

(1973) 11 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 216 of 1973

Baboolal Dalchand Maloniya

APPELLANT

Vs

The Director of Municipal Administration Sachivalaya,
Bombay and Others

RESPONDENT

Date of Decision : 20-11-1973

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 176

Constitution of India, 1950 — Article 226

Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 — Section 40

Municipal Officers and Servants Recruitment Rules — Rule 9

Citation : AIR 1974 Bom 219 : (1974) MhLj 451

Hon'ble Judges : Dharamdhikari, J;Deshmukh, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; V.A. Masodkar and D.B. Najbile, for the Respondent

Judgement

Dharmadhikari, J.—Petitioner Babulal Dalchand Maloniya was appointed as an Assistant Teacher in the Municipal Indian English Middle School, Saoner, on 2-7-1951. After the necessary training he was appointed on a regular scale from 5-4-1954 and was also confirmed in the said post with effect from 5-4-1954 itself. In the year 1957 the Indian English Middle School run by the Municipal Council was converted into a fullfledged High School and the petitioner was appointed as the Assistant Teacher in the same High School. In the year 1969, the petitioner was selected for training of B.Ed. course and he successfully passed the said examination in the year 1970. Thus, the petitioner was working as a trained Assistant Teacher in the Municipal High School. The third respondent to this petition, namely, Wasudeo Laxman Bharadwaj, was working as a Headmaster of the said High School. On 30-12-1972 respondent No. 3 Bharadwaj was to complete his age of 58 years, which is the age of superannuation according to the Municipal bye-laws. Therefore, the Municipal Council, Saoner served an order dated 31-12-1971. Thus respondent No. 3

Bharadwaj was made to retire from service on 30-12-1972. Consequent upon his retirement, the petitioner was ordered to officiate in the post of Headmaster vide order dated 1-12-1972 issued by the Administrator of the Municipal Council, Saoner. Thereafter vide order dated 31-1-1973 the petitioner was appointed as the Headmaster in a substantive capacity. After receiving the notice dated 31-12-1971, the respondent No. 3 preferred an appeal before the Director of Municipal Administration with his representation -cum-appeal dt.14-9-1972. The petitioner was not made a party to the said appeal, nor he was given any opportunity of being heard before an order was passed by the Director of Municipal Administration dated 12-2-1973 whereby respondent No. 3 Bharadwaj was directed to be reinstated as a Headmaster of the Municipal High School. After receiving this order of the Director, the Administrator of the Municipal Council, Saoner issued an order dated 21-2-1973 reinstating respondent No. 3 Bharadwaj as a Headmaster in the Municipal High School with immediate effect. Consequent upon this order of reinstatement of respondent No. 3 Bharadwaj as the Headmaster of the Municipal Council, Saoner further ordered reversion of the petitioner to his original post of the Assistant Teacher. These orders have been challenged by the petitioner in this writ petition.

2. According to the petition, the order passed by the Director of Municipal Administration is without jurisdiction. It was also contended on behalf of the petitioner, that it was not open for the Director of the Municipal Administration to exercise any such powers or act contrary to the Government instructions. According to the petitioner, he was not given any opportunity of being heard before the said order was passed by the Director of the Municipal Administration, and therefore, the said order is contrary to the principles of natural justice. It was also submitted on behalf of the petitioner that the said order passed by the Director of the Municipal Administration resulted in reversion of the petitioner to the post of the Assistant Teacher, and therefore, has resulted in civil consequences. In any case, therefore, before passing of the said order it was obligatory on the part of the Director to give a reasonable opportunity to the petitioner of being heard. It was also contended on behalf of the petitioner that according to the Municipal bye-laws the age of retirement of all municipal employees is 58 years. The respondent No.3 was an employee of Saoner Municipal Council, and therefore, according to the bye-laws of the Municipal Council, Saoner, it was not open for the Municipal Council to retain him in service after he attained the age of 58 years. It was then contended on behalf of the petitioner that the Director of the Municipal Administration committed an error, apparent on face of the record, in holding that the provisions of Secondary School Code, framed under the M.P. Secondary Education Act, 1951, were applicable to the teachers serving in the High School run by the Municipal Council. According to the petitioner, the provisions of the said School Code were not applicable to the schools run by the Municipal Council and the employees of the Municipal Council including the teachers serving in the schools, were governed by the terms and conditions as incorporated in the Municipalities Act,

Rules and Bye-laws framed thereunder.

In the alternative it was also contended on behalf of the petitioner that even assuming that the provisions of the said Code framed under the said Act applied to the teachers serving in the Municipal Council, Saoner, including the respondent No. 3, respondent No.3 Bharadwaj was not entitled to take advantage of the said Code, as no agreement was entered into between the Municipal Council and the respondent No.3 as contemplated by Regulation 7 of Chapter XII of the School Code. According to the petitioner, the School Code framed under the M.P. Secondary Education Act, 1951 was in the nature of a bye-laws framed by the Vidarbha Board of Secondary Education and in case of conflict between the said Regulation and the bye-laws of the Municipal Council, Saoner, the bye-laws framed under the Municipalities Act by the Municipal Council, Saoner should prevail. Therefore, in short, it was the contention of the petitioner that the conditions of service of the respondent No.3 were governed by the provisions of the bye-laws framed by the Municipal Council, Saoner, and therefore, it was not open for the Municipal Council, Saoner, to retain the respondent No.3 in service after the age of 58 years. Hence the order passed by the Municipal Council retiring him from service after attaining the age of 58 years was perfectly legal. It was also contended on behalf of the petitioner that the order of retirement issued by the Municipal Council was not in the nature of penalty, and therefore it was not open for the Director of the Municipal Administration to entertain an appeal under any of the provisions of the Maharashtra Municipalities Act, 1965. The order passed by the Director of Municipal Administration is, therefore, without jurisdiction; and is illegal.

3. In reply to these contentions raised on behalf of the petitioner, respondent No.3 Bharadwaj and respondent B0.2 Municipal Council, Saoner filed their returns. No appearance was put before this Court on behalf of the Director of Municipal Administration. In the return filed on behalf of the respondent No.2, the Municipal Council, Saoner, it was contended that the Municipal Council, Saoner has power to frame the bye-laws for the purposes of prescribing service conditions of its employees and accordingly the bye-laws have been framed by the Municipal Council in this behalf with the approval of the Government. Under the relevant bye-laws the age of superannuation of the Municipal employees is 58 years. According to the Municipal Council Chapter XII of the Regulations of the Board of Secondary Education of Madhya Pradesh, which have been framed under the Madhya Pradesh Secondary Education Act, 1951 are not applicable to the teachers serving in the Municipal Council. It was also contended on behalf of the Municipal Council had not executed any agreement nor has taken any agreement in writing from either the petitioner or the respondent No.3 as contemplated by the provisions of the said School Code. It is no doubt true that the Headmaster of the Municipal High School should be made to sign an agreement of service in writing as per the said Regulations, but, according to the respondent No.2, the Municipal Council, the Municipal Council has been always of the view that the said School Code did not govern the service conditions of the

Headmaster and the teachers of the High School,. In this view of the matter, no agreement of service has been executed by either the petitioner or the respondent No.3, by any teacher at any time so far as the Municipal Council, Saoner, is concerned. Thus, in short, it is also the contention of the Municipal Council, Saoner that the provisions of the School Code were not applicable to the teachers working in the Municipal Council and their service conditions are governed by the bye-laws framed by the Saoner Municipal Council.

4. Respondent No.3 Bharadwaj however, resisted the various contentions raised on behalf of the petitioner. It was contended by him that the provisions of the School Code framed under the M.P. Secondary Education Act were applicable to the teachers working in the Municipal Council and the service conditions of the teachers were not governed by the bye-laws framed by the Municipal Council in this behalf. According to the respondent No.3, Bharadwaj, Madhya Pradesh Secondary Education Act, 1951 was a special Act and in exercise of the powers conferred by the said Act the State Government and framed Regulations, including Chapter XII, known as the School Code. In pursuance of the provisions of the School Code, respondent No.3 Bharadwaj had submitted Form of agreement to the Municipal Council in Form No. III and had completed his part of the contract. According to Bharadwaj, the provisions of this School Code formed part and parcel of the terms and conditions of his service, the Municipal Council, Saoner committed an error in directing his retirement before he attained the age of 60 years. It was also contended on his behalf that the Director of the Municipal Administration has got an overall control over the Municipal Councils and hence he has jurisdiction to set aside the illegal action taken by the Municipal Council. Saoner, and therefore, the order passed by him is in accordance with law. It was also contended on behalf of the respondent No. 3 that in case of a conflict between the School Code and the Bye-laws of the Municipal Council, it is the School Code which will prevail, In any case, according to him, in view of the Government resolution dated 15-10-1971, sanctioning the pension scheme for the teachers who were in service of the Municipal Council on 31-3-1966 were entitled to continue in service till they attain the age of 60 years and as Bharadwaj, the respondent No.3, was in service of the Municipal Council, Saoner in the year 1966, on 31-3-1966 and has exercised his option it was not open to the Municipal Council, Saoner to issue an order of his superannuation directing his retirement from 31st December, 1972.

5. In view of the controversy involved in this writ petition, it will be useful to refer to the relevant provisions of the Madhya Pradesh Secondary Education Act, 1951 and the Regulation framed thereunder. The Madhya Pradesh Secondary Education Act, 1951 was enacted to make a provision for establishment of a Board to regulate Secondary Education in Madhya Pradesh. After making various provisions for incorporation of the Board etc., vide Section 19 of the said Act, a provision was made conferring a power upon the Board to make Regulation for the purposes of carrying into effect the provisions of the Act, In particular and without prejudice to the generality of this power, a power was conferred upon the

Board to frame Regulation providing for the conditions of recognition of institutions for the purposes of admission to the privileges of the Board to frame Regulation providing for the conditions of recognition of institutions for the purposes of admission to the privileges of the Board and framing of a School Code to ensure a minimum standard of efficient and uniform management of the Schools, By Section 20 of the said Act the Government was authorised to frame the first Regulations and it was further directed that the Regulations so made by the State Government, after previous publication, shall be deemed to have been made by the Board and continue in force until altered or modified by the Board. In exercise of this power the Regulations were framed by the State Government, Chapter XI of the said Regulation dealt with the recognition of institutions by the Board. Vide Regulation No. 11 of the said Chapter it was made clear that every recognised school shall comply with the provisions of the School Code as laid down in Chapter XII of the Regulations. Vide Chapter XII of the said Regulations a School Code was framed by the State Government, in exercise of its power u/s 20 of the M.P. Secondary Education Act, 1951.

6. To understand the nature and the scope of the said School Code it is necessary to reproduce the statement of objects and reasons of this Code, which is as under:

"The Code is framed in order to ensure a minimum standard of efficient and uniform management of secondary schools recognised by the Secondary Education Board. It applies to all non-Government Secondary Schools. These schools are at present controlled and managed by Governing Bodies or Managing Committees with widely different constitution and functions. The Code provides for the formation of a School Committee for secondary school, and this shall be the only body answerable to the Board on behalf of the governing body or the founder-member or members as the case may be. The constitution of the School Committee proposed in the Code permits the representation of the governing body on it. The Code also regulates the appointment, salaries and conditions of service of teachers. At present there is no uniformity in these matters, which are trial to the well-being of secondary schools, and the result is that the staff in several schools is underpaid, and has no security of service. The Code finally tries to secure a tolerable financial stability for every institution by requiring that it shall have reserve fund. It private bodes, which are the biggest agency today in the field of secondary education, are to continue to promote and maintain more secondary schools, it is essential that they should be allowed to do so only if minimum financial stability is guaranteed for present and future schools conducted by them. The Code is, therefore, intended to secure the attainment of the following three objectives in all non-Government secondary schools-

(I) minimum standard of uniform efficient management.

(ii) minimum scales of salaries for teachers and satisfactory service conditions for the them: are

(iii) a minimum financial stability." Although the Statement of objects and reasons leading to the passing of the Code cannot be looked into as a direct aid to the construction, yet it can be used for a limited purpose for finding out the purpose for which this Code was made. For properly understanding the true meaning and import of the Code as such, it is necessary to gather as to what was the intention of the Government behind the framing of the Code itself. As observed by this Court in *Radhabai Vs. State of Maharashtra and Others*, the statement of objects and reasons of the Statute may and does often furnish valuable historical material in ascertaining the reasons which induce the Legislature to enact a Statute. For determining the true scope of the Code, it will be necessary to take into account the history behind the framing of this Code, the reasons which led to its framing, the mischief which is intended to suppress and the remedy provided by the Code for curing the mischief. In our opinion, the statement of objects and reasons affords useful assistance in this behalf. From this statement of objects and reasons it is quite clear that before framing of the School Code the schools were controlled and managed by Governing Bodies or the Banging Committees with widely different constitutions and functions, and therefore, it was intended to provide for the formation of a school Committee for the Secondary School and this Committee shall be the only body answerable to the Board on behalf of the governing body or the founder-member or members as the case may be. Before the framing of the Code there was no uniformity in the matters relating to the appointment, salaries and conditions of service of the teachers and as a result of this the staff in the several schools was underpaid and had no security of service. The code also tried to secure a tolerable financial stability for every institution by requiring that it should have reserve fund etc. In short, the Code was, therefore etc. In short, the code was, therefore, intended to secure the attainment of the objectives, namely, minimum standard of uniform efficient management, minimum scales of salaries for teachers and satisfactory service conditions for them and minimum financial stability. From this statement of objects and reasons it is quite clear that the framers of the Code had in their mind the situation then existing in the various private schools which had no financial stability and wherein the staff was underpaid and had no security of service etc. This was the mischief which the framers of the Code intended to suppress and remedy and for this purpose the said Code was framed. So far as the teachers working in the Secondary Schools run by the Municipal Council were concerned their service conditions were governed by the provisions of the C.P. and Berar Municipalities Act and the Rules and Bye-laws framed thereunder. The Saoner Municipality was the Municipality constituted under the C.P. and Berar Municipalities Act, 1922. The said Municipalities Act made specific provisions regarding appointment, duties and conditions of service of the servants of the Municipal Council, Under the C.P. and Berar Municipalities Act, 1922 the State Government was authorised to make rules under the Act prescribing the qualifications of the candidates etc. In exercise of this power, the State Government had framed Rules known as Municipal Officers and Servants Recruitment Rules. By these Rules the State Government had also laid down the

educational and other qualifications of a candidate for the post of a teacher in the High Schools. The Recruitment Rules further provided that the Municipal Committees may make an appointment for any of these posts, including the post of a teacher, either by direct recruitment or by recruitment of an officer or an official already in Municipal service. By Rule 9 of these Rules, the Municipal committee was enjoined to invite applications by notice to be published in the Committee's office and in one or more leading newspapers and constituted a Selection Committee for the purpose of selecting candidates. The provisions were also made for selection, appointment and confirmation of the employees etc. under the Municipalities Act, The conditions of service of teachers, including their appointments, salaries etc. were governed by the various provisions of the Municipalities Act, the Rules and the Bye-laws framed thereunder. So far as the schools run by the Municipal Councils are concerned they were under the management of the Municipal Council and so far as these schools are concerned there was also a minimum financial stability. The provisions were also made regarding the salaries of the teachers and satisfactory service conditions for them. It is also clear from the various provisions of the Municipalities Act that the schools run by the Municipal Council were managed by the Municipal council itself as per the provisions of the Act, and were not controlled and managed by the Governing Bodies or the Managing Committees. Therefore, in our opinion, none by the reasons stated in the statement of objects and reasons, appended to the School Code, applied to the schools run by the Municipal councils. Apart from the statement of objects and reasons appended to the Schools code, the various provisions of the School Code themselves indicate that it was not the intention of the framers of the Schools Code that it should apply to the schools run by the local authorities. Clause 2 of the Code itself in unambiguous terms state that "every school other than a school run by Government or a Local Authority shall have a School Committee answerable to the Board". From this clause itself it is very clear that the school run by the Government or the Local Authority were treated on par and it was not necessary for them to have any School Committee as such. Thereafter various provisions have been made in the School Committee in case of the schools run by the Societies Registration Act, Clause 3 of the Code then provided for the tenure of the members of the School Committee. Clause 4 of the Code made a provision that all funds of these schools shall vest in the Governing Body and the founder-member or the members as the case may be and they alone shall have the powers to enter into any contracts binding on the Society, Then further provisions of the clauses of the Code provided for the conditions of service of teachers, scale of pay, selection of teachers, for appointments etc. Clause 7 (1) of the Code reads as under:

"7 Conditions of service of teachers:

(1) All headmasters and teachers except those appointed temporarily for a period of not less than one year, shall be on probation for a term of one year which may be extended to two years, If after two years of service, any headmaster or teacher is continued in his appointment, for reasons to be recorded in writing

otherwise directs, be deemed to have been confirmed in that appointment. On confirmation, the headmaster or the teacher, as the case may be, shall sign a contract of service in the form prescribed in Form III or IV appended to this Code, as the case may be, as soon as practicable:

provided that the above provisions shall not apply to the case of any special teacher appointed under special agreement after taking the sanction of the Board, or to the case of a person already employed on a contract in writing executed before the commencement of this Code, unless he agrees to substitute it with the new agreement....."

If the contents of Forms III and IV relating to an agreement are read with this Regulation 7, it is quite clear that an agreement is required to be executed by a teacher concerned as well as the Governing Body of the School. If all the clauses of clause 7 are read in their context, to us, it is quite clear that the provisions incorporated in the School Code were not meant for the schools which were run either by the Government or the local authority and were intended to apply to other schools which were run by the societies registered under the Societies Registration Act and were managed by the Governing Bodies or the Managing committees. If the provisions of the school code are compared and read with the relevant provisions of the Municipalities Act and the Rules framed thereunder, it is quite clear that it was not the intention of the framers of the code that the said provisions of the Municipalities Act and the Rules framed thereunder should also govern the schools run by the local authorities which are managed and controlled by the municipal councils constituted under the municipalities Act. On the contrary, in our opinion, it is quite clear from the aims, objects and reasons appended to the code as well as the relevant provisions of the code themselves that it was the intention of the framers of the said code that the said code shall not apply to the schools run by the Government or a local authority.

7. In any case, from the material placed before us by the Municipal Counsel, Saoner, it is quite clear that no agreement as contemplated by Regulation 7 either in Form III or Form IV was executed between respondent No. 3 Bharadwaj and the Municipal Council, Saoner. As there is no completed contract between the Municipal Council and respondent No. 3 Bharadwaj, as contemplated by the provisions of the School Code, it cannot be said that the parties have agreed between themselves that the age of retirement of the headmaster of the Municipal High School shall be 60 years. Apart from the efficacy of such an agreement, even if so entered, in view of the specific provisions of the Municipalities Act and the Rules framed thereunder, in our opinion, in the absence of any such agreement between the parties, it was not open for the respondent No. 3 to rely upon clause 4 of the agreement in Form III. In this view of the matter also, in the absence of any other agreements between the parties, in our opinion, the conditions of service so far as they relate to the age of retirement of a teacher working in the Municipal High School is concerned, will be governed by the bye-laws framed by the Municipal counsel in exercise of the

powers conferred upon it under the C.P. and Berar Municipalities Act, 1922.

8. however, Shri V.A. Masodkar, the learned counsel for the respondent No. 3 Bharadwaj, in support of his contention has relied upon the pension scheme framed by the Government vide Government Resolution dated 15th August 1971, known as the pension scheme for the teaching staff in the Secondary schools run by the Municipal council or the Corporation and which is duly adopted by the Saoner Municipal Council. It is not contended by Shri Masodkar that by virtue of this Government resolution or adoption of the said pension Scheme, an additional right has been conferred upon respondent No. 3 Bharadwaj to continue in service till he attains the age of 60 years. According to Shri Masodkar, the effect to adoption of this pension Scheme by the Municipal Council is to protect the rights already conferred upon a teacher by the School Code. In our opinion, there is no substance in this contention of Shri Masodkar. In the view which we have taken that the provisions of the School Code were not applicable to the teachers serving in the schools run by the Municipal Council, the question of protecting any such right will not arise. Even otherwise merely because the Pension Scheme has been adopted by the Municipal Council, it cannot be said that bye-law framed by the Municipal Council automatically stood altered or amended. This is further clear from the contentions raised on behalf of the Municipal Council in its return.

9. Ordinarily the relations between the management of the Secondary School managed by the Municipal Council and the teachers employed in it would be governed by the terms and conditions of their contract of employment incorporated in the relevant Municipalities Act and the Rules and bye-laws framed thereunder. In the absence of any other statute controlling such a contract of employment and providing to the contrary, the teachers working in the Secondary schools will be governed by the provisions of the Municipalities Act and the Rules and the bye-laws framed thereunder. The mere fact that the school has obtained recognition etc. From the Board or the Education Department would not mean that the relations between the management and its employees have ceased to be governed by the relevant provisions of the Municipalities Act and the Rules and the Bye-laws framed thereunder. No provision has been shown to us which could override the provisions of the Municipalities Act and the Rules and the Bye-laws framed thereunder. In the absence of any such law providing to the contrary or abrogating the terms and conditions of the service of the teachers employed in the Municipal School, it will have to be held that their conditions of service are also governed by the Municipalities Act and the Rules and the Bye-laws framed thereunder. The school code or the pension scheme to which a reference has been made hereinbefore cannot be said to have the effect of controlling the relations between the Municipal Council and its teachers or altering the terms and conditions of employment of such teachers or abrogating the law relating to the municipal employees which ordinarily would govern those relation. Bye-laws No. 23 framed by the Municipal Council, Saoner in unequivocal terms lays down that no servant of the Municipality can be retained in service

after he attains the age of 58 years. In this view of the matter, in our opinion, the Municipal Council, Saoner was right in retiring the respondent No. 3 at the age of superannuation when he attained the age of 58 years.

10. It was also contended on behalf of respondent No. 3 Bharadwaj by Shri Masodkar that the said bye-laws framed by the Saoner Municipal Council stand repealed, in view of the repeal of the C.P. and Berar Municipalities Act, 1922 and enactment of the Maharashtra Municipalities Act, 1995.

11. It is no doubt true that the C.P. Berar Municipalities Act, 1922, as in force in Vidarbha Region of the State of Maharashtra, was repealed by virtue of section 343 of the Maharashtra Municipalities Act, 1965. However, by virtue of the provisions of section 346 of the Maharashtra Municipalities Act, 1965, the bye-laws framed by the Municipal Council under the repealed laws and in force immediately before the appointed day were to continue in force until they are superseded by the competent authority. Thus the bye-laws framed by the Municipal Council, Saoner under the repealed Act were to remain in force in spite of the repeal of the said Act by the Maharashtra Municipalities Act, 1965. By section 347 of the Maharashtra Municipalities Act, 1965 a specific provision has been made for protecting the salaries of officers and servants in the employment of existing Municipal Council. It cannot be said that bye-law No. 23 framed by the Municipal Council is in any way inconsistent with the provisions of the Maharashtra Municipalities Act, 1965. In this view of the Matter, in our opinion, in spite of the repeal of the C.P. and Berar Municipalities Act, 1922 and the enactment of the Maharashtra Municipalities Act 1965, the present bye-law No. 23 governing the age of retirement of the employees serving under the Municipal Council, Saoner, is still in force and will be applicable to the employees serving in the said Municipal Council.

12. It was then contended by Shri Masodkar that in view of the letter issued by the office of the Director of Municipal Administration dated 17-3-73 addressed to the Administrator, Municipal Council, Tumsar, Annexure R-4, and copies of which were forwarded to the Presidents of all Municipal Councils in Nagpur Division, informing them that the age of superannuation of the Secondary School Teachers in Municipal Councils in Vidarbha, who are permanent on 31-12-1965, would be 60 years as per the provision of the M.P. Secondary Education Act, 1951, the respondent No. 3 is entitled to continue in service till he attains the age of 60 years. According to Shri Masodkar, this letter should be construed to be an order issued by the Director of Municipal Administration in exercise of his power u/s 76 (2) (b) of the Maharashtra Municipalities Act, 1965.

13. It is not necessary for us to consider this contention of Shri Masodkar, in view of the fact that the alleged letter was written on behalf of the Director of Municipal Administration of 17-3-1973, much after the actual retirement of respondent No. 3 Bharadwaj. Respondent No. 3 Bharadwaj stood retired from the Municipal service with effect from 31-12-1972. The letter written by the Director of Municipal Administration on 17-3-1973 can have no retrospective effect, and

therefore, in any case as far as the facts and circumstances of the present case are concerned, in our opinion, such a letter is not relevant for deciding the controversy involved in this writ petition.

14. On the contrary as per instructions issued by the Government vide its letter No. SSN/3064 - 34764 - G dated 17-4-1964 and addressed to the Deputy Director of Education, Nagpur the Government has clarified the position that in case of conflict between the service conditions of teachers serving in secondary schools managed by the Municipal Committee governed by the Statute and the service conditions of the teachers laid down in the grant-in-aid code for secondary schools, the former will prevail. The petitioner has also filed an Annexure E, another letter issued by the Government of Maharashtra Education and Social Welfare Department, dated 25-1-1965 addressed to the President, Municipal Council, Deulgaon Raja, district Buldana, wherein the Under-secretary to the Government of Maharashtra, Education and Social Welfare Department and informed the President of Municipal Committee, Deulgaon Raja that in case of conflict between the service conditions of teachers in the secondary schools managed by the Municipal Committees governed by the Statute, and the service conditions of the teachers laid down in the grant-in-aid code for recognition and the grant-in-aid to secondary schools, the former will prevail. From these letters issued by the Government, it is quite clear that even according to the state Government so far as the teachers working in the secondary schools managed by the Municipal Committee are concerned, their service conditions are governed by the provisions of the relevant statute, namely the Municipalities Act. In this view of the matter, in our opinion, there is no substance in this contention raised on behalf of respondent No. 3 Bharadwaj.

15. It was faintly argued by Shri Masodkar that the petitioner has no locus standi to file the present writ petition, because he was only appointed as a headmaster in the Municipal High School in an officiating capacity, which did not confer upon him any legal right to the post.

16. In our opinion, there is no substance in this contention of the Shri Masodkar. After retirement of the respondent No. 3, the petitioner was appointed as a headmaster of the Municipal High School, Saoner initially in officiating capacity by order dated 1-12-1972. However, subsequently by an order dated 31-1-1973 he was appointed as a headmaster in the Municipal High School Saoner with the effect from 1-2-1973 in a substantive capacity. Not only this, as a result of the order passed by the Director of Municipal Administration dated 12-2-1973 he was reverted from the post of the headmaster to his original post of the headmaster to his original post of the Assistant Teacher with immediate effect. It cannot be disputed that this reversion resulted in loss of the emoluments and status so far as the petitioner is concerned. The order passed by the Director of the Municipal Administration directing the reinstatement of respondent No. 3 Bharadwaj and the consequential reversion of the petitioner from the post of the headmaster to the post of an Assistant Teacher had resulted in civil consequences, and

therefore, in our opinion the petitioner was aggrieved by the said orders passed by the Director of the Municipal Administration as well as the Administrator, Municipal Council, Saoner, and had, therefore, locus standi to file the present writ petition.

17. The whole controversy involved in this writ petition can also to be looked into from another perspective. After the formation of the State of Maharashtra a new code for recognition of grant-in-aid to secondary School was framed. From the introductory note appended to this code, which is now known as secondary schools code, it is quite clear that before the state reorganisation, Vidharbha and Marathwada area of the Ex-Madhya Pradesh and Ex-Hyderabad state respectively and the former States of Saurashtra and kutch had in their own areas different rules governing recognition of (and) grant-in-aid to non Government secondary schools. The practices and conventions followed in this connection in these different areas were not uniformity in the matter, an Integration Committee for Secondary Education was appointed by the then Government of Bombay in 1958. This committee, inter alia was asked to examine the different Education Codes and administrative practices then in force at the secondary stage and to make proposals for the introduction of a unified system of secondary education and pattern of assistance to non-Government secondary schools. This Committee submitted its report in 1959. Even though it did not make any specific recommendations with regard to the Grant-in-aid Code, it did make certain suggestions in this respect. Therefore, in December, 1960, the Government of Maharashtra appointed a Committee consisting of officials and non-officials. It was entrusted with the work of suggesting a unified Code for the consideration of government. The Committee, after due deliberations prepared a revised Draft Code and submitted the same to Government in August, 1961. The present school Code is mainly based on the draft prepared by that Committee and was introduced as a common code for the recognition of and Grant-in-aid to non Government secondary schools through out the State. The said Code came into force with effect from the year 1963-64. Therefore, after the framing of the said Secondary Schools code by the Government of Maharashtra, it was the said Code which governed all non-Government secondary schools. After this the Maharashtra Secondary Education Boards Act was enacted by the State Legislature. This Act was enacted to make a provisions for establishment of a State Board and a Divisional Board to regulate certain matters pertaining to the education in State of Maharashtra. By Section 40 of the Maharashtra Secondary Education Boards Act, 1965, the M.P. Secondary Education Act, 1951 stood repealed and even the Vidarbha Board of Secondary Education constituted there understood dissolved. Section 40, which is a repealing and saving section only saved the properties, rights and interest of the erstwhile dissolved Boards. Section 40 (2) (g) and (h) also accorded protection to the officers and servants of the State Government as well as the dissolved Boards and protected their conditions of service which were applicable to them immediately before the appointed day. No provisions was made in this Act to save any of the regulations

framed under the M.P. Secondary Education Act, 1951, including the School Code framed under the said Act. This seems to us to be obvious. As already stated hereinbefore, even prior to the enactment of the Maharashtra Secondary Education Boards Act, 1965 the State Government had framed an independent Secondary Schools Code for the purposes of recognition of (and) grant-in-aid to the Secondary schools. As observed by the Supreme Court in *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, the provisions of this code were in the nature of executive and administrative instructions. It is clear from the introductory note appended to the new Schools Code that it was framed by the State Government to bring about uniformity in all matters which are provided by the said Code. The said Code was in vogue in the whole State of Maharashtra even before the Maharashtra Secondary Education Boards Act, 1965 came into force and Madhya Pradesh Secondary Education Act, 1951 was repealed.

18. In this view of the matter it was contended by Shri Madkholkar, the learned counsel for the petitioner, that in view of the repeal of Madhya Pradesh Secondary Education Act, 1951, the School Code framed under the said Act also stood automatically repealed and as there is no saving clause, saving either the old School Code or any of Regulations framed under the M.P. Secondary Education Act, 1951, it cannot be said that even in spite of the repeal of the said Act, the old Secondary School Code framed under the Madhya Pradesh Secondary Education Act, 1951 will govern the terms and conditions of service of the teachers serving in any of the secondary schools in general and the High Schools managed by the Municipal councils in particular.

19. However, in the view which we have taken already it is not necessary for us to probe into this question in details and to decide it in this writ petition. Since we have already held that the conditions of service of the respondent No. 3, who was the headmaster of the Municipal High School, Saoner, were governed by the bye-laws framed by the Municipal Council, Saoner under the Municipalities Act and not by the School Code framed under the Madhya Pradesh Secondary Education Act, 1951, it is not necessary for us to decide other contentions raised by the petitioner in this petition, because, in our opinion he is entitled to succeed in this petition on this ground alone.

20. In the result, therefore, the writ petition filed by the petitioner is allowed and the order passed by the Director of the Municipal Administration dated 12.2.1973, incorporated in Annexure H, is hereby quashed and set aside. Consequently, the order passed by the H, is hereby quashed and set aside. Consequently, the order passed by the Municipal Council, Saoner dated 21.3.1973 ordering reinstatement of respondent No. 3 Bharadwaj and reverting the petitioner to his original post of Assistant Teacher with immediate effect is also hereby quashed and set aside. However, in the circumstances of the case there will be no order as to costs.

21. Writ petition allowed.