

(2012) 03 BOM CK 0277

In the Bombay High Court

Case No : Letters Patent Appeal No. 533 of 2010 in Writ Petition No. 5072 of 2008 with Letters Patent Appeal No. 581 of 2010 in Writ Petition No. 4217 of 2007

Gramin Vikas Shikshan Va Krida Prasarak Mandal and Head Master/Principal, Pundlikrao Kale Junior College

APPELLANT

Vs

Ku. Yamu Narayanrao Bire

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(kkk)
Limitation Act, 1963 — Section 2, 22, 5
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 10, 11, 11(2), 2(24), 26
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 25A, 25A(2), 25A(3), 26, 26(1)
Secondary School Code — Rule 7.1, 7.5, 7.6

Citation : (2012) 3 ALLMR 149 : (2013) 2 BomCR 611 : (2012) 3 MhLj 820

Hon'ble Judges : B.P. Dharmadhikari, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.B. Pendharkar, with Mr. G. Belsare, for the Appellant; S.P. Dharmadhikari with Mr. P.A. Kadu, Advocate for Respondent No. 1 and Mr. Khubalkar, Learned A.G.P. for Respondent Nos. 2 and 3, for the Respondent

Judgement

B.P. Dharmadhikari, J.—The employer - Educational Institution and its Headmaster have challenged the common judgment dated 24.08.2010 delivered by the learned Single Judge of this Court in Writ Petition Nos. 4217/2007 and 5012/2008. Writ Petition No. 4217/2007 was filed by the employee - respondent No. 1 in both these appeals, assailing the judgment and order dated 30.03.2007 delivered by the Presiding Officer, School Tribunal, Amravati in Appeal No.102/1997 denying her the relief of reinstatement and back wages, though a direction to absorb her service with continuity, was issued to respondent Deputy Director of Education. The employer has challenged the very same judgment of School Tribunal holding the employee entitled to absorption in other Science

College on the post of Junior College Lecturer. The learned Single Judge has in the impugned judgment maintained the finding of the School Tribunal that discontinuation of employee on 20.06.1997 was illegal and in violation of the mandatory provisions of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the M.E.P.S. Rules" for short). The refusal by the School Tribunal to grant reinstatement and full back wages has been quashed and set aside and the appellant - Management has been directed to reinstate her w.e.f. 26.06.1997 and grant her continuity and to pay back wages from that date till delivery of the judgment by the School Tribunal i.e. till 30.03.2007. Management has been permitted to get that amount reimbursed from the office of the Deputy Director of Education. A direction has been issued to forward her salary bill from 01.04.1997 till date of judgment by the learned Single Judge, to the office of the Deputy Director and to continue to do so till her absorption with other employer. The Deputy Director has been asked to release the amount payable to the employee and to include her name in the list of surplus staff and to take steps to absorb her. The learned Single Judge has specified time limit for taking steps, however, those time limits are not very relevant. The facts are not much in dispute. The appellant No. 1 Society runs a High School and a Junior College since the year 1986 and respondent No. 1 was appointed as Junior College Lecturer in Biology to teach 11th and 12th standards, on 28.06.1993 on probation and subject to approval by the Deputy Director of Education. The Deputy Director of Education granted approval only for one year as there was backlog. Respondent No. 1 - lecturer was again appointed in the year 1994/95 and again there was approval only for a period of one year. In the year 1995/96, she was appointed on probation for a period of two years but the Deputy Director granted approval for only one year. The Deputy Director of Education inspected the establishment on 02.01.1997 and because of less strength of students, by order dated 20.01.1997 withdrew the Science faculty in junior college. Students then taking education in 11th standard Science, were transferred to another Junior College and students in 12th standard were permitted to continue till the end of academic session. The entire Science faculty was thus closed down.

2. Order withdrawing these classes was challenged by the management by filing an appeal before the Director of Education, and Director of Education on 26.06.1997 found it not necessary to consider the same. It is in this background that the respondent No. 1 approached the School Tribunal with grievance that when she reported for work as usual on 20.06.1997 in the academic session 1997/98, Principal informed her that her services were not required and prevented her from signing the muster roll. Treating this as termination, she filed an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the M.E.P.S. Act" for short), before the School Tribunal at Amravati on 17.07.1997. Appellant management filed its written statement therein on 26.08.1997 and pointed out the above mentioned facts leading to discontinuation of Science faculty.

Respondent No. 1 Lecturer on 07.07.2000 moved an application seeking leave to amend her appeal memo and to add a relief of absorption in it. This amendment was allowed on 08.08.2000. The final judgment delivered by the School Tribunal and thereafter filing of the Writ Petitions, both by the lecturer and management, are already referred to above.

3. In this background, we have heard Shri R.B. Pendharkar, learned Senior Advocate with Shri Gaurav Belsare, learned Counsel for Appellants, Shri S.P. Dharmadhikari, learned Senior Advocate with Shri P.A. Kadu, learned Counsel for Respondent No.1 and Shri Khubalkar, learned A.G.P. for Respondent Nos.2 and 3.

Both the Letters Patent Appeals are Admitted and by consent of the parties, the same are taken up for final disposal.

4. Shri Pendharkar, learned Senior Counsel with Shri Belsare, learned Counsel appearing on behalf of the appellants has at the outset pointed out that the learned Single Judge has proceeded on wrong presumption, that the School Tribunal has found termination of respondent No. 1 bad. He further states that though the Deputy Director had filed reply before the School Tribunal pointing out closure of junior college and steps taken to absorb respondent No. 1 elsewhere, the learned Single Judge has erroneously presumed that the Deputy Director had not filed any reply before the School Tribunal. Our attention has been invited even to the narration of dates in the impugned judgment, to urge that the material facts itself have been incorrectly mentioned. It is argued that neither the School Tribunal nor the learned Single Judge of this Court attempted to find out whether the provisions of Rule 25A or then Rule 26 of the M.E.P.S. Rules, were relevant. He has also invited our attention to the written statement filed before the School Tribunal by the appellants to the reply of Deputy Director, and also to challenges raised in memo of writ petition and reply filed before the learned Single Judge, to show that all these questions about Rule 25A and Rule 26 were specifically raised and still there is no consideration. It is contended that in this situation, the impugned judgment delivered by the learned Single Judge shows apparent non-application of mind and hence, the same is unsustainable and liable to be quashed and set aside.

5. He has pointed out that under the provisions of M.E.P.S. Act, the School Tribunal gets jurisdiction u/s 9 and its power to grant relief contained in Section 11 thereof becomes available, only if Section 9 is found to be attracted. Here as the School Tribunal has found the termination of respondent No. 1 valid, the School Tribunal ceased to have any jurisdiction in the matter and hence, recourse to its power u/s 11 was not available. All directions issued by it are thus unsustainable. He has contended that when M.E.P.S. Act permits compensation of one year or 6 months in lieu of reinstatement, in present facts when the appeal preferred in 1997, remained pending till 2007 before the School Tribunal, grant of full back wages mechanically by the learned Single Judge is unsustainable. He contends that use of discretion in the matter by the School Tribunal warranted no interference in exercise of writ jurisdiction by this Court.

According to the learned Senior Counsel, Section 11 does not enable the School Tribunal to issue directions to the Deputy Director to absorb, in as much as officers of Education Department of the State of Maharashtra are not necessary parties before the School Tribunal. The direction to absorb as issued cannot be viewed as an exercise of power given to the School Tribunal u/s 11, as those powers need to be construed as ejusdem generis, and he also invites attention to the fact that in all matters where absorption is sought, this Court has been approached directly under Article 226 of the Constitution of India.

6. Respondent No. 1 was being appointed on year to year basis and the Deputy Director of Education had granted approval also on year to year basis because of backlog. Hence, in this situation, respondent No. 1 could not have been treated as a permanent employee. Therefore provisions of neither Rule 25A nor Rule 26 of the M.E.P.S. Rules, were applicable to her and her termination because of closure of junior college at the end of the academic session 1996/97 upheld by the school Tribunal as valid, could not have been set aside by the learned Single Judge. He also points out parameters for exercise of jurisdiction by the learned single judge.

7. To point out the scope of interference, available to this Court in such matters against the judgment of School Tribunal and correctness in process of application of mind when it overlooks a legal provision or a binding precedent, he has relied upon judgment reported at Mayuram Subramanian Srinivasan Vs. C.B.I., and also judgment reported at State of Orissa and Another Vs. Mamata Mohanty, . To demonstrate that the closure of junior college, as also closure of school under Rule 25A, he has invited attention to the provisions of Section 2[24] of the M.E.P.S. Act and to judgments reported at 2008 II CLR 784 [SC] (Ministry of Textile vrs. Murari Lal Gupta and another), State of M.P. and Others Vs. Arjunlal Rajak, , 2007 I CLR 807 (Bom) (Jayant Dhirajlal Kachalia vrs. Dowells Electro Works and another), Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, and 2008 Lab.I.C. 248 (SC) (State of Haryana and others vrs. Navneet Verma).

8. The learned Single Judge has not upset the finding of closure and hence, interference in judgment of School Tribunal is urged to be unwarranted. Support is being taken from judgment reported at (2001) 2 SCC 54 (P.G.I. Of Medical Education and Research, Chandigarh vrs. Raj Kumar). It is further contended that the burden to show entitlement to full back wages is always upon respondent, and as she has failed to discharge it, grant thereof by learned Single Judge deserves to be quashed and set aside. Judgment reported at Municipal Council, Sujanpur Vs. Surinder Kumar, , C.N. Malla Vs. State of Jammu and Kashmir and Others, , Judgment reported at Metropolitan Transport Corporation Vs. V. Venkatesan, and Maharashtra State Road Transport Corporation Vs. Nanuram Verma, are relied upon to substantiate this argument.

9. Our attention has been invited to the fact that Rule 26 dealing with retrenchment has been amended on 28.10.1987 and Rule 25A has been added

simultaneously. Thus closure of part of school cannot be viewed as retrenchment. For this purpose support is being taken from judgment reported at Chandrakant Shikshan Sanstha Vs. Shri Rajendra Belekar and Others, and Nehru Jankalyan Bahu-Uddeshiya Shikshan Sanstha and Another Vs. Mohan Suryabhan Wanjari and Another, . Rule 25A is urged to be a complete code in itself, and all non-voluntary or voluntary closures are covered under Rule 25A [ii]. Judgment reported at 2007 (1) Bom. C.R. 615 (Prabhakar Panjabrao Mahajan vrs. Deputy Director of Education and others), is relied upon for this purpose. It is contended that the Deputy Director filed an affidavit before the learned Single Judge referring to Rule 25A and even affidavit in contempt proceedings, was on the same lines. However, it has been lost sight of. 2002 BCI (0) 19 (J.K. Pansare vrs. Smt. Suman D. Patil and others), is relied upon to support the contention that its closure under Rule 25A and the discussion by the School Tribunal also indicates that it was infact referring to Rule 25A. Mention of Rule 26 by it is an inadvertent error and, otherwise, its said finding is unsustainable. 2010 (5) All MR 149 (Hanmant Bhagwat Melage vrs. State of Maharashtra and others) and 2005 (4) BCR 879 (Ramdash Dashrath Dahat vrs. Education Officer, Nagpur and others) are also relied upon for this purpose.

10. Learned Senior Counsel states that respondent No. 1 lecturer was also aware about year to year appointment and approval and she did not challenge it. State of Punjab and Others Vs. Gurdev Singh, is relied upon to contend that thus she cannot later on turn around and contend that she is permanent employee. Judgment of Hon"ble Apex Court reported at Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, , is also relied upon to support this contention. It is argued that, as learned Single Judge did not consider all these facets, the impugned judgment deserves to be quashed and set aside. Director, Horticulture Punjab and Others Vs. Jagjivan Parshad, is relied upon for this purpose.

11. The issue of limitation is argued at last and it is pointed out that on 07.03.2011 this Court has allowed amendment to memo of Letters Patent Appeals and permitted this ground to be added. After mentioning the date of filing of appeal before the School Tribunal and date of filing of Written Statement, it is urged that the cause of action accrued in favour of respondent No. 1 on 20.01.1997, when the recognition was withdrawn. The inspection was on 02.01.1997 and approval to the services of respondent No. 1 till session end was given on 22.01.1997. She also obtained experience certificate in April, 1997 because of these developments. Judgment reported at V.M. Salgaocar and Bros. Vs. Board of Trustees of Port of Mormugao and Another, is relied upon to buttress the submission that, as School Tribunal was approached belatedly, the cognizance of appeal itself was without jurisdiction.

12. Shri S.P. Dharmadhikari, learned Senior Counsel along with Shri P.A. Kadu, learned Counsel appearing on behalf of respondent No. 1 lecturer has taken up the issue of limitation first. According to him, it is a mixed question of law and

fact and there is nothing on record to demonstrate that respondent No. 1 was aware that her approval was to expire on 30.04.1997. Her services were "otherwise terminated" on 20.06.1997 and hence, appeal filed on 17.07.1997 is within time. The objection as to limitation needed to be raised before the School Tribunal itself, and in that case the respondent No. 1 might have moved appropriate application even seeking condonation of alleged delay. Full Bench judgment reported at St. Ulai High School and Shri Adishakti Hindi Prachar Samitee Vs. Shri Devendraprasad Jagannath Singh and The Zilla Parishad, , is relied upon to contend that language of approval is not decisive and equivalent to termination. On the question of alleged relief of absorption added to appeal memo in the year 2000, learned Senior Counsel contends that the said amendment was not opposed and hence, even at that stage, application u/s 5 of the Limitation act was not required or filed. The order allowing amendment became final and it was not challenged even before the learned Single Judge. Attention is invited to Rule 26 which casts an obligation upon the management not to terminate and requires Deputy Director to absorb. It is contended that said Rule does not contain any time schedule for this purpose. Hence, the cause thereunder is continuous one and respondent No. 1 is entitled to continue to receive salary. Section 2[n] of the Limitation Act defining "Tort" and Section 22 thereof are relied upon in an attempt to demonstrate that it is a continuous cause of action for respondent No. 1. Judgments reported at 2003 (5) BCR 12 (Chairman/President, rotary Charitable Trust and others vrs. Nagendra Pratapsingh and another) on permissibility to raise new point of such nature, AIR 1921 PC 27 (1) (Maharaj Bahadur Singh and another vrs. A.H. Forbes), AIR 1929 158 (Privy Council) and State of M.P. Vs. Dhirendra Kumar, explaining continuous cause are relied upon for this purpose.

13. It is further contended that arguments about legality or otherwise of entry in service, were not raised before the School Tribunal and even before the learned Single Judge. This ground has been added in Letters Patent Appeals by amendment and it is a new plea which is basically turns on facts and hence, it needs to be rejected. It is contended that respondent No. 1 was appointed in response to public advertisement in the year 1993 which did not mention any reservation and her appointment order dated 28.06.1993 was on probation. Even her experience certificate issued on 03.04.1997 shows 4 years experience. It is argued that subsequent advertisements dated 07.06.1995 and 31.07.1995 speaks of two posts in subject Biology and have not been shown to be for the post of present respondent No. 1. Management did not plead year to year appointment, but only pointed out that approval granted were year to year. There was no plea that post in Biology was reserved. Our attention has been invited to roaster to show that the point No. 18 and said post was not reserved and even the Deputy Director in his written statement has not pointed out backlog in the subject of Biology. The School Tribunal therefore, has rightly found respondent No. 1 deemed permanent. He has contended that when all issues decided by the School Tribunal are looked together and discussion is read as a

whole, it is apparent that the School Tribunal has found the termination bad. Judgment reported at Ghateshwar (Ghatadi) Seva Sastha Vs. Shri Hemant Purohit, Presiding Officer, School Tribunal, Director, Technical Education and Deputy Director, Technical Education, , is relied upon to contend that the finding of deemed permanency deserves to be maintained.

14. Learned Senior Counsel states that in submissions filed by the management before the learned Single Judge, the appellant management had also sought absorption of respondent No. 1. There was no ground of absence of jurisdiction in School Tribunal, either before the School Tribunal or before the learned Single Judge. Section 11[2] [f] is stated to be residuary and enabling provision and the School Tribunal has granted consequential relief of absorption under it. On grant of relief of back wages, learned Senior Counsel has argued that Rule 26 of M.E.P.S. Rules mandates continuity and no break. Therefore, reinstatement with back wages is inherent in the scheme. He invites attention to the letter dated 09.09.1997 sent by respondent No. 1, pointing out that she was not permitted to sign the attendance register.

15. According to him Rule 25A or Rule 26 is an unnecessary controversy being raised. Rule 26 deals with cases under which establishment continues to function and here the entire school is not closed down. Judgment reported at Dattaraj Janraoji Nimkar and Others Vs. Swargiya Sakhamaji Shikshan Sanstha and Others, , is relied upon for this purpose. Word "Establishment" in Rule 26 is sought to be explained with the help of Black's Law Dictionary and judgment of Hon'ble Apex Court reported at Municipal Council, Tirupathi Vs. Tirumalai Tirupathi Devasthanam, . The provisions of Rule 26[1][iv] and its position prior to amendment on 20.10.1987 is compared and commented upon. It is submitted that Rule 26[i] to 26[v], are not open to proposed construction in the light of provisions of Section 2[24], and if appellant's argument is accepted, Rule 26 will be rendered nugatory. 2002 (5) Mh.L.J. 149 (Pujya Sane Guruji Vidya Prasarak Mandal and others vrs. Prakash M. Patil and another), is relied upon for this purpose. Jagdish Singh Vs. Lt. Governor Delhi and others, and A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh, , are also relied upon to show the necessity of harmonious construction.

16. Shri Khubalkar, learned Assistant Government Pleader appearing on behalf of respondent nos. 2 and 3 has adopted the arguments of Shri Pendharkar, learned Senior Counsel and contended that u/s 11[2], no directions could have been issued to the Deputy Director. 2006 (3) CLR 468 (J.H. Poddar High School and another vrs. State of Maharashtra and others), is relied upon by him. He further contends that learned Single Judge has not recorded any finding on nature of termination i.e. whether it is retrenchment under Rule 26 or then otherwise termination.

17. In his reply argument, Shri Pendharkar, learned Senior Counsel has contended that there is no question of raising any objection on the ground of limitation and it is the duty of the Tribunal to dismiss the appeal, if it is found

belated. Judgment reported at Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, , is relied upon for this purpose. He further invites attention to the approvals granted on year to year basis, and also the chronology of events to show that respondent No. 1 was aware of all developments. According to him, it cannot be presumed that she was not aware of the withdrawal of recognition on 20.01.1997. Approval was given to her till session end on 22.01.1997. Her conduct of obtaining experience certificate in April, 1997 itself demonstrates that she was aware that her services were coming to end at the end of April, 1997. Attention is invited to plea in Writ Petition before the learned Single Judge with contention that, respondent No. 1 has not filed any rejoinder in that respect. He further contends, that as issue of limitation is allowed to be raised by amendment in Letters Patent Appeal, there is no question of estoppel in the matter. The judgment of Full Bench reported in the case of St. Ulai High School and another vrs. Devendraprasad Jagannath Singh and another (supra), is of no use while considering this question. He further contends that there was never any plea of continuous cause, though applicability of Rule 26 was always in debate. Mathuradas Mohota College of Science Vs. R.T. Borkar and Others, , is relied upon to point out the duty of the Court.

18. He asserts that as Rule 26 is not applicable, Section 22 of the Limitation Act or then its subsection 2[n] are not relevant. As envisaged by Section 9 thereof, cause of action accrued on 22.01.1997 and hence, appeal as filed before the School Tribunal was not within limitation. The amendment allowed by the School Tribunal to raise plea and prayer for absorption, is also hit by limitation and also bar of jurisdiction. AIR 1983 Patna 53 (Pandit Rudranath Mishir and others vrs. Pandit Sheo Shankar Missir and others), is relied upon for this purpose.

19. The Constitutional Bench judgment of Hon"ble Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, as also judgment reported at General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others, , are pressed into service to urge that the burden was always upon the employee to prove that her entry into service was legal. Residuary power clause u/s 11 is, sought to be explained by pointing out that powers not available u/s 9, cannot be usurped by School Tribunal. Full Bench judgment in case of St. Ulai High School and another vrs. Devendraprasad Jagannath Singh and another (supra), is relied upon for this purpose, with contention that jurisdiction of Civil Court is completely ousted in matters covered by Section 9 of the M.E.P.S. Act. Hence, jurisdiction u/s 9 cannot be stretched to disputes pertaining to absorption not mentioned in it. It is further contended that plea in this respect is specifically raised and in any case as it is pure question of law and on interpretation of Section 11, there cannot be any estoppel. The judgment of Hon"ble Apex Court reported at Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, , is relied upon to show how residuary power u/s 11[f] needs to be construed.

20. It is urged that the Full Bench judgment in case of St. Ulai High School and

another vrs. Devendraprasad Jagannath Singh and another (supra), has for the first time on 18.02.2006 severed the question of approval from and its bearing on right to post. Till then law as laid down in case of Anna Manikrao Pethe vrs. Presiding Officer, School Tribunal and others (1997 (3) Mh.,L.J. 697) was holding the field and hence, the said law must be applied to developments and actions herein. The retrenchment can only be from a running school. Attention is invited to judgment reported at Chandrakant Shikshan Sanstha Vs. Shri Rajendra Belekar and Others, , for this purpose.

21. It is pointed out that word "School" has been removed on 26.08.2007 from Rule 26[1][iv] because closure of such school is regulated under Rule 25A. Our attention is also invited to relevant provision of Secondary School Code to urge that here withdrawal of recognition is by competent Authority, namely the Deputy Director. Clause 7.4 of Chapter II is relied upon to show that there can be partial or total withdrawal of recognition. It is further argued that when Rule 25A is construed properly, it becomes obvious that as there was no show cause notice, there was no question of issuing any previous termination order to respondent No. 1. Learned Senior Advocate has compared words employed in Rule 25A[i] and [ii] to show that when closure of school is due to derecognition, volition of management is not necessary and further action under subrule [2] is to be taken by the Deputy Director. All non-voluntary closures are also governed thereunder. Arrangement and scheme particularly in Rule 26[4] to 26[7] is pressed into service to urge that here as no repatriation is possible, Rule 26 cannot be held to be applicable. It is pointed out with reference to reply of Deputy Director filed before the learned Single Judge that, from 1997 till 201011, there was/is no revival of junior college in Science faculty. Judgment in case of Ghateshwar (Ghatadi) Seva Sanstha vrs. Hemant Vinayakrao Purohit and others (supra), and Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., , are again relied upon for this purpose.

22. Judgment reported at Mohan Lal Vs. Management of Bharat Electronics Ltd., , paragraph No. 7 is relied upon to show how the question of grant of relief needs to be approached, with contention that scheme under Rule 26 is no answer to absence of such application of mind. Learned Senior Counsel therefore, has prayed for allowing both the appeals and for dismissal of the appeal lpa533.10fair as filed before the School Tribunal by respondent No. 1.

23. After extending patient hearing to the Counsel for appellants, we find it proper to refer to the alleged non-application of mind by the learned Single Judge, little later. It will be appropriate to first take up the issue of limitation.

Section 9[2] of the M.E.P.S. Act permits filing of appeal within 30 days from the date of receipt of order of dismissal or otherwise termination of service. Here respondent No. 1 has urged otherwise termination on 20.06.1997. She has contended in her memo of appeal, presented to School Tribunal on 17.07.1997, that junior college reopened on 20.06.1997 and when she went to join, she was asked not to report, as her services were not required. Nothing was given to her

in writing, inspite of demand. In written statement as filed, the management has denied oral termination from 20.06.1997 and there is no contention that the appeal as presented was time barred. Management has pointed out in paragraph No. 14 that order dated 20.01.1997 withdrawing sanction was challenged by preferring two appeals on 31.01.1997 before the Director of Education, and both these appeals have been dismissed on 26.06.1997. The fact that employee had reported for work on 20.01.1997 is not in dispute. The order passed by the School Tribunal shows that in academic session 199798, there was no sanction for running 11th or 12th standard junior college in science faculty. The Deputy Director of Education had called for register of attendance vide AnnexureR23 (document before Tribunal) and that information was submitted vide AnnexureR24. No student was shown in Science and Deputy Director gave warning of withdrawing recognition, if science faculty and Standards 11th and 12th were continued by respondent No. 1. These developments are obviously in the year 199798. Thus the episode dated 20.01.1997 which has not been disputed, needs to be accepted. It is obvious that the appeal has been filed within a period of less than one month thereafter.

24. The contention is, cause of action accrued in favour of respondent No. 1 when recognition was withdrawn i.e. on 20.01.1997 or then when approval to her services till the end of academic session 199697 was granted on 22.01.1997. These facts do not show any termination of her service. On the contrary the management had then filed the appeals before the Director of Education and in case fulfillment of the purpose behind said appeals, the management would not have been required to stop respondent No. 1 from signing the attendance register or from reporting on 20.06.1997. Rule 25A which permits termination on account of abolition of post is being pressed into service before us by the appellants, contemplates termination after giving respondent No. 1 advance intimation of three months. Admittedly here no such advance intimation has been given. The judgment of learned Single Judge of this Court (one of us, Justice A.B. Chaudhari) in case of Ghateshwar (Ghatadi) Seva Sanstha vrs. Hemant Vinayakrao Purohit and others (supra), permits even payment of salary in lieu of such notice, however, that step is also not taken. Thus the appellants, who did not issue any order of termination to respondent No. 1, attempted to further continue with the junior college in science faculty and did not raise any plea of bar of limitation before the School Tribunal. It is for the first time by amending memo of Letters Patent Appeals, the same is posed. In the light of facts noticed by us, it is apparent that the appeal as filed, therefore, cannot be said to be belated. It is also settled law that School Tribunal has to extend an opportunity to explain delay to the respondent lecturer before dismissing her appeal as time-barred. Here, had the Appellants objected before the Tribunal on the ground of limitation, the Respondent could have brought relevant material on record to support her story of otherwise termination. Thus, appellants who accept the incidence dated 20.06.1997 and did not issue any written order are now attempting to raise an issue principally dependent on facts belatedly. We

find no merit in it. As we accept that otherwise termination is on 20.06.1997, the appeal preferred by Respondent No.1 before the School Tribunal is within limitation. We therefore need not evaluate arguments and counterarguments citing various precedents about absence of jurisdiction, duty of Tribunal itself to note expiry of time, continuous cause of action etc.

25. The express defence of closure as per Rule 25A as such and, therefore, irrelevance of Rule 26 of MEPS Rules is not raised by the appellants in written statement as filed. They have only pointed out the facts which indicated that after 1996-97 educational session, there was no student in science faculty in junior college. Respondent No. 1 has amended her memo of appeal on 07.07.2000 and the School Tribunal allowed it on 08.08.2000. That amendment was not opposed by the management. The School Tribunal while allowing that amendment on 08.08.2000, noted that there was no reply filed by the present appellants. In said amendment, the respondent No. 1 has contended that as she was a permanent employee, even if plea of closure was to be accepted, as her termination was without obtaining prior approval of the Deputy Director of Education and there was no three months notice and principles of seniority were not followed, she was entitled to absorption. Accordingly she also added prayer clause 3[a] for said purpose. The said challenge definitely refers to Rule 26[1] and 26[2]. Provisions of Rule 26[3] cast obligation upon the Deputy Director to absorb respondent No. 1 in such circumstances, and management is not permitted to effect retrenchment till she is absorbed. The present appellants have not complied with the requirement of Rule 25A or even Rule 26. Hence, in this situation, we are not in a position to hold that the appeal as filed or as amended, contained any time barred prayer. The various judgments to which both the learned Senior Counsel have made reference to point out the duty of the Court or then nature of cause as continuous one or its absence, therefore, need not to be looked into.

26. The prayer for absorption as added in appeal memo before the School Tribunal, has also been assailed on the ground of absence of jurisdiction in School Tribunal. The law as explained by Shri Pendharkar, learned Senior Counsel, by placing reliance upon the judgment in case of Pandit Rudranath Mishir and others vrs. Pandit Sheo Shankar Missir and others (supra), particularly paragraph No. 4 in this respect can not be debated. However, respondent's termination as such has been brought about on 20.06.1997 and its validity has been questioned before the School Tribunal. The additional grounds to assail that termination has been added without any objection, through amendment on 08.08.2000. Basic challenge is to act of termination. The management has not denied the event dated 20.06.1997. They would have needed respondent No. 1 as lecturer if they were to succeed in appeal filed challenging action of closure of Science faculty. Respondent claimed absorption as per Rule 26 of 1981 Rules as according to her, She was retrenched in breach of said Rule. Hence, even objection to the amendment as allowed on the ground of absence of jurisdiction in School Tribunal, is without any substance. The act of obtaining experience

certificate on 03.04.1997, therefore, does not have any bearing on the question of limitation.

27. The question which now needs to be looked into is, Status of respondent No. 1 at the time of her termination on 20.06.1997. It is to be noted that, if she is found to be not a permanent employee, whether her services are terminated at the end of academic session on 30.04.1997 or then on 20.06.1997, is not very relevant. Respondent No. 1 entered service in pursuance of public advertisement which invited applications and called upon all aspirants to remain present for personal interview on 27.06.1993. One post in Biology has been mentioned in this advertisement for higher secondary school. The advertisement is produced as Annexure-I does not specify any reservation. She gave a notice to produce document on record on 07.07.2000 and called upon the Deputy Director to produce her appointment order issued in the year 1993. The School Tribunal directed respondent No. 3 Deputy Director to produce it. No reply was filed by the present appellants to it. The Deputy Director then produced the appointment order dated 28.06.1993 which mentions that her appointment was on probation for a period of two years. Experience certificate issued to her also shows that she was in service from 28.06.1993 till date thereof. Thus, this certificate does not show any break or then year to year appointment. The appellants before the School Tribunal did not plead year to year appointment, but, only pointed out year to year approval. Neither the appellants nor the Deputy Director of Education have pleaded or contended that post of lecturer in Biology on which respondent No. 1 came to be appointed, happened to be reserved for any particular caste or tribe. The advertisement produced by the appellants dated 08.06.1994 appears to be published in daily "Deshonnati". It mentions that the post is without any reservation. This advertisement invited candidates for interview on 14.06.1994 and at its end, it stipulates that experienced and backward class candidates would be preferred. Thus, this is not the first advertisement. There is nothing on record to connect this advertisement with the appointment order dated 20.06.1993. Advertisement dated 07.06.1995/31.07.1995 carries similar condition, but mention two posts in Biology.

28. The year to year approval given to appointment of respondent No. 1 needs to be appreciated in this background. Approval dated 18.09.1994 is for period from 28.06.1993 till 1993-94 session, because of backlog. Total 7 names appear in the document as produced and these 7 persons appear to be at Sr. Nos. 20 to 26. Name of respondent No. 1 is at Sr. No. 24. The approval dated 23.01.1995 is for session 1994-95, dated 04.09.1996 is for session 1995-96 and dated 22.01.1997 is for session 1996-97. Roster in Appendix-C form shows name of respondent No. 1 as O.B.C. Candidate against point No. 18, meant for open category. It shows backlog at the end of the roster. But then, there is no backlog in so far as the post given to respondent No. 1 is concerned. Respondent No. 3 Deputy Director has filed reply before the School Tribunal only disclosing the general backlog and therefore, contending that she was not permanent employee. The

School Tribunal has considered this situation while answering issue No. 4 and concluded that respondent No. 3 Deputy Director took erroneous view of the matter and treated her as nonpermanent employee. Because of this erroneous view taken by the respondent No. 3 Deputy Director, the School Tribunal found no fault with the action taken by the appellants. This is apparent from the discussion at the end of paragraph No. 12 of its judgment by the School Tribunal. However, the School Tribunal has correctly found that respondent No. 1 was appointed against a clear vacant post. The appellants had rightly put her on probation. In view of the Full Bench judgment in the case of St. Ulai High School and another vrs. Devendraprasad Jagannath Singh and another (supra), it is clear that the approval given by the Deputy Director was not relevant and is not decisive. Contention of appellants that till delivery of this judgment, the Division Bench view in 1997 (3) Mh.L.J. 697 (Anna Manikrao Pethe vrs. Presiding Officer, School Tribunal and others) held the field, need not to be gone into because legal position has been laid down by the Full Bench and that position and legal provision were already in existence. The School Tribunal as also the learned Single Judge have appropriately protected the interest of the appellants in the matter. As there was no fault on their part, the learned Single Judge has also considered this aspect and found in paragraph No. 10 that the respondent No. 1 had acquired the status of deemed confirmed employee. Appellants have nowhere contended that the roster point 18 against which Respondent, an OBC candidate, was selected and appointed, was not correctly shown as earmarked for open category. They have not attempted to demonstrate that due to backlog, post in Biology was reserved. We do not find anything wrong with this concurrent finding.

29. The facts above show that after proper advertisement and open interview, respondent No. 1 was selected. In view of this, it is not necessary for us to consider the Constitution Bench judgment in case of State of Karnataka, vrs. Umadevi (supra), as also judgment in case of General Manager, Uttaranchal Jal Sansthan vrs. Laxmi Devi and others (supra). The judgment of Hon"ble Apex Court reported in case of Hindustan Education Society vrs. Sk. Kaleem Sk. Gulam Nabi (supra), also need not to be considered, in view of this position. Division Bench of this Court in Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, has noticed that the Hon"ble Supreme Court has held that temporary appointees are not entitled to claim permanent status until and unless such permanent vacancies are filled in as per Section 5 of the MEPS Act. The Division Bench noticed that the facts in the case of Hindustan Education Society"s case reveal that employee there was untrained teacher and during the relevant three years, he was appointed on purely temporary basis. Thus, the employee not holding requisite qualification who could not have been appointed on probation, was appointed for specified duration and approval was also on same terms. In Nehru Jankalyan Bahhuddeshiya Shikshan Sanstha vrs. Mohan Suryabhan Wanjari and another (supra) the appointment was found not against clear vacancy and not on probation of two years. Management there had also not

obtained clearance from education department before resorting to direct recruitment. The facts before us are entirely different. Management appointed her twice on probation and approval on year to year basis loses its efficacy as the permanent post and clear roster point was available for that purpose. State of Punjab and others vrs. Gurdev Singh, laying down that party like Respondent No.1 aggrieved by the invalidity of order has to approach the court for relief of declaration of that invalidity is not relevant here and the Appellants can not be permitted to go back on their own appointments.

30. Rule 25A is applicable to a permanent employee like respondent No. 1. Similarly, Rule 26 is also applicable to a permanent employee like her. The question, whether it is Rule 25A or Rule 26, will be looked into little later in the body of this judgment. However, we have found that respondent No. 1 was/is a permanent employee with the appellants and termination of her services on 20.06.1997 is, therefore, not in accordance with either Rule 25A or Rule 26. The School Tribunal has found termination not vitiated only because of wrong approach of the Deputy Director of Education. However, it's consideration does not show that it has upheld termination and, therefore, found respondent No. 1 not entitled to any relief. On the contrary, it has set aside that termination and granted necessary relief in accordance with Rule 26 of the M.E.P.S. Rules to her. It has therefore, exercised the jurisdiction available to it u/s 9 of the M.E.P.S. Act. Section 10 of the said Act deals with general powers and procedure of the Tribunal. The powers as are vested in Appellate Court under CPC are available to the School Tribunal. Section 11 enables that Tribunal to give appropriate reliefs and directions. Subsection [2] thereof is relevant for this matter. The School Tribunal has found that the order of termination of respondent No. 1 was unsustainable. Therefore, only it has proceeded to grant her relief under Rule 26[2][iii] of M.E.P.S. Rules, 1981 and has issued appropriate directions to respondent No. 3. In operative para [a], the School Tribunal had dismissed respondent No. 1's claim for declaring the termination order dated 20.06.1997 as illegal and for reinstatement back in service for want of justified grounds. This is only on account of wrong approach by the Deputy Director of Education for which the management could not be blamed. This finding is not sufficient to ignore other discussion by the School Tribunal in its judgment. It's finding against issue No. 6 and issue No. 4 need to be reconciled and it cannot be held that the School Tribunal has acted without jurisdiction in issuing the directions of her absorption. Perusal of the judgment of learned Single Judge reveals that attention of learned Single Judge was not specifically invited during oral arguments to inconsistency in the observations of the School Tribunal. But, then we find that, that said inconsistency cannot be interpreted to mean that the School Tribunal had held the act of termination by the appellants valid. Provisions of Section 11[2] show that it enables the School Tribunal to give "such other relief" to the employee and to impose such other conditions as it may specify having regard to the circumstances of the case. It's other clauses permits the School Tribunal to grant reinstatement on same post or even on lower post, to

restore the employee to the rank, to give arrears of emoluments, to award such lesser punishment, as it may specify in lieu of dismissal, removal etc., and to award compensation. Thus, the legislature has empowered the School Tribunal to grant all necessary reliefs as facts and circumstances of a case presented to it may warrant. Clause [f] is a wider clause employing general words. The discussion above, by us shows that the School Tribunal did not blame the appellants because of wrong approach i.e. wrong perception of the Deputy Director that the respondent No. 1 lecturer was not a permanent employee. It's answer to issue No. 5 and issue No. 6 is because of this wrong approach of Deputy Director. But, then while answering issue No. 4, it has found termination unsustainable and further found that she was entitled to be absorbed. It has made reference to Rule 26 also while answering this issue. It does not appear that it's attention was invited to Rule 25A. Similarly, it also appears that attention of learned Single Judge was not invited to Rule 25A specifically though non-applicability of Rule 26 and involuntary closure of 11th Science appears to have been pressed into service. A permanent employee cannot be retrenched under Rule 26 and accordingly the School Tribunal has recognized this mandate and issued necessary directions as contained in operative part [b] and [c]. This cannot be said to be without jurisdiction or in any way in conflict with the provisions of Section 11[2][f] of the M.E.P.S. Act.

31. The judgment of Hon"ble Supreme Court in the case of Management of Kairbetta Estate, Kotagiri vrs. Rajamanickam (supra), considers the expression "any other reason" as used in definition of lay off in Section 2[kkk] of the Industrial Disputes Act, 1947. It has been held that such any other reason to justify ground of layoff, must be analogous to reasons already specified in the earlier part of the definition. Thus words "any other reason" derive their color from earlier contingencies specified by Parliament u/s 2[kk], as grounds sufficient to refuse to give employment to a workman. We are not in a position to restrict the scope of powers conferred upon the School Tribunal by Section 11[2] [f] by applying this principle. Clause [a] to [e] of Section 11[2] does not lay down any such contingencies or guidelines, warranting the imposition of restriction on that power under clause [f]. Further clause [f] itself contains words "having regard to circumstances of the case", which are employed by the Legislature deliberately, to empower the School Tribunal to mould the relief after considering the circumstances or conditions envisaged in Clause [f]. Therefore, the legislature, in due recognition of nature of dispute, has given primacy to circumstances of the case and to judicial need to mould the relief after considering the same. This scheme of legislature and power conferred upon the School Tribunal cannot be defeated in any way by artificially importing such restraint. We, therefore, find that the School Tribunal has not acted without jurisdiction in any way in the matter.

32. The School Tribunal has granted continuity to respondent No. 1 but held her not entitled to any back wages. It was not called upon to find out whether it is Rule 25A or Rule 26 of the M.E.P.S. Rules that governs the facts presented to it.

Learned Single Judge has also proceeded as if provisions of Rule 26 are relevant for adjudication of the controversy. Rule 26[2][iii] of the M.E.P.S. Rules is found to contain a restraint on power of management to retrench. It is found that respondent No. 1 lecturer could not have been terminated at all and hence, she is found entitled to reinstatement, not only with continuity but, also with full back wages. The language of Rule 26[2][iii] is very clear and till respondent No. 1 is absorbed, management could not have been permitted to effect retrenchment on account of any reasons mentioned in subrule[i]. We have already found that there were no arguments before the learned Single Judge to show that termination of service of respondent No. 1 was not on account of any reasons mentioned in subrule [1] of Rule 26. Perusal of appeal memos of Letters Patent Appeals also does not show a ground that though contention that Rule 25A is relevant and hence Rule 26 has no application, was advanced, the learned Single Judge has failed/refused to consider the same.

33. Grounds, particularly ground No. T onwards, show a challenge to use of Rule 26 by the learned Single Judge. There is no reference to Rule 25A anywhere, even though two grounds i.e. ground Nos. MM and NN have been subsequently added by amendment in the appeal memo. Defence of application of Rule 25A however is raised without any objection and has been answered also by the other learned Senior Counsel. This appears to be on account of the fact that the Appellants had argued that Rule 26 was not relevant to closure of 11th Science class and learned Single Judge has noted it in paragraph 8. The question which therefore arose in present facts was, whether it is Rule 26 which governs the fate of parties or then it has to be some other provision like Rule 25A ? Neither the School Tribunal nor the learned Single Judge have recorded any finding in this respect. This Court has in case of Chandrakant Shikshan Sanstha vrs. Rajendra Ramaji Belekar (supra) in paragraph No. 11 found that Rule 26 applies when activity does not come to an end or/and continues. Rule 25A applies only in case of closure. Division Bench of this Court in 2010(2) Mah. L.J. 837- Laxmi Education Society vs. State of Maharashtra, observes that situations specified under subrule (1) of Rule 26 are on account of reduction of establishment. By its very nature, temporary reduction of establishment is found attributable to the closure of a course of studies, reduction of the number of classes or division or fall in the number of pupils or change in the curriculum effecting number of certain category of employees. It is held not comparable with the closure of a school as a whole. The fact that one of the situations specified in subrule (1) of Rule 26 is "any other bonafide reasons of similar nature" is construed not to mean that even a closure of a school as a whole would be governed by subrule (2) of Rule 26. Whereas, the said subclause(v) is read Ejusdem generis keeping in mind the preceding subclauses in the same Rule. Rule 25A and Rule 26 are stated to operate in different fields mutually exclusive. While considering Clause 7.5 of the Secondary School Code, the said Division bench holds :

It will have to be borne in mind that Rule 7.5 of the Code appears in Section I of Chapter II of the Code. Chapter II of the Code deals with recognition,

organization and management of the schools. Section I thereof deals with conditions, grants, refusal and withdrawal of recognition. Rule 7.1 to Rule 7.6 are grouped under the heading withdrawal of recognition. The code provides for elaborate procedure for recognition of a school. Once the recognition is granted, the school has to abide by the specified norms, failing which it would entail in withdrawal of recognition. The withdrawal of recognition can be either partial or total recognition. The first part..... In the case of closure of a school, there would be no question of permanent staff being rendered surplus. That is relevant to the other situation spelt out in Rule 7.5, to wit, closure of recognized classes or make voluntary change in approved school subjects. That is ascribable to situations specified in Rule 26 as amended in 1987.

In the latter situation the school continues to function but the permanent staff is rendered surplus due to closure of recognized classes or of making voluntary change in the approved school subjects. Whereas, when the whole school is to be closed, it presupposes that the permanent staff of the school at the relevant point of time will inevitably have to be terminated.

34. Effort before us is to show that definition of "School" in Section 2[24] contemplate even a part of any school. Argument is, therefore, when Standard 11th and 12th in Science faculty in junior college are closed, it is closure of part of school regulated by Rule 25A, and hence, there is no question of granting any back wages to respondent No. 1. Perusal of order dated 20.01.1997 shows that during inspection on 02.01.1997 the students on roll in 11th Arts, Commerce and Science were found less than the approved admission-capacity and attendance was very less. In 12th standard in all these three faculties, more number of students were found illegally admitted without approval/permission of the Education Officer, Zilla Parishad, Akola. The procedure followed for admission was also found not valid. Taking into consideration the number of students on roll and attendance, only one section in Arts faculty for 11th and 12th were sanctioned. Two sections in Arts faculty were closed down and a separate section for 11th and 12th Commerce was closed and it was converted into Arts - Commerce combined section. Science faculty in 11th was closed and as 12th Science students were to appear for H.S.C. Examination in March, 1997 and hence, that 12th standard was permitted till the end of 1996/97 academic year. That section was also closed from 1997/98. 11th standard students in science faculty were absorbed in Sudhakar Naik Science and Junior College, Khetan Nagar, Akola. Perusal of reply of the Deputy Director of Education before the School Tribunal shows the stand that there was no question of absorbing respondent No. 1 as she was not permanent employee. He has further stated that a common seniority list was maintained by the appellants, but it was only for the purpose of appointment as Headmaster, Vice/Assistant Headmaster and Supervisor as per seniority. Minimum qualification required to teach junior college is Post Graduation in concerned subject, while for teaching in high school Post Graduation is stated to be not essential by him. He has reiterated that in this situation, there was no question of absorption of respondent No. 1. Thus,

respondent No. 3 has not mentioned either Rule 25A or Rule 26, in this reply.

35. In reply in this present Letters Patent Appeal on 25.04.2011, respondent No. 2 Deputy Director has in paragraph No. 3 stated that Science faculty was closed down. It is also pointed out that the said office has sought appropriate directions from the High Court for releasing salary bills of respondent No. 1, as there was no work load for respondent No. 1 after 20.01.1997. Perusal of reply filed by the said respondent before the learned Single Judge on 02.04.1999 shows that the said respondent has stated that at the most respondent No. 1 would be entitled to be taken in list of surplus candidates and her name can be recommended to newly opened junior colleges or newly sanctioned additional sections/divisions in terms of Rule 25A[2] of the M.E.P.S. Rules. He also communicated that he was trying to find out, whether she can be absorbed against any vacant suitable post. The said respondent has contended that Rule 26 of the M.E.P.S. Rules have no application. Affidavit dated 06.10.2011 also discloses 9 institutions to which name of respondent No. 1 was recommended for absorption. Thus, before the learned Single Judge the Deputy Director has attempted to show that provisions of Rule 26 will not be applicable. Said stand is seen in its affidavits dated 2.04.1999, 16.06.2010 and 7.01.2011. However, learned Single Judge was not called upon to record any finding on relevance of Rule 25A.

36. Rule 26 enables respondent No. 1 to continue to earn salary till she is absorbed by any other management. Rule 25A on the contrary contemplates a termination on account of closure and recommendation by the Deputy Director of Education of her name to management opening new junior college or sections. It does not enable her to continue to earn salary after closure. Rule 26 deals with question of retrenchment on account of abolition of post. The abolition contemplated therein, is, because of reduction due to reduction in establishment, owing to reduction in number of classes or division, fall in number of pupil resulting in reduction of establishment, change in curriculum, closure of course of studies, or any other bonafide reason of similar nature. Subrule [3] permits retrenchment only if the employee refuses to accept alternative employment as offered under Subrule [2]. Other subrules show obligation on such management to take back such employee, after the post are revived or additional post for same subject are created. It therefore, shows that activity continues and hence, there is possibility of revival or regeneration of work for such employee found surplus. Words used in Rule 26[1][v] will be required to be construed in same light and thus bonafide reasons of similar nature envisaged therein and legally sufficient to support retrenchment cannot be understood to cover the situation contemplated in Rule 25A.

37. We have already found that neither the School Tribunal nor the learned Single Judge were required to find out whether it is Rule 25A or Rule 26 of the M.E.P.S. Rules that governs the situation. If the termination of respondent No. 1 w.e.f. 20.06.1997 is to be treated as retrenchment, it is obvious that the junior college [science faculty] needs to be presumed as continuing. It therefore,

means that the appellant/management could have proceeded to admit the students to 11th Science in 1997-98 academic session. Facts on record do not justify drawing of such an inference. Similarly, whether permission to start junior college in Science faculty granted earlier, remained in force after the order dated 20.01.1997 is another aspect. As the junior college in Arts and Commerce continued, whether the permission to start Science faculty (11th standard) in junior college again was required to be obtained afresh in 1997-98 session? Thus, whether science faculty in junior college can be treated as integral part of junior college with Arts and Commerce stream or then said junior college can be treated as integral part of high school are cardinal questions. There is no sufficient material before us to address these issues. Respective learned Senior Counsel have also not advanced any arguments as such to enable us to form any definite view in this respect.

38. If it is closure under Rule 25A, there is no question of payment of any back wages and employee becomes entitled to placement in list of surplus candidates. If it is retrenchment under Rule 26, there can be no termination and respondent No. 1 continues to earn salary every month till she is absorbed. We have already concluded that even if it is a case of closure under Rule 25A, still otherwise termination on 20.06.1997 is bad. Hence, the entitlement to relief of reinstatement or then to relief of absorption and also to relief of wages denied (back wages) turns upon the answer to question whether on 20.06.1997 respondent No. 1 has been retrenched under Rule 26 or terminated under Rule 25A?

39. Accordingly, it is not necessary for this Court to consider the arguments advanced on the question of issue of reinstatement or back wages. Absorption is as per statute and not with Appellants and hence, direction to Deputy Director to discharge that obligation after finding termination bad does not operate to their prejudice. Precedents like Ministry of Textile vrs. Murari Lal Gupta and another, State of M.P. And others vrs. Arjunlal Rajak, Jayant Dhirajlal Kachalia vrs. Dowells Electro Works and another, Maharashtra State Road Transport Corporation and another vrs. Castribe Rajya Parivahan Karmachari Sanghatana and State of Haryana and others vrs. Navneet Verma, all supra, which lay down law on powers of court to order absorption, creation of post, moulding of relief and burden of proof are therefore not required to be gone into. There is also no reason to refer to judgment reported at Municipal Council, Sujampur vrs. Surinder Kumar, C.N. Malla vrs. State of Jammu & Kashmir and others, Metropolitan Transport Corporation vrs. V. Venkatesan and Maharashtra State Road Transport Corporation, Akola vrs. Nanuram Mohanlal Verma relied upon to demonstrate when back wages can be awarded or burden on Respondent No.1 to prove her entitlement thereto.

40. In view of this, we do not find it necessary to refer to the various errors or alleged instances of non-application of mind to which learned Senior Counsel had made reference. The learned Single Judge has found that the Deputy Director

had not filed reply containing a statement that post of respondent No. 1 was reserved for backward class candidate. This consideration has not in any way materially affected the application of mind by the learned Single Judge. Similarly, wrong mentioning of date of termination as 28.06.1997, 26.06.1997 or 26.09.1997 in place of 20.06.1997, of contents of experience certificate dated 03.04.1997 or then alleged wrong premise about findings of the School Tribunal has also not affected the application of mind by the learned Single Judge in any way. School Tribunal has at end in paragraph 12 and at page 26 of its judgment noted that Appellants did not serve 3 months notice upon respondent as per Rule 26(1). Hence, we are unable to appreciate the contention that observations on these lines in second sentence of paragraph 13 in impugned judgment by learned Single Judge are perverse. The mention of Rule 26 as Section 26 in paragraph 11 is mere inadvertence. These errors are irrelevant and have not prejudiced or affected in any way the judicial approach necessary to comprehend the controversy or consequential application of mind. Appellants have not attempted even to demonstrate such resultant error because of wrong mention of dates. The chronology vital for correct perspective and application of law has not been jeopardized at all. Director, Horticulture, Punjab and others vrs. Jagjivan Prashad, (supra) where Hon''ble Apex Court points out "classic case of non-application of mind" in paragraph 8, therefore is not relevant here.

41. In view of this situation, we find it appropriate to place the matter back before the School Tribunal to enable the parties to bring on record sufficient material, so that these issues can be satisfactorily adjudicated upon.

In view of above discussion, both the Letters Patent Appeals are partly allowed and we proceed to pass the following order.

ORDER.

(A) The common judgment dated 24.08.2010 delivered by the learned Single Judge of this Court in Writ Petition Nos. 4217/2007 and 5012/2008 as also the judgment and order dated 30.03.2007 delivered by the Presiding Officer, School Tribunal, Amravati in Appeal No.102/1997 are quashed and set aside.

(B) Appeal No.102/1997 is restored to the file of Presiding Officer, School Tribunal, Amravati for consideration as above in accordance with the discussion in body of this judgment.

(C) Parties to appear before the school tribunal on 31.03.2012 and to abide by its further directions in the matter. School Tribunal shall attempt to decide the question whether the action of management was under Rule 25A or Rule 26 of MEPS Rules,1981, within period of 6 months thereafter.

(D) To avoid any prejudice to Respondent No.1, we direct Deputy Director of Education to add name and claim of Respondent No.1 for grant of employment under Rule 25A of MEPS Rules at appropriate serial number in waiting list in accordance with alleged date of closure of Junior College i.e., 30.04.1997. If, and

as and when, Respondent No.1 gets such employment, Deputy Director of Education shall consider her entitlement to continuity as per law.

(E) Both Letters Patent Appeals are thus partly allowed, however, without any order as to costs.