

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO. 301 OF 2009
IN
WRIT PETITION NO. 445 OF 1995**

Shri Yeshwant Ukha Borase
aged 29 years, Residing at Maulana Azad
Road, Satana Taluka Belgan, District
Nashik.

Appellant

V/s.

1. Nashik Zillha Maratha Vaidya Prasarak
Samaj, Gangapur Road, Shivaji Nagar,
Nashik by its Secretary.

2. Shri B. N. Deore, the President Sarva
Dharma Sambhav Samaj Vikas Mandal,
Vasol, Taluka, Baglan, District Nashik.

3. Indira Madhyamik Vidyalaya Vasol,
Taluka Baglan, District Nashik by its
Headmaster Shri K. N. Deore.

4. Shri. K. N. Deore
Adult C/o Indian Madhyamik Vidyalaya at
Vasol, Taluka, Beglan District Nashik.

5. The State of Maharashtra

6. The Education Officer
Zilla Parishad, Nashik, Dist. Nashik

7. The Deputy Director of Education
Nashik Division, Nashik.

Respondents.

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Mr. Mihir Joshi for Appellant.

None for respondent nos. 1 to 3 and respondent nos. 6 and 7.

A. I. Patel AGP a/w. K. S. Thorat for respondent Nos. 4 & 5/State.

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**CORAM : K. R. SHRIRAM &
RAJESH S PATIL, JJ.**

DATED : 23rd FEBRUARY 2023

Oral Judgment (Per Rajesh S Patil, J):

1. This Letters Patent Appeal is filed by an ex-employee impugning the judgment and order dated 6th September 2007 passed in Writ Petition No. 445 of 1995, wherein the Writ Petition filed by respondent no.1 - an educational trust was allowed. This Appeal was admitted on 15th January 2010.

2. Appellant No.1 had filed an Appeal before the School Tribunal, Nashik being appeal bearing No. 3 of 1992 (the said appeal), under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Act (hereinafter referred as MEPS Act), thereby challenging the action of respondent no.1-educational trust and respondent no.3-school. It was appellant's case that respondent no.1 and respondent no.3 had prohibited appellant from working as Headmaster of respondent no.3-school. The said

Appeal was heard by the School Tribunal, and by an order dated 11th February 1994, the School Tribunal allowed the Appeal. The tribunal directed the educational trust/school, to reinstate appellant to his original post as Headmaster and also give him benefits of the post with back wages with effect from 01st September 1992. The said order dated 11th February 1994 passed by the School Tribunal was challenged by respondent no.1-educational trust by way of Writ Petition No. 2409 of 1994. The Division Bench of Bombay High Court by an order dated 20th July 1994 allowed the Writ Petition filed by the educational trust-respondent no.1 and remanded the matter to the School Tribunal to decide it afresh.

3. The School Tribunal thereafter heard the said appeal *denovo* and by its judgment and order dated 12th December 1994 allowed the appeal of appellant(employee) directing the educational trust to reinstate appellant with back wages from 1st September 1992. In effect reiterated its earlier order. The educational trust (respondent no.1) thereafter again impugned the order passed by the School Tribunal in Writ Petition bearing No. 445 of 1995. The learned Single Judge by judgment and order dated 6th September 2007 allowed the said Writ Petition filed by the educational trust-respondent no.1 and thereby set aside the judgment and order dated 12th December 1994

passed by the School Tribunal, Nashik. Appellant/employee has challenged the said order dated 06th September 2007 passed by the Single Judge, by way of the present Letters Patent Appeal.

4. It was submitted on behalf of appellant employee that he was appointed as Headmaster of respondent no.3 school on 16th September 1985. It is his further case that the school known as Indira Madhyamik Vidyalay, Vasol, District-Nashik was originally run by the educational trust known as Sarva Dharma Sambhav Samaj Vikas Mandal, whose president was Mr. B. N. Deore (respondent no.2 herein). On 22nd November 1991 the educational trust by name Nashik Zilla Maratha Vidya Prasarak Samaj, Gangapur Road, Nashik (respondent no.1 herein) took over the management of respondent no.3 school (Indira Madhyamik Vidyalay). It is further case of appellant that in the region of Vasol there were two schools run by different management having common name, i.e., Indira Madhyamik Vidyalay. It is further case of appellant that from December 1985 to December 1991, salary was not paid to appellant so also to other staff members. It is further submitted that appellant had gone on sick leave on 2nd December 1991 upto 31st December 1991. The said sick leave was duly sanctioned by the school management. However, in the meanwhile the management of the school changed and respondent no.1 took over the

charge of the school.

5. In the list of school employees submitted by the old management to the new management, the name of appellant was deleted. However, the old management thereafter made representation to the new management requesting to consider the case of appellant for appointment as Headmaster. The new management (respondent no.1) did not take any action in spite of oral promises being made.

6. Mr. Patel for respondent nos. 4 and 5 submitted that from 3rd January 1986 one Smt. Madhuri Manohar was put in-charge as Headmistress of the School and thereafter Mr. Prakash Jadhav was appointed as Headmaster from 15th June 1987 to 31st May 1988 and further one Mr. Savkar was appointed as Headmaster from 15th June, 1988 to 20th January 1990 and furthermore on 1st February 1991 one Mr. B. N. Deore was appointed as Headmaster. Considering these factors the findings given by the School Tribunal have been correctly set aside by the learned Single Judge in the writ jurisdiction and hence, the judgment and order passed by the learned Single Judge should not be interfered with in the Letters Patent Appeal.

7. We have heard the learned counsel for appellant and Mr. Patel after going through the impugned judgment and the documents on

record, it appears that appellant must now be around 70 years of age. There is no dispute that new Headmasters had taken up charge of the school more than 30 years ago. So also appellant has not challenged the appointment of new Headmaster. They are also not parties to the proceeding. In such a situation the question of reinstatement of appellant to the post of Headmaster of the said school does not arise.

8. The only issue would be whether appellant should be granted back wages from the year 1992. The appeal was filed under Section 9 by appellant before the School Tribunal on 22nd October 1992 along with delay condonation application. The delay condonation application was allowed and appeal was heard on merits. The School Tribunal allowed the appeal of appellant/employee. This Hon'ble Court, however, in Writ jurisdiction had remanded the matter to the school tribunal with direction to consider and dispose the same *denovo*. The School Tribunal again allowed the appeal. Writ Petition filed by the new educational trust was allowed on 6th September 2007, i.e., around 16 years back. The case of appellant that there were two schools by the same name run by two different trusts at Vasol locality is not accepted by the learned Single Judge while hearing the Writ Petition. Appellant even now before us was not able to prove that there were two different schools by the same name in the same locality. The affidavit filed by the

educational officer goes against appellant. In that it is stated that there is only one school by name Indira Madhyamik Vidyalay at Vasol. So also the educational officer's statement in affidavit, at para no.18 is that as per the school inspection report dated 17th November 1987, appellant was not in service of the school, which falsifies appellant's case that he was in service till the year 1991. There are no documents to prove that appellant was working in the school after 1987. Even if the case of appellant is believed that he was in service even after the year 1987, no reasons have been stated by appellant as to why he did not challenge the appointment of other persons to the post of Headmaster. The said fact itself proves that after appellant, other persons were appointed as Headmasters in last over 30 years. Therefore, when the new educational trust took over the management of the school appellant was not in service of the school as Headmaster. Therefore, the reasoning given by the learned Single Judge in the Writ Petition, in our view is a possible view and there appears to be no perversity. Therefore, the present Letters Patent Appeal requires to be and is hereby dismissed.

(RAJESH S. PATIL, J.)**(K. R. SHRIRAM, J.)**