

(2010) 12 GUJ CK 0279
In the Gujarat High Court

Case No : Letters Appeal No. 709 of 2010 in Special Civil Application No. 4646 of 2009

Jivan Sanskar Vidyalaya run by Sanskar Dham Education Trust APPELLANT
Vs

District Education Officer and Others RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Gujarat Secondary Education Regulations, 1974 — Regulation 9(A)

Citation : (2010) 12 GUJ CK 0279

Hon'ble Judges : S.J. Mukhopadhaya, C.J;K.M. Thaker, J

Bench : Division Bench

Advocate : R.R. Vazkil, for the Appellant; Government Pleader for Respondents 1, 3-4 and A.D. Oza, for Respondent 2, for the Respondent

Judgement

K.M. Thaker, J.—Present Appeal, under Clause 15 of the Letters Patent, is directed against the order dated 25th February, 2010 passed by the learned Single Judge whereby the learned Single Judge has dismissed the petition which was preferred by present Appellant against the order dated 1st September, 2008 passed by the Respondent No. 2-Board and also against the order dated 6th May, 2009 passed by the Respondent No. 4. By the orders impugned in the petition, the registration of the school run by the Appellant has been cancelled.

2. The facts involved in and relevant for present appeal are that:

2.1 The Appellant-trust was granted recognition in January-1995 to start secondary level school from June-1995. The Appellant has alleged that a request for "No Objection Certificate" {"NOC" for short} for appointment of teaching and non teaching staff was forwarded to the DEO in June 1995, however, there was no response from the office of DEO and that in October 1995 also, similar situation occurred.

2.2 Though, the NOC was not granted by the office of DEO, the Appellant issued an advertisement in November 1995 for appointment of teaching and non-

teaching staff. The District Education Officer, having noticed the said advertisement, required the Appellant-Petitioner, by its communication dated 16th December, 1995 to withdraw the said advertisement on the ground that the school of the Appellant trust was not registered by the Board. Subsequently when in April 1996 the Appellant again asked for the NOC (after its registration in January 1996) it was granted in May 1996.

2.3 In January 1997 certain appointments (Three Teachers, One Clerk and One Peon) were made and the papers seeking approval in respect of the appointments were forwarded to the office of DEO, however, the approval was not granted.

2.4 During this process, in July 1997, the office of the DEO imposed ban on the appointments. While the NOC for which requests were made were awaited, NOC for the post of Principal and one Teacher (Scheduled Tribe) in the subject of English was granted. It appears that in February 1999 the ban imposed by the office of DEO was lifted. Thereafter, the appointment of Principal, which was made pursuant to the NOC granted in May 1998, was approved by the office of DEO in October 1999.

2.5 It appears that by a communication dated 27.6.2000, the office of the DEO cancelled all NO Cs on the ground that the Appellant had failed to make the appointments within the time specified in the NO Cs.

2.6 It also comes out from the record that somewhere in April 2005, the Education Inspector had addressed a communication to the DEO, informing about series of serious irregularities on part of the Appellant, alleging inter alia that upon inquiry it had come to the notice of the Education Inspector that since last about 9 years, the Appellant trust's school was not implementing "direct payment of salary" scheme, instead the school was being run by engaging teachers without following the prescribed procedure and only since last about one and half years it had joined the "direct payment of salary" scheme. It was also alleged by the Education Inspector that from amongst several appointments made by the school, the only appointment which was made by following the prescribed procedure was of Principal and all other appointments were made in violation of the prescribed procedure.

2.7 It appears that a notice dated 27th May, 2005 was issued by the DEO from which it transpires that the office of the DEO had received certain complaints from the office of Collector which contained certain allegations against the school run by the Appellant. The notice, included the allegation that an incorrect experience certificate in favour of one Mr. Rajesh J. Parekh was issued by the Appellant. The Appellant was asked to show cause as to why the grant-in-aid should not be reduced or stayed and why the recognition of the school should not be cancelled. It appears that the reply to the notice was not found satisfactory therefore, another notice dated 8th July, 2005 was issued.

2.8 From the record it also emerges that in August-2005, the DEO had addressed

a letter to the Respondent No. 2-Board suggesting that in view of the irregularities allegedly committed by the school, its recognition may be cancelled. The DEO also mentioned, that though the school is recognized for grant-in-aid, it had not made any appointment in accordance with applicable regulations.

2.9 Thereafter, in light of the said communication dated 8th August, 2005 from the office of the DEO, the Respondent-Board issued a show cause notice dated 18th October, 2005 alleging commission of diverse illegalities and irregularities. After the said notice was responded by the school vide its reply dated 29th October, 2005 the decision to conduct an inquiry in the matter of the notice dated 18.10.2005 was taken and vide Resolution No. 682 of 2005 a Committee for the said purpose was constituted.

2.10 The members of the Committee submitted their report on or around 23.2.2006 which allegedly did not contain any clear opinion. The aforesaid events were followed by Resolution No. 755 of 2006 which appears to have been passed on 28.4.2006 whereby a decision to cancel the registration of the school was taken.

2.11 It is claimed that in May 2006, the Committee appointed by the Board submitted its opinion dated 16.5.2006 in continuation of its earlier report dated 23.2.2006.

In the said opinion the committee, inter alia, observed and opined that "considering the totality of the matter, it cannot be said that the irregularity committed by the school tantamount to serious misconduct which would invite harsh action of cancellation of its registration." In view of the said opinion, the Board passed a resolution No. 792 of 2006 somewhere in June 2006 putting in abeyance its earlier Resolution No. 755 of 2006 (dated 28.04.2006).

2.12 Subsequently, on or around 19.6.2006 another Resolution No. 839 of 2006 came to be passed by the Board deciding to appoint another Inquiry Committee. Accordingly, another committee was constituted to inquire into the allegations leveled vide notice dated 18th October, 2005. The Appellant has alleged that the said second committee could not complete the inquiry and did not submit its report since two members of the said committee ceased to be the members of the Board on completion of their term. Therefore, the Board passed resolution No. 287 of 2008 (in June 2008) and resolved to call the DEO as well as the school and to take necessary and appropriate decision after hearing them.

2.13 During the pendency of the proceedings before the said committee, an order dated 8th November, 2006 seems to have been passed by the Education Department whereby appointment of one Assistant Teacher, one Clerk and one Peon (names mentioned in the order) came to be regularized subject to the condition that the Appellant shall comply with the conditions mentioned in the said order.

2.14 In July 2008, the Board passed the Resolution No. 331 of 2008 deciding to

cancel the registration of the school, which was followed by the order dated 01.09.2008 canceling the registration of the school.

2.15 Against the said order, the Appellant preferred an appeal. The Respondent No. 4 rejected the appeal by order dated 15.12.2008 and confirmed the order passed by the Respondent No. 2-Board. Aggrieved by the said orders dated 01.09.2008 and 15.12.2008 the Appellant-Petitioner had filed a writ petition being Special Civil Application No. 15995 of 2008. The Court, by order dated 24th March, 2009 came to the conclusion that the said order dated 15th December, 2008 was passed without taking into consideration the grounds raised in the appeal against the order dated 1st September, 2008 passed by the Board. The Court, therefore, set aside the order dated 15th December, 2008 and remanded the case vide order dated 24.03.2009 to the Government for deciding the appeal afresh on merits. Thereafter, the Appellant filed additional grounds in support of its appeal. By order dated 6.5.2009, the said appeal came to be rejected.

2.16 Aggrieved by the said order dated 6.5.2009, the Appellant again preferred a writ petition being S.C.A. No. 4646 of 2009 wherein by order dated 13.5.2009, the learned Single Judge stayed the impugned orders. Subsequently, by order dated 1.2.2010, passed in aforesaid S.C.A. No. 4646 of 2009, the learned Single Judge vacated the aforesaid interim order and thereafter the petition (S.C.A. No. 4646 of 2009) came to be dismissed by the order dated 25/2/2010. It is against the said order dated 25.2.2010 that present appeal has been preferred.

3. Having regard to the issues and submissions, Rule. Mr. A. D. Oza has wived service of process of Rule. With the consent of the parties the appeal is heard for final decision.

3.1 Mr. Y.N. Oza, learned senior counsel with Mr. R.R. Vakil, learned advocate, has appeared for the Appellant-Petitioner. Ms. Krina Calla, learned AGP, has appeared for the Respondent Nos. 1, 3 and 4 and Mr. A.D. Oza, learned advocate, has appeared for the Respondent No. 2-Board. We have heard the learned Counsel and have carefully examined the record of the appeal and the writ petition.

4. Mr. Oza, learned senior counsel, has submitted that the impugned order dated 6th May, 2009 has been passed by the Respondent-Board in complete violation of Regulation-9(A) and also in breach of principles of natural justice. He has further submitted that the alleged irregular appointments were regularized vide order dated 8.11.2006 passed by the Education Department. The said order was passed much before the impugned order dated 1st September, 2008 came to be passed and that therefore any irregularity in the appointments would pale into insignificance and it could not have been made the base for any action against the school. Learned Counsel has also contended that the impugned order dated 6th May, 2009 is beyond the scope of show cause notice.

4.1 Mr. A.D. Oza, learned Counsel for the Respondent No. 2-Board has submitted

that the contention about the alleged violation of principles of natural justice is devoid of merits. As regards the contention raised in light of Regulation No. 9(A), he has submitted that in view of the resolution dated 6th June, 2008 in pursuance of which, the Appellant-Petitioner as well as the DEO were afforded opportunity of hearing before the Executive Committee of the Board and the resolution dated 21.07.2008 was passed after giving opportunity of hearing before the Executive Committee, the contention about breach of regulation-9(A) does not survive. He has also submitted that the Appellant-Petitioner school has indulged into serious irregularities and has also failed to comply the prescribed procedure and conditions. Mr. Oza for the Respondent-Board, in particular, referred to the incidence of issuance of a certificate containing incorrect details related to one Mr. Rajesh J. Parekh and submitted that the management of the school is being run by persons who are in the habit of indulging into irregularities and in ignoring the directions and instructions. He has submitted that the decision to cancel the registration of the school is justified and based on material available on record and that therefore, the orders passed by the Respondents may not be disturbed.

5. The foundation of the impugned order dated 1st September, 2008 and consequently of the order dated 6th May, 2009 is the notice dated 18/10/2005. Hence, in considering the rival contentions it would be necessary to keep in focus the charges in the said show-cause notice wherein it is alleged that:

1. Recruitment of the Clerk has not been made as per Clause 19 (1) of the Gujarat Secondary Education Board Regulations, 1974.

2. Recruitment of the Peon has not been made as per Clause 19 (3) of the Gujarat Secondary Education Board Regulations, 1974.

3. As per Clause - 19(3)(6) of the Regulations - 1974, appointment of the teachers cannot be made without taking prior permission of the Officer. The said school asked for the N.O.C. of the teachers from the office of the District Education Officer. (a) Though on 19-1-04, the office of the District Education Officer has given N.O.C. to the school, the school has not made recruitment of any of the teachers as per the rules and regulations. (b) Rajesh J. Parekh was appointed as a teacher in the said school and he was paid lump sum amount (salary). And an experience certificate of 4 yrs, 1 month and 20 days has been given wrongly. Due to certificate of experience Shri Rajesh J. Parekh has been appointed at serial No. 1 as a teacher in Uttar Buniyadi Vidhyalaya, Hajipura, Vadpdara but on date 22-2-05, office of the District Education Officer, Vadodara has directed Utter Buniyadi Vidhyalaya, Hajipura, Vadodara to take back the false certificate as per the provision 27(A)(1) of the Gujarat Secondary Education Regulations and further directed to initiate action by depositing the salary of till date of Shri Rajesh J. Parekh by way of chalan in to Government Treasury.

6. Re: Charge/allegation No. (1) and (2)

6.1 So far as the charge alleging that the recruitment of the Clerk and of the

Peon were not made as per Clause-19(1) and Clause-19(3) of the 1974 Regulations are concerned, it is noticed from the record that the Appellant had raised only one defence viz. that in response to the request, the competent authority had regularized the appointments vide order dated 8/11/2006 and when the appointments were regularised then in the subsequent proceedings and/or for subsequent order i.e. after 8/11/2006, the irregularities cannot be and could not have been made base for taking any action.

6.2 In this context, at the outset it deserves to be noted that the Petitioner has taken shelter under the umbrella of subsequent regularization (by order dated 8/11/2006) of the earlier appointments which would mean that the Appellant does not dispute the charge that the appointment/s in question was/were made without following the prescribed procedure. The defence has inbuilt admission. The need for the such order i.e. for regularization of appointment arose because of the said irregularities.

6.3 So far as the said two charge are concerned, the first authority's order is rested only on the so-called admissions. However, when the appellate authority's order on this count is examined, it transpires that the appellate authority has not accepted the defence and the contention on the ground that though the order dated 8/11/2006, is a conditional order the Appellant, had, until then i.e. until the date of the order by the authority, not complied the condition, subject to which the appointments were regularized.

6.4 Assailing the said decision, the Petitioner-Appellant has attempted to construe the said observation as if the appellate authority has raised new ground and on such premise the Appellant has contended that the appellate authority has proceeded on a new ground or new charge which was not part of the show cause notice, hence the order is beyond the show-cause notice.

6.5 However, on closer examination of the appellate authority's order it emerges that the purport of the appellate authority's order is that the order dated 8/11/2006 is a conditional order hence the irregularities cannot be treated or termed as cured or regularised unless the prescribed condition is complied. The said observation (i.e. about the non compliance of direction to accommodate surplus teacher) by the appellate authority drives home the point that the benefit of the order dated 8/11/2006 would not be available to the Appellant because the Appellant has not complied the condition subject to which the order is passed.

6.6 It is trite to state that a conditional order i.e. an order which allows or grants something subject to complying the specified condition, would come into operation only if the condition, subject to which such order is passed, is complied. Until the non-compliance of the prescribed pre-condition continues, a conditional order would remain dormant and would not take effect. In the cases where the condition is to be complied within prescribed time limit the conditional order and the benefit supposed to flow from such order would not come in operation if the condition is not fulfilled within the time limit and it shall cease to

be available upon expiry of the time limit.

6.7 On examination of the order it transpires that, the appellate authority considered the legal consequence of non compliance of the conditional order and proceeded on the premise that since the condition, subject to which the order dated 8/11/2006 is passed, is not complied, the appointments cannot be said to have been regularised and therefore the benefit of the order i.e. of regularisation would not be available to the Appellant and did not accept Appellant's contention-defence.

6.8 When the said aspect and effect of a conditional order is referred to by the authority so as to hold and demonstrate that the benefit of the regularisation of irregular appointments would not be available to the Appellant, then it cannot be said that the appellate authority has proceeded on new or additional ground or new charge which did not form part of the show cause notice.

6.9 However, when the appellate authority proceeded on such premise, the question which arises is whether the condition has been complied, or not.

6.10 It is important to note that even while assailing the order, it is not claimed by the Appellant that the condition (of accommodating surplus teacher) is complied. Instead, what has been submitted is that a direction given before eight years (in 1998) cannot be made the base for taking action after eight years and that too after already having imposed cut in the grant for non-compliance.

6.11 In this context it was relevant and necessary to ascertain as to whether any direction to accommodate any particular surplus teacher was issued after the date of the conditional order i.e. after 8/11/2006, because if any direction (with name of any particular surplus teacher) was not given to the Appellant after 8/11/2006, then it cannot be said that the authority is justified in holding that the conditional order had not come into operation for want of compliance of the condition.

6.12 In this context it is submitted on behalf of the Appellant that actually after 1998, and except the intimation dated 11/7/1998, the Appellant was never directed to accommodate any surplus teacher.

6.13 Unfortunately there is lack of clarity on this aspect in the impugned order and it does not become clear as to how the condition mentioned in the order dated 8/11/2006 to accommodate surplus teacher is construed (by the appellate authority) as the condition with reference to or in connection with the earlier direction given in 1998 (by intimation dated 11/7/1998) whereas there is nothing in the order dated 8/11/2006 to suggest that the condition mentioned therein reiterated and removed the direction given vide the intimation dated 11/7/1998. On the contrary it prima facie appears that by the condition mentioned therein the order dated 8/11/2006 imposed obligation for the forthcoming period. The impugned order does not deal with and does not clarify this vital aspect and it does not become clear as to how the earlier instruction dated 11/7/1998 came in

picture.

6.14 Furthermore, without first confirming the relevant factual aspects viz. (I) whether any other or separate direction reiterating and reimposing the direction dated 11/7/1998 was issued after the order dated 8/11/2006 (which was, then, not complied); (ii) whether any action for not complying the instruction given vide 11/7/1998 was already taken; (iii) whether any specific direction (either conveying the same or any fresh direction with the name of surplus teacher and other details) was given to the school after the order dated 8/11/2006, which was not complied by the Appellant and (iv) whether the surplus teacher (whose name was sent to the Appellant vide 11-7-1998) was already accommodated in other school or not, it could not have been held and/or it cannot be said that the Appellant has or has not complied the condition prescribed vide order dated 8/1/2006. Unfortunately the Appellant authority has recorded the conclusion about the non-compliance of the condition without addressing and examining any of the aforesaid aspects.

6.15 We are, therefore, of the view that without ascertaining the said facts and in absence of clarity the appellate authority is not justified in holding that the condition imposed in the order dated 8/11/2006 has not been complied.

6.16 light of the fact that the Appellant did not dispute or deny the allegation about irregularities in the matter of appointments but raised the defence that the appointments have been regularised vide order dated 8/11/2006, the aforesaid infirmity in the conclusion of the order goes to the root and absence of clarity about relevant facts coupled with the lack of relevant material on record, leave no option for us and warrant remand of the case for proper consideration of the issue.

7. Re: Charge/allegation No. (c)

7.1 So far as the allegation and charge to the effect that even after the NOC was granted, the school did not recruit the teacher(s) after following the prescribed procedure is concerned, here again the first authority has merely proceeded on the premise that the Appellant admitted the irregularity. Any reasoned conclusion on the merits, after examination of record, is not available in the order. On the other hand the appellate authority appears to have examined the record and noted that though under the order dated 19/01/2004, three NO Cs, one NOC for four posts, second NOC also for four posts and third NOC for two posts, were granted, the recruitments were not made after following the prescribed procedure. In light of these findings, the authority concluded that the charge is proved.

7.2 In this context the Appellant appears to have taken up the defence that it could not make the appointments after the NOC was issued because at the relevant time despite requests and reminders the office of the Board and/or DEO did not convey convenient day and time for interview which delayed the process of appointment and when the Appellant proceeded to recruit the teachers and for

that purpose forwarded the merit lists to the authority, the same were returned by the authority with instruction that unless called-for, the merit list need not be forwarded.

7.3 In the facts of the case, more particularly the fact that the NO Cs have been issued over a period of 2-3 years and the appointments also have been made at different points of time, unless the exercise of co-relating each-individual appointment viz-a-viz the relevant NOC and co-relating the appointment viz-a-viz compliance of requirements and procedure is undertaken, either by the Appellant or the authority, neither it can be claimed and proved by the Appellant that after the NOC were issued the appointments were made by following the procedure nor the authority can conclude otherwise.

7.4 In this context what is relevant is that it does not come out from the record as to whether before recording the conclusion such exercise in respect of each of the appointments i.e. co-relating each appointment viz-a-viz the NOC and the appointment viz-a-viz the Compliance of Procedure, was undertaken by present Appellant and/or by the appellate authority, or not. We are of the view that since the conclusion of the authority regarding the appointments will not only have effect on the school (by way of cancellation of registration and/or cut in grant in-aid and/or in any other manner) but it might also have effect on the status and other benefits of the concerned teachers and other staff, such conclusion should be recorded after examining each appointments individually from all perspectives, including the procedure aspect.

7.5 So far as the charge about making appointments without following the procedure is concerned, specific findings ought to have been recorded individually/separately in respect of each of the appointments, however, the impugned order does not contain the discussion or reasons with regard to the said aspect. Even otherwise, a legally sustainable conclusion with regard to the said vital aspect could have been recorded and/or can be recorded only if the aforesaid exercise of co-relating the appointments viz-a-viz (I) the respective NOC and (ii) the prescribed procedure is undertaken, which does not appear to have been undertaken. The aforesaid flow is another infirmity in the order.

7.6 view of this infirmity in the order more particularly when the first authority has passed the order only on the so called admission by the management, and when the exercise of establishing the co-relation (or even lack of co-relation) between each/individual appointment and the NOC or prescribed procedure is not undertaken, either before the first authority or even before the appellate authority, in absence of relevant material on record the only course available to us is to remit the matter to the authority to enable the authority to record the decision with reasons after undertaking the aforesaid exercise.

8. his takes us to the allegation and charge pertaining to the experience certificate issued in favour of Mr. Rajesh Parekh.

8.1 So far as the said issue is concerned, it transpires that the Appellant had

issued experience certificate dated 4/5/2001 certifying that said Mr. Rajesh Parkeh possessed (on the date of certificate) teaching experience in the Appellant's school from June-1996 whereas actually said Mr. Parekh had worked with the Appellant's school from 12/6/1997 (and not June-1996 as stated in the certificate).

8.2 The Appellant appears to have raised the defence that said Mr. Parekh was actually engaged with effect from June-1996, on fixed pay and voucher basis and subsequently with effect from June-1997 he was engaged in the scale of Rs. 1400-2600 therefore it was certified that Mr. Parekh possessed experience from 1996 and since the service rendered on voucher basis was taken into account, the certificate cannot be said to be incorrect or based on incorrect fact.

8.3 Having regard to the fact that the Appellant's school is a grant-in-aid institute and that therefore it is under obligation to follow the regulations including those governing the procedure for making appointment(s), the appellate authority has not accepted the defence on three counts viz. (i) the service rendered pursuant to the appointment made without following the prescribed procedure and rules cannot be taken into account for the purpose of calculating the period of experience; and (ii) in any case service rendered on fixed pay and voucher basis can never be considered for the purpose of calculating the period of experience; (iii) it was noticed that to justify and substantiate the facts stated in the certificate, even the presence record/muster-roll were altered.

8.4 On this count it has been stated that said Mr. Parekh has secured employment in another institution on the strength of the said certificate. There is no dispute between the parties that the Appellant's school is grant-in-aid institute. The Appellant has also not disputed the Respondent's submission that the Appellant's school being a grant-in-aid institute is obliged to make appointment in accordance with the prescribed procedure and applicable rules and any appointment made without following the procedure and rules is not recognized for any benefits.

8.5 The said fact demonstrates that not only such certificate would earn undue benefit in favour of such person but the certificate would also act to the prejudice of other teachers/candidates in the matter of appointments as on one hand they would get the certificate only in respect of the period of their regular appointment whereas persons holding the certificate issued on the basis of irregular appointment may, in several cases, win march over other teachers candidates.

8.6 Furthermore, grant-in-aid schools are obliged to make appointment after following the prescribed procedure and the appointments made by grant-in-aid school without following the prescribed procedure do not entail any benefits. As a corollary, such appointees would not acquire any status in eye-of law. In this view of the matter it is also contended that the period of the irregularly made

appointment cannot be counted for calculating the period of experience, hence it cannot be included and incorporated in the certificate as well. Thus, a certificate containing such details ought not and could not have been issued.

8.7 The appellate authority has accepted the said contention of present Respondent and held the charge mentioned in the notice dated 18/10/2005 with reference to the certificate in favour of Mr. Parekh, as proved. The appellate authority has also recorded that to justify the details mentioned in the certificate even the muster roll was altered.

8.8 In advancing the contention that the certificate merely reflected the actual period of employment of Mr. Parekh, it is conveniently ignored by the Appellant that such certificate of experience would obviously be used for employment purpose. The certificate, therefore, ought not contain such details which are not to be taken into account or which would lead to misleading impressions about experience.

8.9 In this factual background the learned Single Judge has held that the appellate authority has not committed any error in holding that the charge is proved. We do not see any reason to take a different view on this count or to disagree with the conclusion of the learned Single Judge on this point. The Appellant has failed to persuade us to take any different view. The Appellant has also failed to show any material from the record which could demonstrate that the conclusion by the appellate authority is incorrect or contrary to the record.

8.10 However, there is another dimension to this issue which, does not appear to have been addressed by the appellate authority. It is appropriate to note that though the Appellant claimed that from June, 1997 said Mr. Parekh was engaged on pay-scale, it does not become clear from the record as to whether the employment of Mr. Parekh was regularized from June, 1997 or he was recruited afresh in June, 1997 or the appointment continued to be irregular appointment even after June, 1997 and the burden of salary was discharged by the Appellant.

8.11 The clarity on the aforesaid aspect is vital for the reason that if Mr. Parekh's appointment for the period staring from June-1997 was made afresh after following the prescribed procedure then the question about the certificate being incorrect would be confined to the period from June-1996 to June-1997. However, if the appointment from June-1997 onwards continued to be irregular then it would signify that the entire experience certificate was in respect of the service rendered pursuant to irregular appointment. Unfortunately, necessary clarity on this count does not emerge form the record.

9. We may now, turn to the contention raised in light of regulation 9-A.

9.1 The substance and crux of the contention is that when the second committee failed to give its report the Respondent Board could not have passed the impugned order dated 1/9/2008 and in any case the impugned order dated 1/9/2008 is vitiated on account of violation of principles of natural justice.

9.2 In this context it deserves to be noted that the Appellant has alleged that upon expiry of the term of two members the second committee could not complete the inquiry and did not submit the report. It appears, in this context, from the record that the Board had passed the resolution No. 287 of 2008 in the meeting held on 6/6/2008 resolving to call the DEO as well as the representative of the school and to take appropriate decision after hearing them. In pursuance of the said resolution No. 287 of 2008 the DEO and the representative of the school were invited for hearing and they were heard by the executive committee of the Board and after the said hearing, the resolution No. 331 of 2008 was passed in the meeting held on 21/7/2008. In view of the said facts, the learned Single Judge has not accepted Appellant's contention about violation of purpose of natural justice.

9.3 In the affidavit made by Respondent No. 2 it has been asserted that after the resolution dated 6/6/2008 (No. 287 of 2008) the meeting of the executive committee for hearing the DEO/his representative and the school's representative, was held on 7/7/2008. In the said meeting held on 7/7/2008, Mr. Y. K. Shah and Mr. K. K. Shah had attended the hearing as the representative of the school and Mr. U. G. Shah represented the DEO. In light of the representation of the Appellant's representative, the further hearing was scheduled to be held on 21/7/2008. On the said date also, Mr. Y. K. Shah and Mr. K. K. Shah attended the hearing on behalf of Appellant. The said details about the hearing mentioned in the affidavit of Respondent No. 2 are not controverted and/or denied by the Appellant.

9.4 It, therefore, follows that the allegation to the effect that the impugned order dated 1/9/2008 has been passed in violation of purpose of natural justice is not sustainable inasmuch as after the resolution dated 6/6/2008 (No. 287/2008) the Executive Committee had scheduled the hearing on 7/7/2008 and 21/7/2008 which were attended by the representative of the Appellant.

9.5 The second limb of the contention, which is to the effect that when the second committee could not complete the inquiry, the executive committee could not have undertaken the exercise of hearing and passed the order, also does not appeal to us. In this context it is appropriate to take into account the provision under Sub Clause-1 of Regulation-9-A which reads thus:

9-A (1). If it appears to the Board that a person in charge of the management of the registered school (hereinafter referred to in this regulation as "the Manager") has committed defaults..., the Board may direct the Secretary of the Board or any other officer of the Board to conduct inquiry.

(emphasis supplied)

9.6 The said provision prescribes that the Board may direct the Secretary of the Board or or any of the officer of the Board to conduct the inquiry. The said provision cannot be construed to mean that the executive committee itself cannot conduct the inquiry. So as to appreciate this aspect it would be

appropriate to take into account the provision under Sub-Clause-4 of Regulation-9-A which reads thus:

9-A (4) The Inquiry Officer shall submit such report to the Executive Committee of the Board. The Executive Committee shall examine and consider the report and the relevant records of the Inquiry Officer and make such further inquiry as it may deem fit. Thereafter if the Committee arrives as tentatively to the decision that the Manager has committed defaults, the Committee, may serve a notice upon the Manager calling upon him to state and explain within such period as may be specified in the notice, why the name of the school should not be removed from the register. Such notice shall state the reasons as to why the Committee agrees or disagrees with the findings of the Inquiry Officer and also the evidence and other materials on the basis of which it is proposed to remove the name of the school from the register. On receipt of the explanation of the Manager, Committee shall examine and consider whether the explanation submitted by the Management is satisfactory or not. After examining and considering the explanation of the Manager, if the Executive Committee decides that the Manager has committed defaults in carrying out the obligations imposed upon the Manager under the Act. Regulations or any instructions issued to him by the Board, the Board may direct the name of the school to be removed from the register for such period as may be specified in the direction or direct that the name of the school may be removed from the register permanently.

(emphasis supplied)

9.7 The said provision, inter alia prescribes that the Execution Committee can make such further inquiry as it may deem fit and serve a notice on the Manager calling for his explanation and also empowers the committee to disagree with the findings of the inquiry officer and it may consider manager's explanation and come to its own independent conclusion and if the Executive Committee decides that the Manager has committed defaults the Board may direct the name of the school to be removed from the register. Thus, the said provision clarifies that the executive committee is conferred wide powers to make such further inquiry as it may deem fit and to come to its own independent conclusion.

9.8 Hence, it is not possible to hold that the executive committee itself cannot conduct the inquiry so as to ascertain as to whether any irregularity is committed or not. Therefore, in our view the said contention fails.

9.9 However, as noted herein above earlier the appellate authority has not taken into account various relevant aspects, though necessary, before coming to and recording its conclusion with regard to the charge No. 1 and 2 and also in respect of the part of the charge No. 3. On the other hand the first/original authority's order is wholly unsustainable since it is made merely on the so called admission by the Appellant.

10. It is necessary to note that in the facts of the case and particularly in view of the nature of the charge leveled against the Appellant in the notice dated

18/10/2005, it does not appear appropriate to close the case at this stage by merely setting aside, for the reasons recorded above, the orders passed by Respondent Nos. 2 and 4. Under the circumstance, as observed herein above earlier, the case is required to be remitted to the authority for fresh decision.

11. Thus, though the case has undergone couple of rounds, we are left with no option but to remit the case for fresh decision in light of the forgoing discussion. We, therefore, pass following order:

12. The orders dated 1/9/2008 and 6/5/2009 are set aside. The case is remitted to the first/original authority to pass fresh orders after providing opportunity of hearing to the Appellant and after taking into account the discussion in present order. In view of the aforesaid directions, the order by the learned Single Judge would not survive. The competent authority will hear and decide the matter afresh in accordance with law and on the basis of material on record and after hearing the Appellant and without being influenced by the appellate authority's order or the resolution No. 331 of 2008 and/or resolution No. 287 of 2008. The authority shall endeavour to decide the case as expeditiously as possible, preferably by 28/2/2011.

With the aforesaid clarification and directions, the appeal is partly allowed to the extent stated above earlier and it is disposed off. In the facts of the case, no costs.