kept open.

10 In our view, respondent no.1 is free to adopt such proceedings as advised and certainly appellants will be entitled to raise such objections and defences as will be available to appellants in law and the Forum, where any

action is filed by respondent no.1, will decide the matter in accordance with law after hearing both the parties. We are not making any comment or observations.

11 In view of the disposal of the appeal and order impugned having been set aside, appellants are permitted to withdraw the amount of Rs.1,38,138/- deposited with Registrar, High Court, Bombay in Civil Application No.186 of 2001 in Letters Patent Appeal No.145 of 2001 in Writ Petition No.4716 of 2000, pursuant to order dated 14th January 2002. The Registrar, High Court, Bombay, to pay over the amount together with accumulated interest if any to appellant no.1.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)