



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

WRIT PETITION NO. 197 OF 2017

1. Dnyanopasak Mandir Shikshan
Sanstha, Sharda Colony, Brahmapuri,
Tah : Brahmapuri, District Chandrapur.
Through its President,
Smt Sheela Babanao Thakre
2. Dnyanopasak Vidhyalay and Junior
College Nilaj, Tah : Brahmapuri,
District Chandrapur.
Through its Headmaster
3. Dnyanopasak Mandir Shikshan
Sanstha, Sharda Colony, Brahmapuri,
Tah : Brahmapuri, District Chandrapur.
Through its Secretary
Shri Parag Thakre

...PETITIONERS

// V E R S U S //

1. Dodku Vithal Pagadpalliwar, (Dead
Through Lrs),
aged about Major, R/o Nilaj
(Pachgaon), Tahsil Brahmapuri,
District Chandrapur.
- 1-a. Alka Dodku Pagadpalliwar
Aged about 57 yrs, Occ.Labour
- 1-b. Vaibhav Dodku Pagadpalliwar
Aged about 31 years Occ.Labour
- 1-c. Nidhi Dodku Pagadpalliwar
Aged about 29 years, Occ.Private
Nos. 1-a to 1-c, R/o At Near Nagre
Hospital Jani ward Bramhapuri,
Dist. Chandrapur 441206

- 1-d. Siddhi Palind Selokar,
Aged about 28 years,
Occ.Housewife, R/o At-Post Kurza, Tq.
Bramhapuri, Distt.
Chandrapur.441206
2. The Deputy Director of Education
Nagpur Division, Civil Line, Nagpur,
Dist-Nagpur.

...RESPONDENTS

Mr. Shreerang P. Bhandarkar, Advocate for the Petitioners0.
Ms Preeti D. Rane, Advocate for Respondent No.1.
Ms R. V. Sharma, AGP for the Respondent/State.

CORAM : **PRAVIN S. PATIL, J.**
CLOSED ON : **16th JULY, 2026**
PRONOUNCED ON : **4th AUGUST, 2026.**

JUDGMENT :

1. Petitioner management filed the present petition challenging judgment and order passed by presiding officer School tribunal Chandrapur in Appeal No. STC 38 of 2006 dated 10th January 2014, whereby the appeal filed by respondent employee was allowed and management was directed to reinstate him on the post of assistant teacher and pay full back wages from the date of his termination till his reinstatement.

2. It is pointed out that in the present matter the original respondent-Employee during the pendency of the present petition immediately after attending the age of superannuation expired on 05.09.2025 and therefore, his legal heirs are brought on record. As such the present petition is contested by the legal heirs of respondent-Employee.

3. In the present matter the submission of the petitioner-Management is that before School Tribunal, Chandrapur due to mis-communication with the advocate who was engaged by them, they could not represent the matter while same was decided on merits and therefore seeks indulgence of this Court in the matter.

4. From the perusal of the record it is seen that deceased-Employee has filed appeal before the School tribunal against his otherwise termination dated 26.04.2006 along with an application for condonation of delay. The tribunal after registration of the application as well as appeal issued notices to the petitioner-Management for their appearance. In response to the said notices, the management appeared through their advocate before the School Tribunal, Chandrapur and filed their reply to the application for condonation of delay on 19.12.2006. So also the Deputy Director of Education by his communication dated 14.12.2006 submitted his para wise reply in the appeal No. 38 of 2006.

5. The learned Tribunal thereafter by order dated 03.09.2010 decided the application for condonation of delay and thereby condoned the delay which was caused in filing the appeal. In the said order, it was also recorded that in view of the condonation of delay, the appeal shall be proceeded further.

6. After condonation of delay, the Tribunal then fixed the matter for filing of written statement of present petitioner, who are respondent Nos. 1 and 2 before the Tribunal. The present

petitioners did not file their written statement and therefore, on 09.12.2010, the tribunal has passed an order to proceed without written statement of present petitioner. Thereafter, on 30.06.2011, preliminary issues were framed whether the school was recognized as defined under the MEPS Act and second issue whether the appointment of the respondent employee was made as per Section 5 of the MEPS Act and Rules framed thereunder. The appeal was thereafter adjourned on various dates. But, none remain present on behalf of petitioner. Accordingly, Tribunal order dated 27.09.2013 decided the preliminary issues by holding that the school was recognized and the appointment of the respondent employee was made as per Section 5 of the MEPS Act and Rules framed thereunder. The said order was not challenged by anyone before any court of law.

7. The perusal of the roznama of the School Tribunal further shows that before the Tribunal the present petitioner-Management was consistently absent after the order passed by the Tribunal on the application for condonation of delay. Therefore the Tribunal has proceeded to decide the appeal on merits and by impugned judgment dated 10.01.2014 and thereby allowed the appeal by setting aside the order of termination and directed to reinstate the respondent- Employee against the post of assistant teacher with full backwages from the date of termination till his reinstatement.

8. The petitioner-Management thereafter moved the application before the Tribunal bearing Miscellaneous

Application No. 4 of 2014 for setting aside the *ex parte* order dated 10.01.2014 by stating that the Advocate who was engaged by them before the School Tribunal has told them that there is no necessity to attend every date by the applicants before the School Tribunal and he will look after the case. Under such false miss impression they could not appear before the tribunal and proceedings were preceded *ex-parte* against them. They further stated that there was no communication from the counsel whom they have engaged in the matter and same was came to their knowledge when they received a caveat from Advocate P .N. Shende, Nagpur in the matter.

9. The Tribunal has issued notices on that application to the respondent- Employee, the respondent- Employee has filed his detailed reply to the application for condonation of delay and the application for setting aside the *ex-parte* order filed by the petitioner-Management before the School tribunal. The respondent-Employee has denied all the averments of the petitioner-Management by his reply dated 11.07.2014.

10. The petitioner- Management on 15.10.2016, filed a withdrawal pursis before the Tribunal stating that they are going to challenge the judgment and order of School Tribunal in Appeal No. 38 of 2006 before this Court and thereby withdraw the application filed by them. In this background, the present petition came to be filed before this court.

11. Learned counsel for the petitioner has stated that the tribunal has committed a manifest error by not granting hearing

opportunity to the present petitioner. According to the learned counsel for the petitioner the perusal of the record of the School Tribunal which is called for perusal of this Court. It is seen that the application for condonation of delay and appeal was registered at the same time by the learned Tribunal and issued notices on both the proceedings on the same day. According to the learned counsel for the petitioner, Tribunal ought to have registered application for condonation of delay and after decision over the same, then could have registered the appeal. But, such procedure is not followed. The procedure which is followed by the Tribunal is prima facie incorrect and thereby the petitioner- Management could not get opportunity to participate in the proceeding of appeal after the condonation of delay. Therefore, seeks indulgence of this court.

12. On the merits, it is the submission of the petitioner that initially the respondent- Employee was appointed as a Shikshan Sewak from 01.07.2002 to 01.07.2005. After his appointment the proposal was forwarded to respondent No.2- Deputy Director of Education for approval. The Deputy Director of Education by order dated 15.10.2003 rejected the approval on the ground that the Management did not get approved the roster from the reservation cell at the time of appointment of respondent and therefore, the appointment was not made by following due procedure of law.

13. In view of the refusal of approval, the respondent- Employee was served with a termination order stating that as his appointment was not legal, same was not approved,

therefore, relieved/discharged as full time Shikshan Sevak. According to the learned counsel for the petitioner, the same was served through peon book to the respondent-Employee.

14. It is further submitted that in the next academic session 2004-2005 the fresh advertisement was issued in a weekly newspaper "Vartul" dated 24.07.2004 for appointment of part time Shikshan Sevak. In pursuance of the said advertisement respondent- Employee applied for the post and then he was appointed as a half time Shikshan Sevak from period 28.07.2004 till further order. On completion of the academic session, his services were again terminated with effect from 30.04.2005 and termination order was again served to the respondent- Employee through peon book.

15. In next academic session 2005.2006, again fresh advertisement was issued in weekly newspaper Vartul to appoint the teachers on clock hour basis. The respondent-Employee again applied for the post and then he was appointed as a Shikshan Sevak w.e.f. 21.07.2005 till the end of session. According to the the petitioner- Management, the respondent has joined the services from 21.07.2005 and rendered service for a period of 2 months and thereafter remained absent.

16. It is submitted that the respondent- Employee then on the wrong cause of action that his services are otherwise terminated with effect from 26.04.2006 preferred the appeal before School Tribunal, Chandrapur.

17. The learned counsel for the petitioner stated that considering the fact that his approval was rejected by the Deputy Director of Education by order dated 15.10.2003, respondent- Employee was thereafter appointed on year to year basis in the school that too as a part time or clock hour basis. According to the Management, his appointment therefore was not legal and proper as contemplated under section 5 of the MEPS Act and Rule 9 of the MEPS Rules. However, this aspect is not considered by the School Tribunal and therefore interference of this Court is necessary in the matter.

18. Per contra, the respondent- Employee has contested the present petition by denying all the submissions made by the petitioner-Management in the present petition. The respondent- Employee has placed on record the document to show that the initial appointment of the respondent-Employee was made by following due procedure of law, but this fact is not disclosed by the petitioner-Management in the present petition. Therefore, to substantiate the submission placed on record the entire documents. The respondent-Employee has pointed out that deputy Director of Education, Nagpur Division, Nagpur by his order dated 21.11.2002 has granted permission for filling-up three posts in the petitioner No.2 School/Junior College in the academic session 2002-2003. After the permission granted by the Deputy Director of Education the advertisement was issued by the petitioner-Management in daily newspaper "Lokmat", wherein it is specifically mentioned that in pursuance of the permission issued by the Deputy Director of Education three

posts are required to be filled. Those posts were specifically earmarked for the reserved categories along with a requisite qualification required for the post. By the said advertisement the candidates who are interested and qualified were asked to attend the school/college for interview on 07.12.2002. According to the learned counsel for the respondent, he possesses the qualification of M.A. (Second Division), B.Ed and B.A. (English Literature) and (History) and belongs to scheduled caste. As such he being qualified for the post, made application for the appointment by tendering all his details and appeared for interview in terms of advertisement. After the interview was conducted by the petitioner-Management, the school committee by its resolution dated 30.06.2002, decided to appoint the petitioner against the post of Shikshan Sevak earmarked for SC category with effect from 01.07.2002. In pursuance of the resolution of the school committee, the appointment order was issued, whereby the respondent-Employee was appointed as a Shikshan Sevak from 01.07.2002 to 01.07.2005.

19. Learned counsel for the respondent further pointed out the workload assigned to the respondent during the period when he was in employment in the petitioner No.2- School. To substantiate this workload, he has relied upon the time table of 11th and 12th standard from academic session 2002-2003 to 2004-2005. As such respondent has rendered continuous service of 3 years in the petitioner No.2-School and acquired the status of deemed confirmed employee immediately after the

completion of 3 years of period that is on 01.07.2005. It is further pointed out that during the period from 01.07.2002 to 01.07.2005, he was never in receipt of any adverse communication or show cause notice in respect of his work and behaviour is not satisfactory. Therefore, considering the Section 5 of the MEPS Act, he was deemed to be a confirmed employee upon completion of three years of service.

20. According to the learned counsel for the respondent, once the respondent has obtained the status of deemed confirm employee, his service cannot be terminated without following due procedure of law as contemplated under Section 4(6) of the MEPS Act. However, without following this mandatory provision of the MEPS Act, his services were otherwise terminated by the petitioner-Management with effect from 26.04.2006, the same become a reason for him to knock the door of School tribunal.

21. The School tribunal accordingly appreciated the controversy involved in the matter and held that the appointment of the respondent-Employee being made on clear and vacant post as per Section 5 of the MEPS Act and rules framed thereunder, set aside the impugned termination order by holding that while terminating service, procedure as contemplated under the provisions of MEPS Act is not followed in the matter.

22. In light of the submissions of both the parties initially the counsel for the petitioner, made prayer that as the petitioner-Management could not get the opportunity of hearing, the

appeal be remanded back to the Tribunal to decide afresh in the facts and circumstances of the case. However, the respondent-Employee has strongly opposed for remand of the matter. The respondent-Employee has pointed out the conduct of the petitioner- Management in the present position. The respondent has pointed out that, initially this Court on 24.01.2017 as petitioner did not disclose correct facts, has granted ad-interim stay to the operation and execution of the judgment of school tribunal. On response to the notices issued by this Court on 24.01.2017, the respondent-Employee appeared before this Court and by pointing out the factual position and prayed for vacating the ad-interim stay granted by this Court. On 09.10.2018, this Court heard the matter and by recording the finding that this Court is actually inclined to dismissed the petition in view of conduct of the petitioner but as an indulgence adjourn the matter for next date by clarifying that the petitioner shall be heard on merits subject to deposit of entire back wages granted by the School tribunal in this Court. The ad-interim stay granted by the earlier order dated 24.1.2017 was vacated.

23. On 17.10.2018, it is recorded by this Court that back wages are not deposited therefore, this Court has passed the order that if the back wages are not deposited the Court shall consider of passing order of dismissal of the petition and adjourned the matter for 22.10.2018. On 22.10.2018, by recording the earlier orders this Court has recorded specific facts in para 5 which reads as under :

“ Few facts may now be noted.

The challenge is to the order dated 10.01.2014 rendered by the School Tribunal by and under which the petitioners are directed to reinstate the respondent 1 with back wages. The petition is preferred on 23.11.2016 and objections are removed on 9.1.2017. While issuing notice on 24.1.2017, this Court granted ad-interim relief in the nature of stay to effect, operation and execution of the impugned order. The statement made before this Court on 24.11.2017 is that the Tribunal proceeded against the petitioners ex-parte without giving them notice of appeal. As is noted in the earlier orders, referred to supra, this statement appears to be contrary to record. It is more than obvious that the petitioners have no sanctity for the orders of this Court or the process of law. In this view of the matter, while granting the request for adjournment, which I must record is absolutely unjustified, I deem it appropriate to saddle costs of Rs. 10,000/- on the petitioners, which shall be deposited with the High Court Bar Association, Nagpur in 48 hours.”

24. The petition was thereafter posted for 02.11.2018. This Court again reproduced the order passed by this Court dated 22.10.2018 and 09.10.2018 and thereby dismissed the petition for not complying the order dated 22.10. 2018. While dismissing the petition for want of prosecution this Court also noted that no application for restoration of the petition shall be entertained unless accompanied by receipt evidence deposit of cost of Rs.15000/- with the High Court Legal Aid Sub Committee, Nagpur.

25. The petitioner- Management thereafter moved Miscellaneous Civil application No. 440 of 2009. The said application was listed before this Court on 23.06.2022. This

Court has recorded that in case the petitioner failed to produce the proof that respondent No.1 is reinstated in service within a period of one week from today, the application will be dismissed without reference to the Court. Accordingly, the respondent-Employee was in pursuance of order of this court dated 10.01.2015 and 29.06.2022. In view of the reinstatement of respondent No.1, this Court by order dated 04.08.2002, restored the petition by recording the fact that earlier conduct of the petitioner can be considered, only if the petition is restored. Hence, the petition was accordingly restored.

26. The petition then listed before this Court on 10.03.2025, this Court has reproduced the order dated 09.10.2018 passed in this matter and recorded the submission of the petitioner that they have challenged the said order before the Hon'ble Supreme Court of India. However, the special leave petition came to be dismissed. This Court further recorded that though despite the special leave petition have been dismissed, the petitioner failed to deposit the entire back wages.

27. It is made clear that unless the back wages are deposited, the petition cannot be heard on merit. The petitioner was therefore directed to deposit entire back wages granted by the School Tribunal in this Court within 14 working days from the date of order failing which the petition shall dismissed without further reference to the Court.

28. The petitioner-Management thereafter deposited a meager amount of Rs.2,55,144/- towards the entire back wages

of the petitioner from the date of his termination 26.04.2006 till his reinstatement 29.06.2022. The respondent- Employee has objected for depositing of such meager amount before this Court. According to the respondent, the entire back wages for said period comes approximately Rs.1,06,94,301/-. The respondent to justify this amount has prepared the chart and filed the same on record along with the affidavit dated 16.01.2023. The petition thereafter time and again adjourn for one or other reason before this Court and lastly listed today for final disposal.

29. The respondent employee therefore states that looking to the earlier conduct of the petitioner- Management, it is clear that petitioner-Management is not obeying the orders of the this Court in its true spirit. The amount which is deposited is meager compared than to the actual entitlement of the respondent-Employee.

30. In the circumstances with the clear understanding to both the parties that this Court is going to decide the present petition on its own merits by considering their submission, heard both the parties at length. The original record of the School Tribunal is perused and granted opportunity to both the parties to place on record all relevant documents as well as case laws relied by them.

31. In the present matter, the first issue which was raised by petitioner-Management whether the School Tribunal was justified to register the appeal before deciding the application

for condonation of delay. It would be relevant to refer Section 10(2) of the MEPS Act. The said provision empowers the presiding officer of the Tribunal to decide the procedure to be followed by the Tribunal for the disposal of appeals filed before the Tribunal. It is well settled position of law that the provisions of the MEPS Act and Rules framed thereunder are code in itself to decide the procedure of deciding the proceedings. Section 12 of the MEPS Act states that the decision of the Tribunal on an appeal entertainment and dispose of by it shall be final and binding on the employee and the management. No suit, appeal or other legal proceeding shall lie in any Court or before any other Tribunal for authority in respect of the matters decided by the Tribunal. Hence, after the decision of the Tribunal only remedy is to the employee or the management to prefer the writ petition before this Court.

32. In respect of the submissions of the learned counsel for the petitioner of registering the application for condonation of delay along with the appeal, it would be necessary to refer Section 9(4) of the MEPS Act. This provision states that for entertaining the appeal by the Tribunal, the employee has to pay the amount of Rs.500 which shall be credited to the consolidated fund of the State and non-refundable. As such only after the registration of the appeal and deposit of the amount, the Tribunal can proceed in the matter. Therefore, considering the general powers made available to the presiding officer while deciding the appeal, the registration of the appeal along with the condonation of delay cannot be said to be prima facie

incorrect and thereby, the entire proceeding decided by the Tribunal are vitiated. On the contrary, in view of the provisions of the Act, the Tribunal can exercise such powers.

33. In the present matter, it is not the case that petitioner was not in receipt of copy of appeal memo or not having knowledge that Tribunal has issued notice on appeal also. As such, Tribunal, who is empowered to decide its own procedure to deal with the proceeding filed before it, can't be faulted merely because appeal was registered along with application of condonation of delay. It needs to be considered that if delay application would have been rejected, the appeal would have automatically rejected and if application is allowed, then the appeal have to proceed further. Therefore, in my opinion, there is no illegality committed by Tribunal in the matter.

34. Learned counsel for the the petitioner in support of this submission has relied upon the judgment of Calcutta Bench reported in **1976 SCC Online Cal 182**, wherein the Calcutta High Court has held that when appeal is barred by limitation and application is filed for condonation of delay along with memorandum of appeal, until the application of condonation of delay is allowed, the appeal cannot be filed or admitted at all. In this regard, it would be pertinent to note that the Calcutta High Court has considered the matter which was filed under the different provisions of law. Here, as stated above, the provisions of MEPS Act and Rules framed thereunder is a self code and powers are available with the presiding officer to decide the procedure to be followed by him for the disposal of its business.

Therefore, merely registration of the appeal along with the condonation of delay cannot be said to be major irregularity committed by the Tribunal in the matter. Hence, in my opinion, the judgment of Hon'ble Calcutta Bench is not applicable in the facts and circumstances of the case.

35. The next submission which was made by the petitioner is that appointment of the respondent was year to year basis as stated above. According to the learned counsel for the petitioner once the respondent's approval was rejected by the Deputy Director of Education by holding that his appointment was not made as per the rules that document itself sufficient to demonstrate that the appointment of the respondent- Employee was illegal in the School. It is further stated that thereafter the respondent accepted year to year appointment which were time to time issued in each academic session to him in the matter. Therefore, his appointment was not on clear and permanent vacant post as required under Section 5 read with Rule 9 of the MEPS Rules. In support of this submission, the petitioner has relied upon the judgment of this Court in the case of *Priyadarshini Education Trust and others Vs. Ratis (Rafia) Bano d/o Abdul Rasheed and others* reported in *2007 (6) Mh.L.J. 667*. According to the learned counsel for the petitioner, the Division Bench of this Court has clarified "what is meant by duly appointed, in a manner prescribed". As per the judgment, the appointment of a person, who is eligible for the post should be by a selection process that is by competition amongst all eligible and desirous candidates on a permanent vacant post. In view of

this judgment of the Division Bench, he has stated that as the appointment of the respondent- Employee on year to year basis cannot be termed as duly appointed in a manner prescribed.

36. In respect of this submission, it would be relevant to note that the Hon'ble Full Bench of this Court has considered all these aspects in detail in the case of ***Ramkrishna Chauhan Vs. Seth D. M. High School and others*** reported in ***2013(2) Mh.L.J. 713***. The Hon'ble Full Bench has specifically held that Management can appoint a person on a temporary basis on a permanent vacant post and there is no such restrictions in the Management for such appointment. But, before making such appointment, the Management should take a conscious decision and record it's subjective satisfaction in that behalf. If such satisfaction is recorded by way of resolution then same can be made available to the Court of law to verify its validity in case the appellant challenge to the said appointment. It would be relevant to refer para 16 and 17 of the judgment of Ramkrishna Chauhan (Supra), which reads as under:

“16. The question is, whether the Management has unbridled power and authority to appoint a duly qualified person on temporary basis against a permanent vacancy? As aforesaid, the Management is, primarily, under an obligation, in law, by virtue of section 5(1), to fill in the permanent vacancy as soon as possible. To wit, if a permanent vacancy is caused by any reason, before the commencement of the new academic year, the Management must take immediate steps to fill in that vacancy, by appointing a duly qualified person, after following the prescribed procedure, on probation, for a

period of two years. That means, the selection process must be held to, as far as possible, culminate with selection of a duly qualified person, before the commencement of the new academic year. However, for some fortuitous or tangible reason, such selection process cannot be commenced or for that matter completed, there would be in the mean time, nothing wrong if the Management were to appoint a duly qualified person on contractual or temporary basis, for a limited duration, so that, in the prescribed procedure to select a duly qualified person, to fill in the permanent vacancy is completed and the selected person can be appointed on probation, against the permanent vacancy. There may be situation where the Management makes efforts in right earnest to complete the selection process but, at the end of the process, it is confronted with a situation where the person who participated in the selection process, though duly qualified, in its perception is not suitable for appointment. In that event, it can certainly make an appointment on contractual or temporary basis, for a limited duration, so that new selection process can be commenced and concluded within a reasonable time.

17. Ordinarily, if the selection process is commenced and at the end of the selection process a person duly qualified is available and is found to be suitable, the Management is under an obligation to appoint him on probation, to fill in the permanent vacancy. This mandate flows from conjoint reading of sub-section (1) and (2) of section 5. The only exception is, where a person identified in the selection process is duly qualified but is not found suitable by the Management, the Management is free to exercise its inherent power of making a contractual or temporary appointment. Indeed, whether a person, who had participated in the selection process, is suitable for being appointed or otherwise, is the subjective satisfaction of the

Management. Merely because a person is duly qualified, that per se is not enough. The person must not only be duly qualified to fill the permanent vacancy but, must also be found to be suitable by the Management. However, the Management cannot be permitted to take cover under the pretext of successively rejecting the candidates in selection process on the ground of suitability; and keep on appointing same person or different persons on contractual or temporary basis for limited duration, against a permanent vacancy. In cases where the Management takes a conscious decision to appoint a duly qualified person on temporary basis, for a limited period against a permanent vacancy, it must contemporaneously record its subjective satisfaction in that behalf. For, if the appointment order on contractual basis were to be made subject-matter of challenge before any Authority or Court of law, in such inquiry, it may be open to examine the controversy on the touchstone of permissibility of judicial review of such decision. If finding of colourable exercise of power by the Management is arrived at in that inquiry, appropriate direction can be issued against the Management. That will have to be examined on case to case basis.”

37. In light of this legal position, it was expected from the petitioner-Management to place on record the resolution of the Management of terminating the services of the respondent-Employee after rejection of his approval and further resolutions showing what was the reason for appointing him on year to year basis. But nothing is placed on record by the petitioner-Management for all those years when the petition is pending before this Court as well as when this Court granted them opportunity to place on record whatever documents they want to rely in the matter. It is further pertinent to note that the

petitioner-Management has taken all this plea when they have moved the application before the Tribunal for setting aside the *ex-parte* order. At that time, the present respondent has specifically denied all this averment made by the petitioner-Management that he was terminated after rejection of approval and was appointed on year to year basis. Therefore, considering these facts of the matter, it is clear that factually and legally the stands of the petitioner-Management does not survive in the matter.

38. In the present case, the documents which the respondent-Employee has relied upon, it is crystal clear that before appointment of the respondent-Employee due permission was obtained from the Deputy Director of Education. After the permission, the advertisement was issued in a daily newspaper "Lokmat" and interviews were held. After conducting the interview, by the resolution of the School Committee, the appointment order was issued to the respondent-Employee for 3 years as a Shikshan Sevak. Hence, considering this aspect of the matter, I am satisfied that appointment of respondent-Employee was duly appointed in a manner prescribed.

39. There is one more reason which needs to be recorded in the present matter. In the present case at the time of initial appointment of the respondent-Employee in the year 2002, the perusal of the document shows that after obtaining the due permission from the Deputy Director of Education, the

advertisement was issued in a daily newspaper “Lokmat” which is having wide circulation in all over district. But the petitioner management while showing the year to year appointment of the petitioner which is denied by the respondent, it is seen that the advertisement was issued in a weekly newspaper “Vartul”. The said newspaper being weekly newspaper has no wide circulation and said advertisement was issued in violation of Rule 9 of the MEPS Rules. Therefore, the said documents create doubt in the matter. Furthermore, the peon book which is placed on record shows that the termination order was served on the respondent- Employee on 01.04.2004 vide outward letter bearing No.912 of 2004. The bare perusal of this Peon Book shows that along with present respondent, one letter of same outward number was also served to one other employee namely, D. K. Shivurkar, intimating termination of his service. It is a common knowledge that termination order is served independently to the employees. Therefore, there cannot be a same outward number to different termination orders. So also, the termination order which is relied by the petitioner, nowhere shows that by the same communication, two persons were terminated therefore, again this document creates doubt in the matter.

40. The next issue raised by the petitioner is that as the Deputy Director of Education has rejected the approval therefore, it has to be held that his appointment was illegal and was not made as per the Rules. In this regard, it would be

relevant to note down the fact that as per the Full Bench judgment of this Court in the case of *St. Ulai High School and another Vs. Devendraprasad Jagannath Singh and another* in the case of *2007(1) Mh.L.J. 597*. It is held that grant of approval or rejection of approval by the Education Authority is not a condition precedent to a valid order of appointment. It is made clear that approval relates to disbursement of grant-in-aid by the State to the Management and want of approval will not invalidate an order of appointment.

41. In light of the law laid down by the Hon'ble Full Bench, the submission of the petitioner- Management cannot be accepted that the appointment of the respondent- Employee is to be held as illegal as there was no approval granted by the Deputy Director of Education.

42. The petitioner's next submission is that as per law laid down by this Court, it is the burden of the employee to establish before the Tribunal that his appointment was made by following due procedure of law and for that purpose there should be specific pleading and document must be placed on record by the employee.

43. In my opinion, in such cases what is expected from the employee is to file the document of his qualification which he possess, the copy of advertisement, the date of interview, the

date of resolution of the School Committee and the appointment order. The other documents or the pleading cannot be done by the employee because he is not the custodian of the document which were communicated between the management and Education Officer or Deputy Director of Education before issuing advertisement by the Management. Therefore, to that extent, pleading in the appeal memo are not required in the matter. Court can't expect the document to be produced of which he is not custodian. As per Hon'ble Full Bench in Ramkrushna (supra), it is the burden of management to establish, if they make appointment of qualified persons on temporary basis.

44. Perusal of the appeal memo shows that the respondent-Employee has specifically stated that there was an advertisement issued by the petitioner-Management in daily newspaper Lokmat and face the interview and then was appointed vide appointment for probation period w.e.f. 01.07.2002 to 01.07.2005. He further stated that that the respondent belongs to schedule tribes and possesses a requisite qualification for the post. The documents which are relied upon are perused by this Court. The perusal of the advertisement shows that the permission was granted by the Deputy Director of Education and thereafter the advertisement was issued by earmarking the post for reserved category. Date of interview was stated in the advertisement and accordingly the respondent-Employee appeared for the interview and thereafter,

in pursuance of resolution of school-committee the appointment order was issued to him. As such, considering this compliance done by the respondent, I am of the considered opinion that appointment was made by following due procedure of law. Consequently, the decision of the School Tribunal on the preliminary issue cannot be faulted in the matter.

45. In the present case, the petitioner-Management has failed to establish any of the ground which was raised in the petition and therefore, in my opinion, the judgment and order passed by the School Tribunal cannot be said to be incorrect or illegal in the facts and circumstances of the case. The petition according to me is devoid of merits and therefore same deserves to be dismissed.

46. In my opinion, the back wages which is deposited by the petitioner before this Court Rs.2,55,144/- is not a correct calculation towards the back wages. In the present matter, the respondent- Employee by filing the affidavit dated 16.01.2023 has given the details of the back wages, which according to them till the date of filing affidavit was Rs.1,06,94,301/-.

47. In view of this, the superintendent of pay unit of district Chandrapur is directed to quantify the arrears of salary of the petitioner from the date of termination of respondent-Employee with effect from 26.04.2006 till date of superannuation of the

respondent-Employee. If required, the Authority is permitted to conduct the hearing of the parties and thereafter determine the amount of back wages. This exercise be completed within a period of 45 days.

48. In above terms, the Petition stands dismissed. The legal heirs of respondent, who have contested this petition are entitled for the back wages as directed by the School Tribunal, after amount is quantified by the superintendent of pay unit.

49. No order as to costs.

(PRAVIN S. PATIL, J.)