
(2016) 08 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 9312 of 2014

Datta Education Society, Nanded

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(1)

Citation : (2016) 5 AIRBomR 600 : (2016) 6 ALLMR 387

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : Mr. R.N. Dhorde, Senior Counsel, i/b Mr. V.R. Dhorde, Advocate, for the Petitioner; Mr. S.D. Kaldate, AGP, for the Respondent-State; Mr. S.B. Gastagar, Advocate, for the Respondent Nos. 5 and 6; Mr. V.D. Gunale, Advocate, for the Respondent No. 7

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2. This Petition takes exception to the impugned order dated 11.09.2014 passed by respondent No. 3 ? Deputy Director of Education, Latur, confirming the approval granted to the appointments of respondent nos. 5 and 6 on the post of Shikshan Sevak in respondent No. 7 school on 10.08.2012. It is further prayed that the appointment orders dated 29.02.2012 of respondent nos. 5 and 6 on the post of Shikshan Sevak in respondent no.7 school and the approval dated 10.08.2012 be quashed and set aside.

3. The learned Senior Counsel appearing for the petitioner submits that the Managing Committee belonging to the group of which the petitioner is member, was elected in the year 2009, and since then they are looking after the affairs of the trust. The new Committee is again elected in June, 2012, for further period of three years. Accordingly, all respondent authorities were informed that the

group of petitioner is elected on 04.08.2009 and change report was also filed. Thereafter, even from the year 2012, the group of petitioner is elected and even rival group did not file any change report before the Assistant Charity Commissioner. It is submitted that as the posts were vacant in the school run by the petitioner, the petitioner made an application on 31.08.2012 to respondent No. 3 ? Deputy Director of Education, requesting to grant permission to fill in the said vacant posts. It was stated in the application addressed to the Education Officer that the rival group, who has no lawful authority, is claiming that they are in power and trying to appoint their relatives on the vacant posts. It is submitted that in the month of December, 2012, some members of the present Managing Committee learnt that respondent nos. 5 and 6 are appointed as Shikshan Sevak by the Headmaster. The petitioner filed application under Right to Information Act (in short ?RTI Act?) to the Headmaster, seeking information of such appointments. Accordingly, the information was received, disclosing that respondent nos. 5 and 6 are appointed as Shikshan Sevak.

4. It is further submitted that before making such appointments of respondent nos. 5 and 6 as Shikshan Sevak, no procedure as contemplated under Section 5 of the Maharashtra Employees of Private Schools (Condition of Services) Regulation Act, 1977 [in short ?MEPS Act?] r/w. Rule 9 has been followed by the Headmaster. No advertisement was issued before making appointments of respondent nos. 5 and 6 by the Head Master. Though the present Managing Committee is represented by the petitioner in power, the Headmaster acted arbitrarily in collusion with the so-called person claiming to be in power, whose change reports are rejected and no appeal has been filed by them, and therefore, the petitioner terminated the services of respondent nos. 5 and 6, by an order dated 29.04.2013. The said order was sent by RPAD. Accordingly, the Education Officer was informed on 04.05.2013 about termination of services of respondent nos. 5 and 6. In spite of terminating the services of respondent nos. 5 and 6 by the Managing Committee, the Headmaster continued them in service in collusion with the earlier President and the Secretary of the trust as respondent nos. 5 and 6 are their relatives. The then Headmaster was acting highhandedly, informed that as the approval has been granted by respondent No. 3 Deputy Director of Education in favour of respondent nos. 5 and 6, therefore, they cannot be removed from the service. Therefore, the petitioner filed application under RTI Act to the office of the Education Officer/Deputy Director, seeking information and the copy of approval order. Accordingly, the information was given to the petitioner on 10.07.2013 by the respondent authority, providing the copy of approval dated 10.08.2012 granted in favour of respondent nos. 5 and 6. The petitioner also filed an application under RTI Act to respondent No. 3 on 16.04.2013, requesting to give the copies of all documents containing file about the proposal granting approval in favour of respondent nos. 5 and 6 submitted by the Headmaster. However, as no information was received from respondent No. 3, the petitioner again filed application on 20.06.2013, seeking copies of the said documents, however, there was no response from the office of

respondent No. 3. Therefore, the petitioner filed Appeal under RTI Act before the Appellate Authority on 25.07.2013. Since the appointments of respondent nos. 5 and 6 were made by the Headmaster without permission of the management, the proceedings of his removal from the said post was initiated, show cause notice was given to him on 24.05.2013, and accordingly, after conducting an enquiry about misconduct of the Headmaster, ultimately he was removed from the post of Headmaster. The Resolution was passed to that effect on 17.09.2013, thereby resolving to terminate the services of the Headmaster and the said Resolution/order of termination has come into force with effect from 01.10.2013. The petitioner immediately informed the respondent authorities about passing of such termination order, despite this, respondent nos. 3 and 4 continued to release pay bills of the respondent Headmaster, whose services were already terminated as he has illegally appointed respondent nos. 5 and 6. Then the petitioner filed a representation with respondent No. 3, but no action was taken. The petitioner preferred Writ Petition No. 7559/2013 before the Bombay High Court, Bench at Aurangabad. The said Writ Petition was disposed of by giving directions to respondent No. 3 to decide representations made by the petitioner within a period of 6 weeks, by an order dated 24.09.2013.

5. It is further submitted that the petitioner remained present before respondent no. 3 and filed detail reply on 30.10.2013, thereby pointing out that, the appointments of respondent nos. 5 and 6 are illegal as they are not qualified and their appointments are made without following due procedure and request was made to withdraw the approval dated 10.08.2012 granted in favour of respondent nos. 5 and 6. In spite of direction given to respondent No. 3 to decide representation of the petitioner, no decision was taken within stipulated period. Thereafter, the petitioner filed number of representations, however, no heed was paid to such representations. The petitioner filed Writ Petition No. 2159/2014, seeking direction to the respondent authorities to stop salary of the Headmaster as his services were terminated in the month of October, 2013. After filing such Writ Petition, respondent no. 3 had conducted hearing on 26.08.2014, and accordingly, the decision was taken by him on 11.09.2014, thereby confirming the approval granted in favour of respondent nos. 5 and 6 and rejected the objection of the petitioner. It is submitted that respondent nos. 5 and 6 are closely related to the rival group and the Headmaster is in collusion with the said rival group by preparing forged record shown that respondent nos. 5 and 6 are appointed as Shikshan Sevak. Respondent No. 5 is the husband of Shrutika, who is daughter of Urmila. The said Urmila is a daughter of Vithal Marotirao Tawade, who was claiming to be the Secretary, and therefore, respondent no. 5 is the soninlaw of the then Secretary Shri Vithal Marotirao Tawade while respondent no. 6 is the granddaughter of the then President Keshavrao Sonbarao Tawade. It is submitted that the false record has been prepared by the Headmaster showing that respondent nos. 5 and 6 were appointed on 29.02.2012. The petitioners received the information under RTI Act that the advertisement was given in the news paper namely 'Tarun Mukhnayak',

which is not widely circulated news paper and is also not known to the people. As per the record received, it is shown that the interviews were held on 28.02.2012 by one Shri G.P. Kamble, who is the subject expert and is a teacher in the school. It is submitted that on 28.02.2012 the said Shri G.P. Kamble was not on duty and was posted out of station. In support of this contention the learned Senior Counsel for the petitioner invited our attention to the copy of document showing that on the said date Shri G.P. Kamble was not on duty.

6. It is further submitted that one muster roll shows that the signatures during the said period only of the Headmaster and one Shri Kamble, and the other muster roll was separate in respect to the respondent nos. 5 and 6. If really respondent nos. 5 and 6 were appointed in the month of February, 2012, then their signatures ought to have appeared on the same muster roll, which have been signed by the Headmaster and other teachers. The separate muster roll maintained clearly shows that the appointments are backdated and without following any procedure and the forged record has been prepared in order to accommodate the close relatives of the then Secretary and President. It is submitted that the State Government has issued Government Resolution dated 06.02.2012, wherein the directions are issued in respect of filling in the vacant posts of teaching and nonteaching staff. In view of clause 4 of the said Government Resolution (Exhibit Z1 Page195), it has been stated that the management shall fill in the vacant posts by giving advertisement after the permission given by the Competent Authority within two months. The advertisement is to be given in two widely circulated news papers giving all details. Respondent No. 3 did not consider the voluminous documents submitted by the petitioner and unreasoned order has been passed by respondent No. 3. It is submitted that the entire record was forged and respondent nos. 5 and 6 are shown to be appointed in accordance with the procedure on the basis of such forged and fabricated documents. Respondent No. 3 did not consider the guidelines issued in Government Resolution dated 06.02.2012. It is submitted that even the reservation roster was not followed while making appointments in favour of respondent nos. 5 and 6.

7. The learned Senior Counsel also invited our attention to the averments in affidavit-in-rejoinder to the affidavit-in-reply filed by the respondents. It is submitted that as two additional posts were sanctioned by the Deputy Director, therefore, it was necessary to get the roster verified before making appointments as per the sanction order issued by the Deputy Director. Respondent No. 3 himself has admitted in the affidavit-in-reply that there was backlog of one post of OBC category. The news paper in which the advertisement was given is not widely circulated newspaper and the same is also not registered and recognised news paper and even not registered with the District Publicity Office, Nanded. It is submitted that Shri Dangat, who was appointed in the year 1989, was appointed from OBC category. Subsequently, the caste ?Vanjari?, which was recognised as OBC, was included in NT (D) category, and therefore, the said Shri Dangat ought to have been considered from N.T. (D) category. The said fact was

not brought to the notice while verification of roster point in the year 2009. The learned Senior Counsel for the petitioner pressed into service exposition of law in the case of Pramod Kumar v. U.P. Secondary Education Services Commission and others (2008) 7 SCC 153 and submits that when the appointments are made and such appointee lack of essential qualifications at the time of appointments, such illegality cannot be cured. For the same preposition, he also pressed into service exposition of law in the cases of Vidya Bharti Shikshan Sanstha, Goregaon, District Gondia v. Presiding Officer, Additional School Tribunal, Nagpur and others 2010 (4) Mh.L.J. 718, Priyadarshini Education Trust and others v. Ratis (Rafia) Bano d/o. Abdul Rasheed and others 2007 (6) Mh.L.J. 667 and the learned counsel also invited our attention to the Judgement of the Bench presided over by learned Single Judge in the case Sawale Motiram Shridhar v. Maharashtra Seva Sangh, Solapur and others, 2009 (4) MhLJ 233 : (2009) (6) ABR (NOC) 1035 (Bom). Therefore, relying upon the pleadings in the Petition, annexures thereto, rejoinder-affidavit filed by the petitioner, relevant proceedings of RTI Act, the Government Resolution, the aforementioned reported judgements of the Supreme Court and the High Court, the learned Senior Counsel appearing for the petitioner submits that the Petition deserves to be allowed.

8. The learned counsel appearing for respondent No. 7 relying upon the averments in the affidavit-in-reply filed by respondent no. 7 submits that there is no Resolution passed by the management authorising Mr. Narayan Govindrao Tawade to file this Petition. It is submitted that he is not the President of the petitioner society as per Schedule-I of the said trust, one Keshavrao Sonbarao Tawade is the President and 2009 (4) Mh.L.J. 233 Shri Vithal Marutiro Tawade is the Secretary of the said trust. Shri Narayan Govindrao Tawade is only the member of the Managing Committee as per the schedule I of the said trust. Datta Education society is registered trust and the said trust is having its own Rules and Regulations. The said trust is running the school namely Datta Madhyamik Va Ucha Madhyamik School at Talni, Taluka Hadgaon, since 1958. There is a Managing Committee, consisting of 7 members, including the office bearers. Out of 7 members, one President namely Keshavrao Sonbarao Tawade died. He was the Treasurer. The learned counsel also invited our attention to the fact that, at the relevant time when the appointments of respondent nos. 5 and 6 were made, there was no Managing Committee in the office due to dispute pending before the Competent Authority, and therefore, the Headmaster issued an advertisement. In absence of the Managing Committee, the Headmaster is authorised to appoint the teachers keeping in view the vacancies available and need of teachers.

9. It is submitted that petitioner Narayan Tawade failed in the proceedings initiated before the Charity Commissioner raising the dispute about elections/appointment of trustees. It is submitted that change report No. 921 of 2014 was filed in the office of Assistant Charity Commissioner and the same is pending. Therefore, the present petitioner is not the President of the said trust, having the authority to file this Writ Petition, challenging the appointments of respondent

nos. 5 and 6, which are made after following due procedure and with consultation of the Education Officer and also the Deputy Director of Education and more particularly, as per the orders passed by the Assistant Charity Commissioner, Nanded, in Enquiry No. 1367 of 2010, under Section 41A dated 28.09.2010. It is submitted that Narayan Tawade is residing at Yavatmal. Earlier he was in Government service and after his retirement, he has his medical practise at Yavatmal and in fact he has no concerned with the said trust. However, he is trying to interfere in smooth functioning of the trust to meet illegal demands. The petitioner has no authority and power to make appointment of teachers, but with a view to collect the huge donation and to fill up those posts, the petitioner was trying to obtain permission to fill up the vacant post. However, neither the Education Officer, nor the Charity Commissioner granted permission to Narayan Tawade to fill up those posts. On the contrary, the Assistant Charity Commissioner in the application filed by the petitioner, directed the Education Officer to take appropriate steps to fill up the vacant posts as there is no legal School Committee in the said school.

10. It is submitted that two posts of Junior Lecturers in the Higher Secondary School were sanctioned by the Deputy Director, vide order dated 09.12.2010 and directed the School authorities to submit the revised proposal for the staff approval. Earlier in the said Higher Secondary School, one Shri Kamble was working in the said School. The said Higher Secondary school is having only faculty of Art and Shri Kamble has also retired from the service due to age of superannuation in the month of July, 2012. However, there was no teacher in the Higher Secondary School and the students were suffering due to nonavailability of teachers. Respondent No. 7 consulted with the Education Officer as well as the Deputy Director of Education, Latur. However, he was told to act as per the Government Resolution dated 19.11.2001 as there is no School Committee in existence. Therefore, respondent no. 7 published an advertisement in daily news paper, which was widely circulated in the Nanded District, calling upon eligible candidates for appointment of the two vacant posts of teacher in the Higher Secondary School and one teacher in the Secondary School as per the workload available in the said School. As there is no sanction post subject wise to the Higher Secondary School, and therefore, the candidates possessing the qualification for teaching Marathi, Economics, Hindi and English subjects were invited. As per the said advertisement, the candidates have applied. The Local Selection Committee conducted the interviews for two posts. There were four applicants. The said advertisement was as per the roster of the reservation, which was duly verified by the Assistant Charity Commissioner, B.C. Cell. Accordingly, the interviews were conducted on 28.02.2012 in the school premises and the Local Selection Committee selected respondent nos. 5 and 6 respectively as Shikshan Sevak on probation for three years. Accordingly, the proposal was submitted for approval of the said appointments with the office of Deputy Director of Education, Latur, along with all requisite documents, including the process of selection, roster of reservation, educational qualifications of the

selected candidates. The Deputy Director of Education has granted approval to the appointment of the respondent nos. 5 and 6, vide order dated 10.08.2012. The learned counsel for the respondent No. 7 invited our attention to the copies of letter of Dy. Director of Education dated 09.12.2010, staff approval for the year 2011-12, advertisement, report of the Selection Committee dated 28.02.2012 along with the list of the candidates, who have attended the interviews, the copies of appointment orders of respondent nos. 5 and 6 dated 29.02.2012, copy of roster of reservation and the proposal submitted by respondent No. 7 for approval and approval order dated 10.08.2012. It is submitted that there was only one Lecturer namely Shri Kamble, he was going to retire in the month of July, 2012, and therefore, there was no teacher in the Higher Secondary School. As per the approval, the Deputy Director sanctioned two more posts for secondary school. The respondent nos. 5 and 6 are qualified, eligible and their appointments are as per the roster. The advertisement was issued for three posts, however, nobody had applied for third post of secondary school, and therefore, the said post is not filled in. It is submitted that the petitioner is in habit of filing applications/representations and the Petitions for no reason. The High Court directed the Deputy Director of Education to conduct an enquiry on the representations of the petitioner and decide the same within 6 weeks. The said directions were issued in Writ Petition No. 7579/2013, filed by the petitioner. As per the directions dated 25.11.2013, the Deputy Director of Education issued notices to all concerned including the petitioner and after hearing the parties and perusing the record, decided the said representation on 11.09.2014. It is submitted that there is no sanction for independent post for each subject. Therefore the appointments of respondent nos. 5 and 6 are as per their qualifications and those are made as per the Government Resolution dated 19.11.2001 by the Headmaster due to the dispute in the management. The said order of the Deputy Director needs no interference. It is submitted that the petitioner has no right or power either to constitute the Committee for conducting the enquiry against respondent No. 7 or to terminate his services, since he is not the President or the Secretary of the said trust. Respondent No. 7 is working in the said school honestly and sincerely since 1985. He has completed continuous service about more than 28 years. He has not received single memo or notice during his entire service tenure. It is submitted that the Deputy Director of Education has heard all the parties and perused the record and then held that the appointments made in favour of respondent nos. 5 and 6 are in accordance with the procedure.

11. It is submitted that newly appointed employees have signed on separate muster roll, because there was ending of academic year and they were not approved teachers at that time, and therefore, they signed on the separate muster roll and no such false record is prepared by the respondent No. 7 as alleged by the petitioner. Therefore, the learned counsel for the respondent No. 7 submits that Petition deserves to be dismissed.

12. The learned counsel appearing for respondent nos. 5 and 6 submits that the

petitioner has no locus standi to file Petition, who claims to be the President of the trust. However, he is not the President of the trust and one Keshavrao Sonbarao Tawade is the President of the trust and Shri Vithal Marutirao Tawade is the Secretary of the trust. It is submitted that there is no legal Committee in the office and as per the Schedule-I, de facto trustees are on record. Therefore, the Assistant Charity Commissioner, considering the situation, directed the Education Officer to take necessary steps for making the appointment of the staff in the school run by the said trust in absence of the legal management. The Headmaster is entitled to make the appointments due to nonavailability of school Committee, in view of the Circular issued by the Director of Education dated 19.11.2001. It is submitted that the petitioner is trying to interfere in the smooth functioning of the trust. It is submitted that respondent nos. 5 and 6 were interviewed on 28.02.2012 in the school premises by the Local Selection Committee along with the other candidates. The said Selection Committee selected respondent nos. 5 and 6 as Shikshan Sevak on probation for three years, vide appointment order dated 10.08.2012. Their appointments are as per the staffing pattern. They have completed three years satisfactory service as Shikshan Sevak, and therefore, in view of the provisions of subsection (2) of Section 5 of the MEPS Act, they have acquired status of deemed confirmed employees. Therefore, relying upon the averments in the affidavit-inreply, the learned counsel appearing for respondent nos. 5 and 6 submits that the Petition deserves to be dismissed.

13. The learned AGP appearing for the respondent ? State relying upon the averments in the affidavit-inreply filed by respondent no. 3, additional affidavit filed on behalf of respondent No. 4 and additional affidavit filed on behalf of respondent No. 2 submits that the appointment of respondent nos. 5 and 6 is in accordance with the procedure established. They are qualified for the post considering the workload available for the academic year 2010-11, the School management was communicated by the Deputy Director of Education, Latur Region, Latur that school is entitled for more than two posts in the Higher Secondary School. The individual approvals are given to the appointment of respondent nos. 5 and 6. The representation of the petitioner has been decided by the Deputy Director of Education, Latur Region, Latur on 26.08.2014, and reasoned order has been passed on 11.09.2014. As the roster of the petitioner society is verified by B.C. Cell on 18.11.2009, and the backlog of teaching staff was mentioned nil, and there was one post of Secondary teacher remained vacant. Though two additional posts of Shikshan Sevak were sanctioned by the Government, there will be backlog of one post of OBC category. As per the advertisement of three posts, one post of OBC category was filled in by appointing one Smt. Neeta Ramdasrao Ganjare as Secondary teacher, and on two posts of Shikshan Sevaks from open category, respondent nos. 5 and 6 are appointed. Respondent No. 4 has filed additional affidavit, and it is stated in the said affidavit that whether ?Dainik Muknayak? Times in which the advertisement was given is registered news paper or otherwise, was enquired from the office of

the District Information Officer, Nanded. It was informed by the said office that the said news paper i.e. 'Dainik Muknayak' Times, is not listed in the advertisement registered news paper in Nanded District. It is stated that considering three posts of higher secondary teachers, there is backlog of one post of OBC category teacher. It is submitted that keeping in view the necessity of the appointment of teachers, the appointment of respondent nos. 5 and 6 have been made, and the approval is granted to their appointment on certain terms and conditions. Respondent no. 2 has also filed additional affidavit and more or less the contentions raised by respondent No. 4 have been reiterated in the said affidavit-inreply.

14. We have considered the submissions of the learned Senior Counsel appearing for the petitioner, the learned AGP appearing for the respondent 'State and the learned counsel appearing for respondent nos. 5, 6 and 7. With their able assistance, perused the pleadings in the petition, annexures thereto, the replies filed by the respondents and also rejoinder-affidavits filed by the petitioner, the relevant provisions of the MEPS Act and Rules, and also the Judgement cited across the Bar by the learned Senior Counsel appearing for the petitioner. The Division Bench of the Bombay High Court, Bench at Aurangabad, in the case of Priyadarshini Education Trust (supra), while considering and interpreting the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, has taken a view that :

"Duly appointed, in the manner prescribed" would be an appointment of a person who is eligible (qualified for the post) for appointment, who is selected by due process of selection i.e. by competition amongst all eligible and desirous candidates, and who is appointed on a permanent vacant post. In other words, inviting applications, as also holding of screening tests, enabling all eligible and desirous candidates to compete for selection and appointment, is a must. Once an eligible candidate (duly qualified as required) is selected by selection process as above, for filling in a permanent vacancy, there is no option for the management and it is obligatory on it to appoint such person on probation for a period of two years. It is neither open for the management to appoint him for one academic year or any period shorter than two years probation period, nor it is open for Education Officer to grant approval for such shorter period (in fact, in view of requirement as in clause (i) above, the process of grant of approval by Education Officer should begin with examination of selection process and its validity.) The candidate thus selected with due process and appointed on probation shall enjoy status of deemed permanency on completion of two years, unless extension of probation is informed, or termination is ordered. The appointment of a person not belonging to reserved category, in a post reserved for a particular category, because the candidate of that category is not available, shall be absolutely temporary and on an year to year basis, governed by sub-rule (9) of Rule 9, although in a permanent vacancy.

15. Therefore, keeping in view the exposition of law in the case of Priyadarshini

Education Trust (supra), we have to consider whether in the facts of the present case, respondent nos. 5 and 6 are selected by due process of selection on the post of Shikshan Sevak. While advertising the posts and also during the selection process, whether the tests of competition amongst all eligible and desirous candidates was adverted to and followed by the concerned respondents. Whether the permission of the respondent State Authorities was sought taking recourse to Section 5 (1) of the MEPS Act before the posts were advertised. Whether the procedure contemplated under Section 5 (1) of the said Act and the Government Resolution dated 06.02.2012 issued by School Education and Sports Department was really followed. We are examining the case in hand, in peculiar facts of this case, inasmuch as the petitioner has specifically pleaded in the Petition that Ravikant Balasaheb Deshmukh and Subhangi Shivajirao Tawade, who are respondent nos. 5 and 6 respectively in this Petition, are the relatives of Keshavrao Sonbarao Tawade, who claims to be the President of the trust and respondent No. 5 is the soninlaw of Vithal Marotrao Tawade, who is claiming to be Secretary of the said trust. It is specifically pleaded by the petitioner that, respondent No. 5 is the son-in-law of Vithal Marotrao Tawade and respondent No. 6 is granddaughter of the then President Keshavrao Sonbarao Tawade. On careful perusal of the replies filed by respondents, there is no denial to the said relationship by the respondents. Therefore, the present case requires in depth introspection so as to find out whether the selection process, which was initiated and ultimately culminated into the appointments of respondent nos. 5 and 6, was really in accordance with the provisions of Section 5 (1) of the said Act, and the Government Resolution dated 06.02.2012 issued by School Education and Sports Department, Government of Maharashtra, Mumbai. We have considered the preliminary objection raised by the respondent nos. 5 to 7 that, though the petitioner claims to be the President of the said trust, he is not the President of the trust. However, fact remains that, respondent nos. 5 to 7 have admitted in their affidavit-inreplies that Shri Narayan Tawade i.e. the petitioner herein is a member of the trust. Therefore, we are inclined to entertain this Petition at his instance, as he is one of the trustees of the petitioner society/trust and not stranger. The provisions of Section 5 (1) of the MEPS Act, reads thus :

5. Certain obligations of Management of private schools.

(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy :

[Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the Officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such

person being available, the Management shall appoint that person in such vacancy.]

16. The aforesaid provision came up for consideration before the Division Bench of the Bombay High Court, Bench at Aurangabad, in the case of Priyadarshini Education Trust (supra). As already observed, the view is taken in the said Judgement that, due process of selection means by competition amongst all eligible and desirous candidates, by inviting applications as also holding of screening tests, enabling all eligible and desirous candidates to compete for selection and appointments. In the present case, though the Deputy Director of Education in the month of December 2010 informed the respondent institution/school that two posts of teacher are admissible in Higher Secondary School, however, the selection process was undergone in the year 2012. The respondents have not placed on record any documents showing that before advertising the post, the concerned Headmaster had informed the concerned Education Officer/Deputy Director of Education that, they intend to advertise posts and for the said purpose, the permission is sought as contemplated under Section 5 (1) of the said Act. As already observed, the respondents have not placed on record the copies of the documents showing that as a matter of fact before advertising the post an exercise envisaged under Section 5 (1) of the MEPS Act was gone into by the concerned Headmaster/Local Management before advertising the post. Therefore, there was no adherence to the procedure stated in the said provision, and in absence of such adherence, the entire exercise undertaken by the respondents to advertise the post, that too, in the newspaper, which is not registered with the Local District Authority and not widely circulated in the vicinity, was not in accordance with the provisions of the MEPS Act and Rules and also Government Resolution dated 06.02.2012 issued by the School Education and Sports Department. Therefore, there is no slightest doubt that, the respondents so as to exclude the desirous and qualified and more meritorious candidates, which possibly are available hundreds in number in the society, have published an advertisement in the newspaper 'Tarun Mukhnayak', which is not registered with Competent Authority and not widely circulated. At this juncture, it would be apt to reproduce herein below the relevant provisions of the Government Resolution dated 06.02.2012 issued by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai :

"kklu fu.kZ;%&

mijksDr izLrkousrhy ckch o ek0 mPp U;k;ky;kps vkns"k fopkjk ?ksrk] f"k{k@f"k{kdsrj deZpk&;kaph fu;qDrh] oS;fDrd ekU;rk] inksUur;k o vuq"kafxd ckchaP;k lanHkkZr [kkyhyizek.ks dk;Zi)rhpk voyac dj.;kr ;kok0%&

v & "kS{kf.kd laLFksus@O;oLFkkiukus djko;kph dk;Zokgh%&

1- egkjk"V~ [kktxh "kkGkarhG deZpkjh (IsosP;k "krhZ) fofu;eu vf/kfu;e] 1977 e/khy dye 5(1) uqlkj in Hkj.;klkBh "kD; frrD;k yodj fofgr dj.;kr vkysY;k jhrhus in Hkj.;kph dk;Zokgh dj.;kr ;koh0 ijarq vls fjdkes in Hkj.;kiwohZ lacaf/kr f"k{k.kkfk/

kdkjh] ft0i0@f"k{k.k fujh{kd@f"k{k.k milapkyd dk;kZy;kdMs Bso.;kr vkysY;k vfrfjDr f"k{k{kdkap;k ;knhe/kwu ;ksX; O;fDr miyC/k gks.;ktsxh vkgs fdaok dls ;kph [kk=h d:u /;koh0 v"kh dks.krhgh O;fDr miyC/k vlsy R;kckcrhr O;oLFkkiu v"kk fjdke;k inkoi R;k O;Drhph fu;qDrh djhy0

2- laLFkse/khy dks.krsgh in fjDr >kY;kuarj izpfyr vkj{k.k /kksj.kkuqlkj Inj in dks.kR;k izoxkZrwu Hkj.ks visf{kr vkgs ;kph [kk=h dj.;klkBh fcanwukekoyhph jksLVj lacaf/kr l{ke izkf/kdk&;kdMwu iMrkG.kh d:u ?;koh o ;k izkf/kdk&;kaP;k vfHkizk;kuqlkj in foof{kr izoxkZrwu Hkj.;kph fofgr dk;Zokgh djkoh0

3- lacaf/kr dk;kZy;kdMs vfrfjDr deZpkjh miyC/k ulY;kl laLFksl Inj in lJGlsok Hkjrhus Hkj.;klkBh tkfgjkr ns.;kph ijokuxh fnyh tkbZy0 R;klkBh laLFksus foof{kr in dks.kR;k izoxkZlkBh jk[kho vkgs] inkkBh vko";d "kS{kf.kd ik=rk (ek;/e o fo"k;klg) dk; vkgs] o;kse;kZnsph vV dk; vkgs] in iw.kZosG@v/kZosG@?kM;kGh rkl@jtk dkyko/kh ;kiSdh fuf"pr dks.krs vkgs] in vuqnfur@va"kr% vuqnfur@fouk vuqnfur@ dk;e foukvuqnfur] lapekU;rsuqlkj in ekU;] izLrkfor ok<+ho in] inkps eku/ku @ osruJs.kh] inkkBh miyC/k dk;ZHkkj bR;knh loZ vVh o "krhZ uewn d:u tkfgjkrhl ijokuxh feG.;kckcrpk izLrko l{ke izkf/kdk&;kdMs lknj djkoh0

4- l{ke izkf/kdk&;kus tkfgjkr ns.;kl ijokuxh fnY;kiklwu laLFksus Inj ij Hkj.;kph dk;Zokgh 2 efgU;kaP;k vkr dj.ks ca/kudkj d jkghy0 tkfgjkr gh lokZf/kd [kikP;k nksu orZekui=kae;/s oj uewn dsY;kizek.ks loZ rif"kyklg ns.;kr ;koh0 tkfgjkrhe/khy ri"khy gk oLrqfLFkrh"kh folaxr vLY;kl o R;keqGs fu;qDr deZpk&;kaph ekU;rk ns.;ke;/s vMp.kh vkY;kl R;kl laLFkk tckcnkj jkghy0

5- Inj ij ekxkloxhZ; izoxkZrwu Hkjko;kps vLY;kl lacaf/kr dk;kZy;kdMwu R;k&R;k izoxkZP;k mesnokjkaph ;knh izkIr d:u ?;koh0 mnk0 lektdY;k.k vf/kdkjh] vkfnoklh fodkl vf/kdkjh bR;knhA

6- laLFksus tkfgjkr nsrkuk oLrqfLFkrh"kh folaxr ri"khy nsmu use.kwd dsY;kl o ekU;rk f"kfckje;/s Inj chch fun"kZukl vkY;keqGs l{ke izkf/kdk&;kdMwu ekU;rk ukdkjyh xsY;kl njE;kuP;k dkyko/khe;/s Inj deZpk&;kus dsysY;k dkekps osru lacaf/kr laLFksus ns.ks ca/kudkj d jghy0

17. The aforesaid Government Resolution further contemplates the exercise/duty of the Education Officer, Zilla Parishad/Education Inspector/Deputy Director of Education when the permission is sought by the Headmaster/management for appointments on the post in following manner :

c & f"k{k.k.kkf/kdkjh] ft0i0@f"k{k.k fujh{kd@f"k{k.k milapkyd dk;kZy;kus djko;kph dk;Zokgh%&

4- l{ke izkf/kdk&;kph ijokuxh u ?ksrk o vfrfjDr deZpk&;kaps lekos"ku u djrk laLFksus iJij dsysY;k use.kqdkauk ekU;rk ns.;kr ;sow u;sr0 vfrfjDr deZpkjh miyC/k vlruk o ojhy dk;Zi)rhpk voyac u djrk uO;kus fu;qDr deZpk&;kauk ekU;rk fnY;kl ;kckcr lacaf/kr f"k{k.k.kkf/kdkjh@f"k{k.k fufj{kd@foHkkxh; f"k{k.k milapkyd O;fDr"kr% tckcnkj jkgrhy0

10-2- lacaf/kr f" k{k.k laLFksl ins Hkj.;kckcr tkfgjkr ns.;kph ijokuxh ns.;kiwohZ lacaf/kr foHkxh; f" k{k.k milapkyd@f" k{k.kkf/kdkjh@f" k{k.k fujh{k d ;kauh mijksDr ckchaph dkVsdksji.ks rikl.kh d:u tkfgjkrhe/;s ojhy loZ ckchapk Li"V mYys[k dj.;kP;k vWhoj r"kh ijokuxh ns.;kr ;koh0 rlsp] ojhy ckchapk lekos" k lacaf/kr laLFksus fu;qDr dsysY;k f" k{k kd@f" k{k dsrj deZpk&;kaP;k fu;qfDr vkns" kklkscrP;k izi=kr dj.;kckcrP;k lwpuk loZ f" k{k.k laLFkpkkyd@O;oLFkkidkauk ns.;kr ;kO;kr0 mijksDr ckch uewn ulysyh fu;qfDr vkns" kklkscrph izi=s oS;fDrd ekU;rsP;k izLrkoklksr vLY;kl vls izLrko =qVh iwrZrslkBh lacaf/kr laLFksyk@ O;oLFkkiuky rkRdkG ijr dj.;kr ;kosr0

18. The said Government Resolution is issued by the State Government keeping in view the directions issued by the High Court time to time as mentioned in the said Resolution so as to bring transparency in the selection process and strict adherence to the provisions of Section 5 (1) of the said Act.

19. In the aforementioned clause 4 of the said Government Resolution, it is provided that, the concerned institution should apply under Section 5 (1) of the said Act to the Education Officer/Education Inspector/Deputy Director of Education, as the case may be. In case there are surplus teachers on the roll of the concerned authority, the said authority shall ask the management to absorb those surplus employees, who are on roll of said authority. It is also necessary to get roster verified before such permission is sought for appointments on the sanctioned posts by the management. There are detailed procedural aspects which are mentioned in clause 3 of the said Government Resolution. The clause 4 of the said Government Resolution specifically provides that, once permission to advertise the post is granted by the concerned Competent Officer, the society or institution shall complete exercise of the appointment on the said post/posts within two months from the date of granting such permission. It is provided in the said Government Resolution that the advertisement should be given in two news paper, widely circulated and having the highest sale in the vicinity, and such advertisement should be given in detail. There should not be variation in the information given in the said advertisement about factual position.

20. In the facts of the present case, the advertisement was given by the concerned Headmaster, in the news paper 'Dainik Mukhnayak' Times. Respondent No. 4 in his additional affidavit has specifically stated that, when the information was sought from the District Information Officer, Nanded, whether the 'Dainik Muknayak' Times is registered with the said office, the said authority replied that the said news paper is not registered news paper in Nanded District. There is no denial to the said fact in the reply that the said news paper is not registered with the Competent Authority by respondent nos. 5 to 7. As already observed, the present case stands on its peculiar facts inasmuch as there are specific allegations made by the petitioner that, respondent nos. 5 and 6 are relatives of the Keshavrao Sonbarao Tawade and Vithal Marotrao Tawade. Therefore, in the peculiar facts of this case reasonable inference can be drawn that, the advertisement was given in such a news paper, which is not widely

circulated, and registered with the Competent Authority with a view to ensure that the candidates, who are fully qualified and more meritorious, and desirous for appointment on the said posts, should be kept outside the selection process so as to ensure appointments of respondent nos. 5 and 6. It is a matter of serious concern from the view point of public at large that, though there may be hundreds of unemployed youths/candidates, who are possessing requisite qualifications, necessary for the appointment on the said posts, and desirous for applying for appointments on the said posts, which were advertised, were not perhaps aware about the said advertisement, since same was not published in the news papers, which are widely circulated and having maximum sale in the vicinity and registered with Competent Authority. As a result, as contended by respondent No. 7, there were only 4/5 candidates who were interviewed by the Headmaster/Local Managing Committee. It is crystal clear that, the entire alleged selection process was done in such a surreptitious manner so as to create conditions favourable to respondent nos. 5 and 6, who are relatives of the Keshavrao Sonbarao Tawade who is claiming to be the President and Shri Vithal Marotrao Tawade, who is claiming to be the Secretary of the said trust. Ultimately, the post sanctioned by the State Government must be advertised in accordance with procedure so that all desirous and qualified candidates can apply for said posts, and there should be complete transparency in the selection process, which would inspire public confidence in public employment.

21. As already observed, there is total non adherence to the provisions of Section 5 (1) of the MEPS Act, and also to the provisions of the Government Resolution dated 06.02.2012, referred herein above, and therefore, the said act of the Local Management/Headmaster to exclude large number of eligible candidate by not advertising the posts in leading news papers, which are widely circulated and sold on large scale in the vicinity. Therefore, such act of the Local Management not only amounts to irregularities but amounts to indulging into illegalities, and same cannot be countenanced in public domain. If such acts are allowed to continue merely because by this time respondent nos. 5 and 6 have completed more than 3 years service, would be adding to the premium on dishonesty and illegalities and also cause damage to the ?public interest? inasmuch as by not giving advertisement in two leading news paper, which are widely circulated and sold in the vicinity, and also not adhering to the provisions of the MEPS Act and Rules and also provisions in Government Resolution, the respondents made every endeavour to see that selection process is completed in surreptitious manner so as to ensure the appointments of respondent nos. 5 and 6, who are relatives of Keshavrao Sonbarao Tawade, who is claiming to be the President and Vithal Marotrao Tawade, who is claiming to be the Secretary of the said trust.

22. In our considered opinion, neither the respondent school management, nor the Government Authorities adhered to the provisions of Section 5 (1) and also to the provisions of the Government Resolution dated 06.02.2012. The Deputy Director of Education, who was supposed to take decision on the representation

of the petitioner within 6 weeks from the date of directions issued by the High Court in Writ Petition No. 7559/2013, which was disposed of on 24.09.2013, in utter disregard to the said directions stipulating time limit did not take decision within 6 weeks. He heard the parties on 26th August, 2014 and took decision on 11.09.2014. We have carefully perused the proceedings conducted on 26.08.2014. Upon careful perusal of the said proceedings, it is abundantly clear that the Deputy Director of Education had made farce of hearing and taking decision by merely recording the submissions of the parties, and in the end, without assigning any reasons, has straightway recorded the conclusions. The conclusions reached by the Deputy Director of Education did not refer to the provisions of Section 5 (1) of the said Act, and also to the provisions of the Government Resolution, which contemplates giving advertisement in two widely circulated news papers. The Deputy Director of Education did not take into consideration, the provision which mandate that before advertising the post, as a matter of fact whether the respondents have verified the roster from B.C. Cell, and the specific allegation of the petitioner that the respondent nos. 5 and 6 to whom the approval is granted by the respondent Deputy Director of Education are relatives of the Keshavrao Sonbarao Tawade, who is claiming to be the President and Vithal Marotrao Tawade, who is claiming to be the Secretary of the said trust. Therefore, in our considered view, the Deputy Director of Education consciously or subconsciously in breach of the provisions of Section 5 (1) of the MEPS Act, and also the aforementioned Government Resolution dated 06.02.2012 has granted approval to the appointment of respondent nos. 5 and 6 as Shikshan Sevak for three years. Therefore, the Director of Education deserves to be directed to cause enquiry about the conduct of the Deputy Director of Education, who has not followed the provisions of Section 5 (1) of the MEPS Act and also the provisions of the Government Resolution dated 06.02.2012. We do not propose to enter into disputed questions of fact, which are raised by the petitioner, including the preparation of separate muster roll for signing by respondent nos. 5 and 6, not adhering to the reservations and preparing false and fabricated documents in respect of appointment of respondent nos. 5 and 6. On undisputed position, which is discussed in the foregoing paragraphs, violation of the statutory provisions under Section 5 (1) of the MEPS Act and also the Government Resolution, which was issued keeping in view the directions given by the High Court to the State Government to streamline the procedure for the appointments of the employees in the institutions so as to bring complete transparency and accountability, the Headmaster giving go bye to the aforementioned provisions and excluding, may be hundreds of desirous candidates, who possessed requisite qualifications for the post by way of not giving advertisement in widely circulated two news paper, ensured selection of respondent nos. 5 and 6.

23. As already observed, merely because, respondent nos. 5 and 6 have completed three years period, cannot be reason to confirm their services, when their appointments are made by committing illegalities and irregularities in

violation of the statutory provisions. As per routine procedure, the grant of approval is at two stages. First, the approval is given at the stage when the appointments are made and after completion of three years period after appointments, another approval is given, so that the status of appointee from Shikshan Sevak undergoes change and appointee becomes Assistant Teacher. In the facts of the present case, on considering the documents placed on record in its entirety, it does not appear that, second approval is granted in requisite form by the concerned respondent authorities to respondent nos. 5 and 6. It is difficult to fathom that only 4/5 candidates applied as against three posts, which were advertised by the Headmaster when the thousands of unemployed youths, who are qualified for the post and eligible and desirous for the appointments available in the society, would keep themselves away from participating in selection process in case they had knowledge of advertising such posts in widely circulated news papers. It also appears that respondent No. 6 is given workload of political science and she is asked to complete post graduation in the said subject in future. If the advertisement would have been given in two widely circulated news paper, having highest sale in the vicinity, many more candidates who are having degree of political science ought to have applied for the said post meant for said subject, and therefore, there was no question of seeking bond from the appointed candidates that they will subsequently acquire the requisite qualifications for teaching political science or any other subject.

24. As already observed, we are disturbed by the conduct of the Deputy Director of Education, who made farce of enquiry and did not adhere to the directions issued by the High Court to take decision on the representation filed by the petitioner within 6 weeks and the decision was taken belatedly, and also without answering the legal question raised by the petitioner in his representation.

25. In the light of the discussion in the foregoing paragraphs, in our considered view, the intervention of this Court under extra ordinary writ jurisdiction is warranted in the peculiar facts of the case, since the appointments of respondent nos. 5 and 6 are made giving go bye to the provisions of Section 5 (1) of the MEPS Act and also the provisions of the Government Resolution dated 06.02.2012, and therefore, we are inclined to pass the following order :

ORDER

(i) The Petition is allowed in terms of prayer clause B and C. The order dated 11.09.2014 passed by respondent No. 3 Deputy Director of Education, thereby confirming the approval granted to the appointment of respondent nos. 5 and 6 on 10.08.2012 on the post of Shikshan Sevak in respondent No. 7 school is quashed and set aside. Consequently the appointment order dated 29.02.2012 of the respondent nos. 5 and 6 on the post of Shikshan Sevak in the respondent school is also quashed and set aside.

(ii) We direct respondent No. 7 and State Authorities to advertise the said posts within 3 weeks and ensure that the appointments are made within 8 weeks from

today so as to avoid any inconvenience to the students. However, after adhering to the provisions of Section 5 (1) of the MEPS Act and also the Government Resolution dated 06.02.2012. The amount towards remuneration, if any, paid to the respondent nos. 5 and 6 shall not be recovered. In case respondent nos. 5 and 6 are desirous to apply after re-advertising the posts, they are not precluded from participating in the selection process, if they are otherwise eligible and possess requisite qualifications necessary for the appointment on the said posts.

(iii) We direct the Director of Education, Maharashtra State, Pune to cause enquiry about the conduct of respondent No. 3 Deputy Director of Education [Shri. V.K. Khandke], in the light of the discussion in the foregoing paragraphs and after giving full opportunity to defend himself, and shall take appropriate decision/action, if warranted, depending upon the outcome of the enquiry in accordance with the Rules/procedure established and as per permissible in law as expeditiously as possible within three months from today.

(iv) Rule is made absolute on above terms. The Petition stands disposed of. No costs.

(v) The Director of Education shall send compliance report of enquiry and decision/action taken to the registry of this Court on or before 30.11.2016.