

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

LETTERS PATENT APPEAL NO.84 OF 2010
IN
WRIT PETITION NO.3924 OF 2009 (D)

Appellant : Bhartiya Sewa Acharya Education Society,
through its Secretary Bharat Mahadeo Parate,
Aged about 54 years,
R/o Vinobha Bhave Nagar, Nagpur.

– Versus –

Respondents : 1. Ku. Tulsi D/o Shankar Parate,
Smt. Tulsi w/o Ramrao Khadgi,
Aged about 43 years, Occ: Nil,
R/o Vinobha Bhave Nagar, Nagpur.

2. The Head Mistress,
Sangeeta Uccha Prathmik Vidyalaya,
Near Itabhatti, Vinobha Bhave Nagar, Nagpur.

3. The Education Officer (Primary),
Zilla Parishad, Civil Lines, Nagpur.

4. The Presiding Officer,
School Tribunal, Nagpur, Civil Lines, Nagpur.

Mr. R.S. Parsodkar, Advocate for the Appellant.
Mr. N.A. Vyawahare, Advocate for Respondent No.1.

CORAM: **ROHIT B. DEO AND M.W. CHANDWANI, JJ.**
DATE : **4th JULY, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

By the present Letters Patent Appeal, the order dated 03/12/2009
passed by the learned Single Judge of this Court, in Writ Petition

No.3924/2009, whereby the learned Single Judge of this Court dismissed Writ Petition No.3924/2009, has been assailed.

02] The appellant is a Society, which runs an educational institution. Respondent No.1 filed appeal before the School Tribunal at Nagpur alleging that she was appointed by the appellant as a Peon in Sangeeta Balwadi initially from 01/07/1995, but no order of appointment was given. She worked there for three years and thereafter she was shifted as Peon in Sangeeta Shivankala Vidhyalaya, where she worked for a year and thereafter the appellant asked respondent No.1 to work as a Peon in Sangeeta Prathamik Vidhyalaya. Till 2004, she worked on the above said institution on the oral order of the appellant. However, she had signed the muster rolls. Since, she had worked continuously from 01/07/1995, she has attained the status of permanent employee. She was assured that the appellant will send a proposal for approval of her appointment, as the post of Peon was to be sanctioned in July, 2004. She was asked not to come to the School. Thereafter, inspite of her request, she was not allowed to join the School. Therefore, termination order dated 30/03/2004 was challenged in the appeal before the School Tribunal.

03] The appellant appeared and contested the appeal before the School Tribunal. The School Tribunal vide its judgment and order dated 04/09/2009

allowed the appeal of respondent No.1 by quashing the termination order of the appellant with direction to the appellant to reinstate respondent No.1 on the post of Peon along with full back wages and continuity of service. Feeling aggrieved with the impugned order dated 04/09/2009 of the School Tribunal, Nagpur, the appellant assailed the said order before the learned Single Judge of this Court vide Writ Petition No.3924/2009. By another impugned order dated 03/12/2009, the learned Single Judge of this Court held that no case is made out warranting interference in the writ jurisdiction and dismissed the said writ petition.

04] Heard learned Counsel Mr. Parsodkar for the petitioner and learned Counsel Mr. Vyawahare for the contesting respondent No.1. We have gone through the record of the School Tribunal as well as Writ Petition No.3924/2019.

05] It appears that the appellant has taken the defence that respondent No.1 was Peon in Balwadi running by the appellant, therefore, the School Tribunal has no jurisdiction to entertain any claim of Balwadi employee.

06] The School Tribunal on the strength of copies of Teachers Attendance Registers (Muster Rolls) in Sangeeta Uccha Prathamik School has held that respondent No.1 was working as a Peon in Sangeeta Uccha

Prathamik School running by the appellant. The School Tribunal further drew adverse inference against the appellant and it records that the appellant failed to produce the original Attendance Register inspite of direction given to it. Therefore, the appellant has intentionally not produced the Attendance Registers, as the name of respondent No.1 is shown in the Attendance Registers.

07] Perusal of the order of the first appeal suggests that an attempt was made by the appellant to file affidavit showing that the original Attendance Registers were misplaced, but it was not allowed by the learned Single Judge of this Court for the reason that the appellant failed to produce its affidavit before the School Tribunal and since the fact was not pleaded in any form before the School Tribunal that the said original Attendance Registers are not with the appellant, the learned Single Judge of this Court dismissed the writ petition.

08] The contention of the appellant is that despite in written statement before the School Tribunal, wherein the Muster Rolls produced by respondent No.1, are denied, the School Tribunal on the basis of the copies of the Muster Rolls held that respondent No.1 was appointed on Sangeeta Uccha Prathamik School. It is also contended that despite there was no oral evidence, the copies of the documents produced by respondent No.1 were relied.

09] The learned Counsel for the appellant took us to the order of this Court in Writ Petition No.2041/2008, which was filed by respondent No.1 against the final order of the School Tribunal holding that the respondent No.1 being a Peon in Balwadi School, the appeal before the School Tribunal was not maintainable. The said writ petition came to be allowed. However, the learned Single Judge of this Court in paragraph 4 of the said judgment has observed thus :

“4. Having heard learned Counsel for the rival parties, I find that the question whether the petitioner was working in higher primary school or in Balwadi is a mixed question of fact and law. This is all the more so because the petitioner holds certain number of documents which are stated to be false by the respondents but then these documents will have to be tested by the test of cross-examination. Reliance placed by learned Counsel for respondent Nos.1 and 2 on the inspection report of the Education Officer of the primary school also will have to be put to test of cross-examination. In other words, the parties will have to be allowed to lead oral as well as documentary evidence to find out whether the petitioner was working in Balwadi or primary school, as contended by the petitioner. This course was not adopted by the learned Presiding Officer for the Tribunal. Hence, the Tribunal erred in rejecting the appeal for want of jurisdiction.”

10] Thus, the learned Single Judge of this Court in earlier round of limitation opined that the documents produced by the respondent will have to be tested by the test of cross-examination as well as inspection report of the

Education Officer will have to be put to the test of cross-examination. It appears that inspite of these findings, the respondent did not lead any oral evidence, whatsoever, before the School Tribunal and the School Tribunal did not consider the observations made in Writ Petition No.2041/2008. The appellant could not get an opportunity to cross-examine respondent No.1 as the respondent did not enter into the witness box. Therefore, we are of the opinion that the matter needs to be remanded to the School Tribunal for fresh decision in accordance with law. Hence, the following order :

ORDER

- (1) The appeal is remanded to the School Tribunal for fresh decision in accordance with law.
- (2) The School Tribunal shall frame two questions for determination, in addition to the other questions, which according to the School Tribunal, may arise in the matter:
 - (i) Whether the appointment of the employee was at Balwadi or at the Uccha Prathamik School, as is the case of the employee?
 - (ii) If the School Tribunal answers question (i) in favour of the employee, whether the appointment of the employee

at the Uccha Prathamik School was in accordance with the provisions of the M.E.P.S. Act and the Rules framed thereunder?

- (3) We further reserve liberty with the parties to file affidavits in lieu of oral examination-in-chief in which event, the other side shall have the right to cross-examine.
- (4) We further reserve liberty with the parties to amend the pleadings and to place on record any other relevant material.
- (5) The parties shall appear before the School Tribunal on 10th August, 2023.
- (6) We request the School Tribunal to decide the appeal within six months from the date of appearance of the parties.
- (7) The Registry shall ensure that the record and proceedings are immediately send back to the School Tribunal.

(M.W. Chandwani, J.)

(Rohit B. Deo, J.)

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