

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.421 OF 2007

**Head Master, Meenal Arjun Chavan VidyalayaAppellants
Ulhasnagar & Anr.**

Versus

Sunita Laxman Kolhe & Anr.

....Respondents

ORDER

The present appeal arises out of a brief order passed by the High Court of Judicature at Bombay in Writ Petition No.6446 of 2006. By the said order, a writ petition filed by the appellant herein (Management before the High Court) under Article 227 of the Constitution of India was summarily dismissed.

The facts of the case are that the respondent herein was appointed as an Assistant Teacher in Smt. Meenal Arjun Chavan Vidyalaya, Ulhasnagar on June 16, 1997. According to her, she was continued in service up to December 28, 2001. From that date onwards, however, she was not allowed to discharge duty and also not allowed to sign muster roll. Being aggrieved by the said action, she preferred Writ Petition No.5840 of 2002 in the High Court of Bombay on which *rule nisi* was issued. But finally by an order dated August 25, 2005, the writ petition was disposed of as the High Court felt that appropriate statutory remedy is

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available to the respondent under Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'the Act').

In pursuance of the said order, the respondent herein approached the Maharashtra School Tribunal at Navi Mumbai by filing Appeal No.20 of 2005. The Tribunal after considering the facts and circumstances as also the evidence led by both the parties, recorded a finding of fact that the respondent herein was appointed by the Management and that she had completed more than two years and her services were terminated only in 2001 i.e. after about four years. In the light of the findings recorded by the Tribunal, final order was passed by the Tribunal granting reinstatement.

Regarding back wages, the Tribunal took the view that though the services of the respondent were terminated in December, 2001. she did not avail of alternative and equally efficacious remedy under the Act but had approached the High Court by invoking writ petition under Article 226 of the Constitution of India and it was only after the order passed by the High Court granting liberty to the respondent to avail of the remedy that she had approached the Tribunal in 2005. Considering the said aspect, the Tribunal granted back wages but not from the date of termination of her services but from the date of approaching the Tribunal.

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Being aggrieved by the said order, the Management approached the High Court but the High Court summarily dismissed the writ petition. The said order is challenged by the Management in the present appeal. On January 08, 2007, the Court passed the following order:

“Learned counsel for the petitioner is directed to produce all the muster roll records and other records pertaining to the appointment

of the respondent herein including the so called letter of appointment and he acquittance roll of the payment made, within two weeks. Put up after two weeks.”

On January 25, 2007, leave was granted and interim stay was also granted.

Today the matter has been called out for final hearing.

We have heard the learned counsel for the parties. The learned counsel for the appellant vehemently contended that the respondent was never appointed on regular basis on a permanent post by the appellant. The counsel submitted that the respondent herself was aware of that fact and that is why a prayer was made by her to issue an order of appointment. According to the counsel, the prayer went to show that she was not appointed on a permanent post and appointment order was not issued in her favour. It was also contended that no documentary evidence was produced by the respondent which would show that there was a permanent

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vacancy in the school and she was appointed on probation and by completion of two years, she became permanent. It was, therefore, submitted that the Tribunal committed an error of law in granting benefit to the respondent. It was also contended that the respondent had forged the so called appointment order and on that ground also, she was not entitled to an equitable relief of reinstatement. The High Court in the light of all the contentions ought not to have disposed of the petition by a 'cryptic order' and ought to have entered into all the questions raised by the Management.

Finally, it was submitted that even if the Tribunal is held to be right in setting aside the action of the Management, back wages ought not to have awarded. It was submitted that this Court in a series of decisions has held that grant of back wages depends upon the facts and circumstances of each individual case and no back wages can be ordered to be paid merely on the ground that the termination was illegal. It was, therefore, submitted that the order passed by the Tribunal deserves to be set aside. In any case, the matter must be remitted to the High Court so that it may be decided in accordance with law by a reasoned judgment.

Learned counsel for the respondent, on the other

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hand, submitted that the order passed by the Tribunal does not call for interference by this Court in exercise of power under Article 136 of the Constitution of India. It was submitted that it was not the case of the Management that the respondent was not working in the school. In fact, the case of the Management was that the respondent had worked for some time on 'contract basis'. If it is so, it was for the Management to put forward the relevant record showing that such appointment was merely on 'contractual basis' and it did not create any right in favour of an employee. But it was not done.

Our attention was also invited to an application filed by the respondent herein before the Tribunal demanding the relevant documents which would throw considerable light on the status of the respondent. In paragraph 3 of the application, the respondent had prayed to the Tribunal to direct the Management to produce the following documents:

- 1) Muster Roll from 1997 to 2002 of primary as well secondary section. well
- 2) Catalogue of 5th Std. For the academic year 1998- 99.
- 3) Result sheet of 5th Std. For the academic year 1998- 99.
- 4) Result sheet and catalogue of 9th Std. For the academic year 2000-01. academic
- 5) The Staff approval of the school from the year 1998.
- 6) Catalogue of 1999-2000 for 9th Std.”

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An order was passed by the Tribunal directing the Management to produce the documents. Admittedly, no such documents were produced by the Management and the Tribunal decided the case on the basis of the application made, order passed and by raising adverse inference against the Management. Moreover, in spite of the order of this Court as noted above, no documentary evidence for the period between 1997-2001 has been produced by the Management.

It is true that the High Court has not entered into the merits of the matter and without issuing notice to the respondent herein, dismissed the petition by a brief order which reads as under:

“Heard the learned counsel for the petitioner.

No case is made out to interfere with the impugned order. The view taken by the Tribunal is reasonable and possible view. Petition is therefore, dismissed in limini with no order as to costs.”

In our opinion, it would have been appropriate had the High Court considered the facts of the case and disposed of the matter. But on the facts and in the circumstances of the case, in our opinion, this is not a case which calls for

interference under Article 136 of the Constitution of India.

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So far as the provisions of the Act are concerned, they lay down the procedure for termination of services of a teacher. The Tribunal which is an authority under the Act entered into the factual aspect and recorded certain findings. The School Tribunal considered all the facts and recorded a finding of fact that the respondent was appointed as a teacher in 1997 and was continued till 2001. In view of the said fact, in our opinion, it cannot be said that the Tribunal had committed an error of jurisdiction which required to be corrected by the High Court in exercise of power of superintendence under Article 226 of the Constitution of India.

In view of the said fact, in our opinion, though the disposal of High Court may not be said to be strictly proper, in the light of factual situation, we are of the view, that the case does not require interference by this Court in its discretionary and equitable jurisdiction under Article 136 of the Constitution of India.

Regarding back wages also, in our opinion, the Tribunal was not wrong. It has not lost sight of relevant facts and has taken into account equitable consideration. The respondent instead of approaching the Tribunal, approached the High Court directly and the writ petition was

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dismissed. It, however, took about four years. Obviously, the Management could not be blamed for such delay. The Tribunal considered the said fact and did not grant benefit of payment of wages to the respondent teacher for the said four years. As far as the remaining period is concerned, in view of the fact that in the light of the statutory provisions, the respondent teacher had become permanent employee of the appellant institution, the grant of benefit cannot be held to be unreasonable or otherwise illegal.

For the foregoing reasons, the appeal deserves to be dismissed and it is dismissed accordingly with costs.

[C.K. THAKKER]

..... J.

**[AFTAB ALAM]
NEW DELHI,
NOVEMBER 05, 2008.**

.....J.