

(1999) 07 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 1098 of 1992 (Writ Petition No. 1095 of 1983)

Adarsh Education Society and another

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Evidence Act, 1872 — Section 115

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 15

Citation : (1999) 4 ALLMR 174 : (2000) 2 BomCR 799 : (2000) 85 FLR 703 :
(2000) 1 MhLj 179

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : D.A. Gursahani, for the Appellant; M.S. Indani, Asst. Govt. Pleader,
for the Respondent

Judgement

R.G. Deshpande, J.—The judgment and order dated 17-2-1983 passed by the learned Presiding Officer of the School Tribunal in Appeal No. TR/4/EN/144/1982 is the subject matter of challenge in the present writ petition. By this judgment and order, the learned Presiding Officer of the Tribunal has allowed the appeal of the respondent No. 4, permitting him to resume the duties by reinstating him in service on the post of a teacher and also directing the petitioner management to pay arrears of salary and allowances due and payable to the respondent No. 4. The order dated 12-1-1981 passed by the Deputy Director of Education, Nasik Division, Nasik, is set-aside.

2. In nutshell, the facts of the case are:

On 12-6-1973 the respondent No. 4 was appointed as Assistant Teacher in the High School run by the petitioner society, in a clear vacancy, where he worked from June, 1973 to August, 1976. The respondent No. 4 after having served for about three years was permitted to proceed for his B.Ed, training on deputation. However, it was on leave without pay from August, 1976, to April 1977. No

doubt, the respondent No. 4 completed the B.Ed, training course from Sagar University and on completion he returned to his original duties from May 1, 1977. The teacher who was appointed in place of the respondent No. 4 as a substitute and in the leave vacancy of respondent No. 4 was then relieved by the petitioner. The respondent No. 4 resumed his duties as mentioned above and worked from June, 1977 till the end of academic session of 1978-79. It would not be out of place to mention here itself that on his completing B.Ed, course, the respondent No. 4 was paid salary as a trained Graduate Teacher.

3. On 7-2-1979, the respondent No. 4 was served with the show cause notice by the petitioner, which was duly replied by the respondent No. 4 (hereinafter referred to as the "teacher" for the purposes of brevity) by his reply dated 20-2-1979, however, the management did not initiate any action. After summer vacation of 1979, on the reopening of the school i.e. on 11-6-1979, the teacher, when presented, himself in the school for joining his duties as usual, to his surprise, was prevented by the Head Master from joining the duty and informed him to bring permission of the management i.e. the Chairman of the society to resume the duties and thus, the teacher was not allowed to join his duties.

4. The efforts on the part of the teacher to obtain necessary permission and to know the reason as to why he was not allowed to join the duties were in vain and the teacher was required to move the Education Officer, Jalgaon, by an application seeking his intervention in the matter. It is the contention of the teacher that not permitting him to join the duties virtually amounted to oral termination of his services. The application which was moved by the teacher to the Education Officer was dated 12-6-1979. The teacher received letter dated 7-11-1979 from the Chairman of the society on 10-11-1979 whereby he was informed about the constitution of the Enquiry Committee under Rule 77.3 of the Secondary Schools Code and the teacher was directed to nominate his representative on the Enquiry Committee, which, according to the management, was constituted to inquire into the conduct of the teacher. The time gap between the issuance of the show cause notice and obtaining of the explanation and that of constitution of the Enquiry Committee was of ten months and therefore, the respondent No. 4 teacher objected to such a constitution of the Enquiry Committee. According to him, the constitution of the Enquiry Committee was against the provisions of Rule 77.3(ii) and (iii) of the Secondary Schools Code. Needless to mention that in pursuance of the letter referred to above, the petitioner had already suggested the name of his representative. However, the copy of the resolution which was demanded by the teacher regarding setting up of the Enquiry Committee was not given to him. The respondent No. 4 teacher was also served a copy of the questionnaire thereby asking him to give his explanation by way of his reply to the said questions. No doubt, the respondent No. 4 teacher complied with the same by his reply dated 7-1-1980. The management having been dissatisfied with the replies given by the teacher, called the representative of the respondent No. 4 teacher by name Shri Zambre to attend the office of the Head Master on 8-1-1980 for the conduct of alleged

inquiry. Shri Zambre, however, having found that a farce of inquiry into the matter was made, informed the same to the Education Officer, Jalgaon and the copies of the same were also forwarded to the Deputy Director of Education, Nasik, the President of Teachers Association, Jalgaon, and also to the President of Teachers Association i.e. Jalgaon District Teachers Association, Bamnod. According to Shri Zambre, the inquiry was nothing but a farce and it was a sham and bogus and is conducted in contravention of the provisions of the Secondary Schools Code. The Education Officer, Jalgaon, having given a due consideration, formed an opinion that the termination of the services of the respondent No. 4 teacher or his removal from service was not only in contravention of the provisions of the Secondary Schools Code but also in flagrant disregard of the principles of natural justice. Naturally, the Education Officer, Jalgaon, by his letter dated February 22, 1980, holding that the action of the management of removing the respondent No. 4 teacher from service could not be upheld, ordered the petitioner society to reinstate the respondent No. 4 teacher in service, and further to report compliance.

5. Instead of complying with the directions of the Education Officer, Jalgaon, the petitioner filed an appeal against the decision of the Education Officer before the Deputy Director of Education, Nasik Division, Nasik.

6. The Deputy Director of Education, by his letter dated informed the Chairman of the Institution that in accordance with the Government Resolution dated 14-3-1975 there was no question of treating the appeal of the management under Rule 77.3 of the Code, as according to the Deputy Director of Education, said resolution applies to the cases of permanent employees. Since the respondent No. 4 was not satisfied with the decision of the Deputy Director of Education, Nasik, he preferred an appeal on 24-1-1981 to the Director of Education, who in turn, forwarded the same to the School Tribunal, Bombay. Before the School Tribunal, amongst other challenges, the respondent teacher asked for setting-aside the order of Deputy Director of Education and restoration of the order dated 22-2-1980 passed by the Education Officer, whereby the respondent No. 4 teacher was directed to be reinstated in service with other consequential benefits. Alongwith his appeal the respondent No. 4 filed all the relevant documents. The petitioner, on notice, filed certain documents with its reply in support of its defence.

7. The petitioner society based its case mostly on the Government Resolution of 14-6-1977.

8. The learned Presiding Officer of the School Tribunal, Bombay, who dealt with the matter, by his judgment and order dated February 17, 1983, allowed the appeal of the respondent No. 4 teacher, observing that the teacher did work in the school right from 1973, to be precise from June, 1973 to August, 1976, i.e. for about 3 years and the appointment order dated 28-5-1973 did show that the teacher was appointed as a temporary teacher but since he was continued from time to time till May, 1979, it would have been appropriate for the management

to have given a chance to the respondent No. 4 society (sic) employee teacher to obtain B.Ed, degree from the recognised university instead of terminating the services of the teacher, if, according to the management, B.Ed, degree from Sagar University was not held to be a qualification in compliance with the rules and regulations. The important aspect to be noted is that even after obtaining B.Ed, degree from Sagar University, the respondent No. 4 was allowed to work till May, 1979. Failure on the part of the management to give a chance to the respondent No. 4 teacher in accordance with the Government Resolutions dated 7-2-1974, 20-4-1978 and 9-7-1980 definitely deprived the respondent No. 4 of his services which were not in consonance with any of the provisions of the rules and the regulations applicable to the case of the respondent No. 4 teacher.

9. The learned Presiding Officer of the School Tribunal observed and rightly so, that there was no termination order whatsoever issued to the respondent No. 4 in the year 1979. However, he was orally prevented from joining the school. This, according to the School Tribunal, virtually amounted to an arbitrariness on the part of the management and even the termination was without any proper notice as required by law. Thus, the services of the respondent No. 4 teacher, which were brought to an end on 11-6-1979 could not be upheld. The learned Presiding Officer also took into consideration that for the first time the order of termination was given to the respondent No. 4 teacher in the year 1981 vide letter dated 27-5-1981 which is virtually after nearly two years of the oral termination i.e. in June, 1979. The learned Presiding Officer of the Tribunal also observed that the constitution of the Enquiry Committee was also not in good faith and was not so constituted in accordance with the provisions of the Secondary Schools Code. Taking into consideration all these aspects, the School Tribunal also reached to the conclusion that the respondent No. 4 did deserve reinstatement in service by setting-aside both the termination orders i.e. oral termination dated 11-6-1979 and also the order dated 27-5-1981. The School Tribunal also observed that Shri Zambre, representative of the employee had specifically informed that his signature which was obtained on the Enquiry Report, was not as regards his agreement with the decision but only with regard to attending the said inquiry. However, he suggested that he did not agree with the conclusions of the Enquiry Committee. It is pertinent to note that during the inquiry neither the statement of the respondent No. 4 teacher was recorded nor was any evidence allowed to be produced before the Enquiry Committee; Conduct of the Enquiry Committee or the business transacted by it, according to the Tribunal, appeared to be in total violation of all norms of the principles of natural justice. The above-said judgment of the School Tribunal is the subject matter of challenge in the present writ petition.

10. Shri. D.A. Gursahani, learned Advocate appearing for the petitioner society, while assailing the order of the Tribunal, argued that the appointment of the respondent No. 4 teacher was that of a temporary nature and according to him, the respondent No. 4 teacher was not entitled to the benefit of provisions of Rule 77 and its sub-rules of the Secondary Schools Code. Shri Gursahani further

argued that approaching the Director of Education by the respondent No. 4 teacher was not in consonance with the provisions as there was no such appeal provided before the Director of Education and hence, according to him, factually there was no appeal and therefore, there was no question of transfer of any appeal to the School Tribunal by the Director of Education u/s 15 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977. Shri Gursahani further argued that the respondent No. 4 was not a qualified teacher at the time of his appointment and even otherwise his appointment was purely of temporary nature and therefore, there was no question of his confirmation and further that the B.Ed, degree obtained by the respondent No. 4 from Sagar University was not recognised by the State of Maharashtra. According to Shri Gursahani, appeal preferred by the respondent No. 4 teacher before the Director of Education was incompetent and therefore, there was no further scope for transferring the same to the School Tribunal u/s 15 of the Act. Shri Gursahani further argued that the respondent No. 4 was not even entitled for the benefit of the Government Resolutions dated 14-3-1975 and 14-6-1977.

11. As against the arguments of Shri Gursahani, the respondent No. 4, who appeared as a party in person, argued that he was appointed on 12-6-1973 as an Assistant Teacher and though, according to him, the qualifications required were B.Sc. B.Ed., no doubt, he did not possess B.Ed, degree at the time of his appointment. Hence, he was appointed as an untrained teacher. However, according to him, very continuation of his service on the said post for years together including that when in his absence a teacher was appointed in a leave vacancy, clearly indicates that he was appointed in a clear vacancy and that too after due permission by the school management. He argued that till August, 1976 he worked without any break and at no point of time his services were discontinued even in summer vacations. He further pointed out that when he had been for B.Ed, course, he was allowed to go on leave without pay having a lien on the said post. He obtained B.Ed, degree in April, 1977 and from 1-5-1977 again he was allowed to join in the school. Not only this but the teacher appointed in his place in a leave vacancy was immediately relieved and discharged from service. He further specifically pointed out that the petitioner treated him as a trained teacher for the education sessions of 1977-78 and 1978-79 and was accordingly paid salary as a trained teacher. The respondent No. 4 further argued that in accordance with the provisions of Rule 68.3(b) of the Secondary Schools Code he could be deemed to have been confirmed in the said post. He, therefore, argued that preventing him from joining the duties on 11-6-1979 was in total disregard of all the norms and the rules in that behalf. The respondent No. 4 teacher further argued that giving of a show cause notice and to be precise the charges therein in fact were a farce only with an intention to get rid of his services. Surprisingly, immediately after his reply to the show cause notice, no Enquiry Committee was formed for about 10 months and the inquiry was not completed speedily and further that till the year 1981 there was

no termination order whatsoever served on him. The respondent No. 4, therefore, argued that this clearly indicates total mala fides on the part of the management. It would not be out of place to observe here itself in this case that during the intervening period i.e. between 11-6-1979 till the date of termination issued in the year 1981 the respondent No. 4 was not even suspended inspite of there being a provision for suspension during inquiry. The respondent No. 4, therefore, argued that the action of the management in doing away with his services from 11-6-1979 was absolutely bad in law and deserves to be quashed and set-aside. He further argued that even assuming for the sake of arguments that B.Ed, degree from Sagar University was not recognised, even then the management could have given him an opportunity to complete B.Ed, degree from the recognised university. However, failure on the part of the management to give such a chance has prejudicially affected the respondent No. 4 teacher. He also argued that formation of the Enquiry Committee after such a long gap of the show cause notice or receipt of the reply to the show cause notice made the constitution of the Enquiry Committee itself bad in law. He further pointed out that he was given the questionnaire to answer but no charge-sheet or statement of allegations was served on him. He also further argued that one Mrs. Meera A. Sainani, who was identically situated in every respect as that of the respondent No. 4, the management in a most biased way, continued the said teacher, confirmed her in service and did not terminate her services on the ground on which his services were terminated. He, therefore, challenges the action of the management as mala fide and also with biased intentions. He further argued that the action of the management in sending one month's salary alongwith the termination order was also illegal, as, according to him, his services were terminated in fact orally by the management on 11-6-1979 itself and sending of salary in 1981 and that too alongwith the termination order was nothing but an attempt on the part of the management to fill up lacunas in the matter.

12. After having heard the parties and particularly the learned Advocate for the petitioner and respondent No. 4 as a party in person, it would be appropriate for this Court to deal with the points one by one so as to find out as to whether any error was committed by the management and further as to whether the respondent No. 4 teacher is entitled to the benefits awarded to him by the judgment and order of the School Tribunal.

13. So far as the appointment of the respondent No. 4 is concerned, it is no doubt true that the respondent No. 4 was appointed for the first time as untrained Assistant Teacher on 12-6-1973. At the same time one cannot lose sight of the fact that till May, 1979 he was allowed to continue and in the intervening period he was also allowed to complete his B.Ed, degree which he obtained from Sagar University which is not recognised. The fact remains that even after completion of his B.Ed, degree course, the respondent No. 4 was allowed to join the duties on his regular post. That means the management was also definitely under the impression that the respondent No. 4 did qualify himself for the post of Assistant Teacher. This is more clear when the management

started making payment of his salary as that of a trained teacher. This conduct of the management of allowing the respondent No. 4 to work throughout without any break in service right from the year 1973 except for a period when he had gone for B.Ed, training course, till May, 1979 when his services were abruptly brought to an end, clearly is an indication that the management had no grievance whatsoever either about the working of the respondent No. 4 or about his qualifications and ability to teach. Such a long spell of about 6 years of continuous service without break would not mean that though he was initially employed in a temporary capacity he continued to be in temporary capacity indefinitely. The very fact that it was not thought necessary by the management to dispense with the services of the respondent No. 4 teacher for a considerably long time and that is for years together would by itself indicate that his services during all these years could not be said to be merely temporary. It is an established principle that a temporary employee cannot be kept in suspended animation for an indefinite period, else, if on that sole ground services of an employee are brought to an end, it would virtually be a glaring example of unfairness and arbitrary action of the management conferring undue privileges on the management and thereby acting as per sweet-will and whims of the management to bring to an end the services of such an employee. Such a pleasure in today's social circumstances cannot be allowed to be enjoyed by the management which has utilized the services of an employee for uninterrupted period and then on one fine morning driven out the employee out of the services in a most unceremonious manner and that too under the refuge that the employment of employee was of purely temporary nature. This Court, therefore, is of the opinion that bringing to an end the services of the respondent No. 4 teacher on the ground of employment being purely of temporary nature in the circumstances mentioned above cannot be accepted and that the petitioner cannot be said to be entitled to terminate the services of the respondent No. 4 in such circumstances and on that count.

14. The next aspect to be dissected is as regards the attainment of qualifications by the respondent No. 4 and to find out as to whether could he be considered by the management for giving one chance for completing B.Ed, degree from the recognised University. The management was very well aware of the fact that the respondent No. 4 had gone on leave for doing B.Ed, from Sagar University. However, the management at no point of time brought to the notice of the concerned teacher that the said qualification would not be a recognised qualification. On the contrary after having obtained B.Ed, degree from the Sagar University the management relieved the teacher who was appointed in place of the respondent No. 4 and allowed the respondent No. 4 to resume the duties as usual which clearly means that the management had no grievance whatsoever as regards the qualifications nor does the record indicate that any fresh appointment order was issued again on purely temporary basis by the management after the respondent No. 4 had come to resume duties after obtaining B.Ed, degree from Sagar University. This leads to the unmistakable

conclusion that the management was very much under the impression that the respondent No. 4 obtained necessary required qualifications i.e. B.Ed, degree. In addition, the management treated him as a trained teacher and paid salary accordingly. This conduct of the management definitely indicates that the management was also of the firm opinion that the respondent No. 4 obtained B.Ed, course which qualified him for being continued as a trained teacher.

15. It is the case of the petitioner management that as per the Government Resolution bearing No. ESTT/2276/2075(1430)-XXVII dated 14-6-1977, the Government withdrew recognition of B.Ed, degree if it is from Sagar University and that the Government has directed all the persons possessing B.Ed. degree of Sagar University should not be held eligible for employment in the secondary schools in the State thereafter. This clearly means that till the issuance of the above mentioned Government Resolution, the person having B.Ed, degree from the Sagar University also could be said to have been recognised for being appointed as an Assistant Teacher in the secondary school in the State. If the facts are minutely looked at, the respondent No. 4 proceeded on leave without pay from August, 1976 to April 1977 and he completed his B.Ed, degree from Sagar University. It is the case of the petitioner management itself as is clear from the contents of paragraph 12 of the writ petition that as per the above mentioned Government Resolution, the persons who had passed B.Ed, degree from Sagar University should not be held eligible for employment in the secondary schools after 14-6-1977 and further that the persons possessing such B.Ed, degree from Sagar University (Madhya Pradesh) and those who were in the employment of the Government and in private schools in the State prior to 1-6-1976 should be considered as trained and were held eligible for the pay scale and also other privileges admissible to the trained graduates. In the background of this, if we look at this matter, it is clear that after the appointment of the respondent No. 4 in 1973 at no point of time his services were terminated and he was allowed to go on leave for B.Ed, degree may be without pay. That would not in any case be labelled to be the discontinuation in services and even after completing B.Ed, course he was allowed to resume the duties as usual, which clearly means that the respondent No. 4 was in the continuous service of the petitioner prior to 1-6-1976 and in such a case the respondent No. 4 could be said to be eligible for being treated and retained in service, for the pay scale and other privileges of a trained graduate teacher. This is fortified by the conduct of the management when the management itself granted the salary of a trained teacher to the respondent No. 4. In the circumstances, it would be inappropriate on the part of the management to say that the respondent No. 4 did not hold the requisite qualifications.

16. Assuming that the respondent No. 4 was not having required qualifications because he completed B.Ed, course from Sagar University, even then it was still open for the management to have allowed the respondent No. 4 to obtain the degree from other recognised University by bringing this fact to the notice of the respondent No. 4 and such a power was very much vested in the management

vide Government Resolution dated 27-10-1976. As per this Government Resolution the Government directed that the temporary untrained teachers who were appointed on or after 7-2-1974 but who were absorbed in other secondary schools to acquire prescribed training qualifications, the Government granted concession to such teachers that they should acquire the training qualifications at their own costs within a period of 5 years from 14-3-1975 i.e. latest by June, 1980 and only if they fail to do so they would not be entitled to protection of service thereafter. If the Government has entertained such a nice idea of giving protection to the concerned employees who were not qualified, it is surprising as to why was it not possible for the petitioner management to have offered the respondent No. 4 this chance of completing B.Ed, course from any other recognised university. The conduct of the management of taking undue advantage of the Government Resolution dated 14-6-1977 just to do away with the services of the respondent No. 4 cannot be supported and therefore, in the opinion of this Court, the management should not have dispensed with the services of the respondent No. 4 on this ground.

17. Shri D.A. Gursahani, learned Counsel for the petitioner, on the basis of Rules 77.1 and 77.3 of the Secondary Schools Code, further argued that the respondent No. 4 could not be given advantage of those provisions. This Court is of the opinion that till coming into force of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 which actually came into force on 15-7-1981, the respondent No. 4 could be said to have been entitled for the benefits of the provisions of the Secondary Schools Code. The record, no doubt, indicates that a farce was made of conducting an inquiry against the respondent No. 4 by the management. The management issued a show cause notice on 17-2-1979 and on having obtained the reply of the respondent No. 4, alleged to have conducted the inquiry on 8-1-1980, i.e. after about 11 months from the date of giving notice. When the services of the respondent No. 4 were brought to an end in June, 1979, as he was not allowed to join his duties and since there was no other order of keeping him under suspension or otherwise, it is still a matter of undisclosed mystery as to why the management thought it fit to conduct the inquiry and that too after lapse of such a long period. If we look at the matter from another angle, then the holding of an inquiry into the conduct of the temporary employee, assuming it to be so as said by the management, then the management otherwise could have done away with the services of the respondent No. 4 without inquiry as according to the management, he was purely a temporary employee. The conduct of the management in issuing a show cause notice and making a farce of an inquiry definitely indicate that the management, no doubt treated him as a permanent employee. It will have to be reiterated that the appointment of the respondent No. 4 in the year 1973 itself could be said to be in a clear vacancy as he was continued in service till June, 1979 and even during his leave period the post was manned by a substitute employee in Leave vacancy. It is also pertinent to note that during the alleged inquiry there does not appear to have been any evidence recorded in any

manner and no chance was given to the respondent No. 4 to have cross-examined any witness on any point of allegations against him. Against the decision of the management of not allowing the respondent No. 4 to join his duties, it is for the first time in the year 1981 that the respondent No. 4 was served with the termination order. However, much prior to that the respondent No. 4 approached the Education Officer, Zilla Parishad, Jalgaon, challenging his removal from service by not permitting to join the duties. The Education Officer by his letter dated 22-2-1980 no doubt did not approve the action of the management and therefore, directed the management to allow the respondent No. 4 to allow him to resume his duties and further to pay him all arrears of his salary. He also sought compliance thereof. However, the management, instead of complying with the directions of the Education Officer, Zilla Parishad, Jalgaon, approached the higher authority by way of an appeal, which was communicated to the respondent No. 4 teacher by the Education Officer, Jalgaon, by his letter dated 1-9-1980. He, therefore, advised the respondent No. 4 that necessary decision in the matter would be taken after receipt of the decision from the higher authority. The Deputy Director of Education, Nasik, by his letter bearing No. J-I-MUS/NR/J/8081 written some time in the month of January 1981, informed the Chairman of the petitioner society that he did not find it appropriate to consider the appeal of the management under Rule 77.3 of the Secondary Schools Code, as, according to him, the said rule was applicable in the case of permanent employee. The respondent No. 4 having realised that he should have approached the Director of Education, filed an appeal before the Director of Education, Maharashtra State, Pune, who, in view of coming into force of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977, forwarded the same to the School Tribunal u/s 15 thereof.

18. The learned Presiding Officer of the School Tribunal, who dealt with the matter, by his judgment and order dated 17-2-1983, allowed the appeal directing the management to reinstate the respondent No. 4 in service with all other consequential benefits as is observed by him in his order.

19. Shri Gursahani argued that in fact that appeal could not have been transferred to the School Tribunal. According to him, the appeal itself was incompetent, wrongly entertained and that the appeal could not have been at least allowed by the Tribunal. Shri Gursahani, in support of his case, brought to my notice three decisions. The first decision is in AIR 1976 S.C. 1136(sic). It is a case of an adhoc employee. In this case, the employee concerned, who was temporarily employed did not avail of the opportunity given to him to undergo training and since he did not obtain necessary training, his services were terminated. Their Lordships of the Supreme Court observed in that case that the petitioner in that case did not avail the opportunity of acquiring the training qualification and his failure to obtain required qualifications made the management to do away with his services and said discontinuation of his services could not be said to be illegal. In my opinion, this case is not applicable to the facts of the present case and is of no avail to Shri Gursahani. The second

decision is reported in AIR 1977 S.C. 2126 in the case of Hindustan Education Society and another v. Sk. Kaleem Sk. Gulam Nabi and others. This case relates to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (III of 1978). In this case, the employee was appointed against a clear vacancy, however, purely on temporary basis for a period of 11 months only. On expiry of said period of 11 months, the services of the employee came to an end by efflux of time itself. Their Lordships of the Supreme Court, after dealing with the provisions of section 5 of the Act, observed that the appointment of the employee could not be considered to be an appointment of a permanent nature and therefore, the action of terminating his services or bringing to an end his services could not be said to be illegal. The facts of the present case, as referred to above, are much different and the said decision, in the opinion of this Court, is also not applicable to the present case. Shri Gursahani also relied on one more decision of this Court reported in Akbar Peerbhoy College and others Vs. Mrs. Pramila N. Kutty and others, . This is a case regards issuance of the notice to a temporary employee, whose appointment was for a fixed period. The Honourable Judge of this Court, who dealt with the matter, observed that the services of a temporary employee comes to an end on the expiry of period mentioned in the appointment order or on expiry of the fixed period and therefore, there was no necessity of giving a notice under rule 28(1) of the Rules framed under the Act. If we see the facts of the present case, we notice that the appointment of the respondent No. 4 thought on temporary basis, was continued for years together. The record as is put before this Court by the management through this writ petition only shows that the respondent No. 4 was given only one appointment order in the year 1973. No other order is placed on record indicating that appointment orders were given to the respondent No. 4 every year and that too for a fixed period. On the other hand, continuation of the respondent No. 4 in service for years together clearly indicates that in fact his appointment was made in a clear vacancy and was virtually treated as a permanent employee. In the circumstances, the case cited by Shri Gursahani also cannot be said to be applicable to the facts of the present case.

20. Shri Gursahani faintly tried to argue that taking into consideration the charges levelled against the respondent No. 4, which, according to him, are said to have been proved, even in that case, according to Shri Gursahani, the termination of services of the respondent No. 4 needs to be upheld. I am not inclined to accept this argument of Shri Gursahani, as, I have already observed that in the alleged inquiry the principles of natural justice were not observed. Even the representative of the respondent No. 4 had specifically pointed out that his signature was just obtained to show his presence during the inquiry but he did not sign the report as having approved the decision of the Enquiry Committee or for having agreed with the decision of the Enquiry Committee. In addition to this, the conduct of the management in continuing and confirming the services of one identically and similarly situated teacher in the school will indicate that the

action taken by the management against the respondent No. 4 was mala fide for the reasons known to the management itself.

21. It is also seen from the record and to be precise from the order sheet dated 8-7-1998 passed by my brother Judge that the management had shown its willingness to reinstate the employee if the employee was ready to forego back wages. This approach of the management cannot be so lightly brushed aside and it definitely deserves to be given due weightage so as to find out whether the respondent deserves to be reinstated in service or not. This clearly shows that even though according to the management, the respondent did not fulfil the required qualifications, still the management was ready to reinstate and continue him in service. I also do not find that the teacher had committed any error in refusing to accept that cheque which was sent by the management in lieu of notice at the time of terminating his services in 1981. It is also worth to note that about three charges were levelled against the teacher as regards his conduct, behaviour and work. However, nothing is placed on record to show as to how, in what manner and what type of inquiry was made by the management to prove these charges against the teacher. The sum and substance is that the inquiry was not made in accordance with law as it should have been.

22. I feel it necessary to mention that though on behalf of the management, Shri Gursahani, learned Senior Advocate, argued the matter, I had no advantage of hearing in detail any such argument on behalf of the respondent No. 4 teacher who attempted to put his case before the Court appearing in person.

23. In the circumstances I do not find any substance in the present writ petition. The writ petition deserves to be dismissed. It is accordingly dismissed with costs. Rule discharged.

24. After the pronouncement of the judgment, Shri D.A Gursahani, learned Counsel, requested that the order of the Tribunal be stayed for twenty days. I am not inclined to accept this request. The request is rejected.

25. Petition dismissed.