

(2015) 12 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 8837 of 2015

Maulana Azad Educational Trust and Others

APPELLANT

Vs

Uzma Khanam Mirza Moin Ullah Baig and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12, 7
Evidence Act, 1872 — Section 111
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 11, 4, 5, 5(1), 5(2)

Citation : (2016) 1 ABR 508

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : Rajendrraa S. Deshmukkh and Amol Joshi, Advocates, for the Appellant; S.V. Dixit and R.R. Mantri, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Ghuge, J.—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner/Management is aggrieved by the judgment and order delivered by the School Tribunal dated 08.07.2015 by which Appeal No. 21/2014 preferred by Respondent No. 1/Employee has been allowed.

3. Strenuous submissions of Shri Deshmukkh, learned Advocate for the Petitioners can be summarized, in brief, as follows:--

"(a) Petitioner No. 1 is a minority educational institution which is registered under the Societies Registration Act, 1886 and the Maharashtra Public Trusts Act.

(b) Petitioner No. 2 is an unaided recognized school operated by Petitioner No. 1/Trust.

(c) The Maharashtra Employees of Private Schools (Conditions of Service)

Regulation Act, 1977 (herein after referred to as "the MEPS Act, 1977") and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (herein after referred to as "the MEPS Rules, 1981") are applicable to the Petitioner Institution and it's employees.

(d) Respondent No. 1 was temporarily appointed for the academic year 2012-2013 as an Assistant Teacher.

(e) The said appointment was extended for another academic year 2013-2014 w.e.f. 15.06.2013 considering that the performance of Respondent No. 1 was good.

(f) Notice dated 28.04.2014 was issued to Respondent No. 1 by which she was intimated that her term of appointment was expiring on 30.04.2014 and she was not supposed to attend the school w.e.f. 01.05.2014. Her signature was obtained on the said notice.

(g) On 23.06.2014 an experience certificate was issued to Respondent No. 1 indicating that she was working as an Assistant Teacher in the primary school from 02.07.2012 to 30.04.2014. Her work was satisfactory. She is sincere and hardworking.

(h) An explanation was called for from Respondent No. 1 on 04.08.2014 on the ground that she had forcibly signed the muster roll from 16.06.2014 till 02.08.2014.

(i) She submitted her explanation on 05.08.2014.

(j) She made a representation on 08.08.2014 alleging that she was not being permitted to attend duties and to sign the muster roll from 04.08.2014.

(k) She preferred Appeal No. 21/2014 on 26.08.2014 before the School Tribunal challenging her oral termination dated 04.08.2014.

(l) The Management filed it's reply to the appeal on 04.12.2014 contending therein that the appeal is filed beyond limitation, cause of action is dated 30.04.2014 and Respondent No. 1 was appointed purely on temporary basis.

(m) By the impugned judgment dated 08.07.2015, the School Tribunal has allowed the appeal, set aside the termination dated 04.08.2014, directed reinstatement of Respondent No. 1 and has held her to be entitled for 30% back-wages from the date of termination till her reinstatement.

(n) The appointment of Respondent No. 1 was purely temporary and was extended for another academic year.

(o) There was no advertisement published by the Petitioner Management.

(p) No appointment order was issued to Respondent No. 1 as she was appointed temporarily.

(q) The cause of action cannot be said to be 04.08.2014 as Respondent No. 1 was given a notice on 28.04.2014 indicating that her last date in employment would be 30.04.2014.

(r) The appeal was delayed beyond the prescribed period of limitation of 30 days under Section 9 of the MPES Act, 1977 since the termination can, at the most, be said to be of 30.04.2014.

(s) No vacant post was available.

(t) No permanent post was available.

(u) Respondent No. 1 was aware that she was temporarily appointed.

(v) The notice dated 28.04.2014 effecting her termination from 30.04.2014 has not been challenged.

(w) Forcibly signing the muster roll would not indicate that Respondent No. 1 was in employment till 04.08.2014.

(x) Internal correspondence dated 15.06.2012 seeking approval of appointment of teachers in primary section, reappointment of such teachers by internal correspondence dated 30.04.2013 and the notice dated 28.04.2014, were not placed on record before the School Tribunal.

(y) Respondent No. 1 has suppressed the fact that she was appointed temporarily.

(z) A temporary appointee has no right to continue in employment.

(aa) A temporary appointee cannot derive any advantage of the deeming fiction under Section 5(2) of the MEPS Act, 1977.

(ab) No notice is required to be issued to a temporary employee prior to his/her termination.

(ac) The impugned judgment is perverse and erroneous.

(ad) The impugned judgment reflects non application of mind.

(ae) By the impugned judgment, Respondent No. 1 has been foisted upon the Petitioner.

(af) The impugned judgment deserves to be quashed and set aside."

4 Shri Mantri and Shri Dixit, learned Advocates appearing for Respondent No. 1/ Employee, submit as under:--

"(a) The school at issue is a private unaided school.

(b) It is a minority institution and has every liberty of administration of the school and in making appointments of teaching and non teaching staff.

(c) Section 111 of the Evidence Act, 1872 is applicable.

- (d) Rule 9(5) of the MEPS Rules, 1981 covers the case of Respondent No. 1.
- (e) Schedule-D is the format in which the order of appointment has to be issued to every employee, either temporary or on probation or otherwise.
- (f) Section 5(1) and 5(2) of the MEPS Act, 1977 squarely covers the case of Respondent No. 1.
- (g) The School Committee of the Petitioners has resolved to appoint Respondent No. 1.
- (h) Rule 9(7) of the MEPS Rules, 1981 defines reservation.
- (i) Rule 9(8) of the MEPS Rules, 1981 provides for advertisement to be published for making appointments only to the reserved categories.
- (j) Rule 28(1) of the MEPS Rules, 1981 provides for at least one month's notice or one month's salary in lieu of notice period before terminating even a temporary employee.
- (k) Rule 20 of the MEPS Rules, 1981 mandates the Provident Fund contributions, be it a full time or part time employee, thereby indicating that Respondent No. 1 was a full time employee.
- (l) There is no dispute that Respondent No. 1 has worked for two complete consecutive academic years.
- (m) It is not the case of the Petitioners that the strength of students of the primary school has fallen and hence, they are required to reduce the strength of the teaching and non-teaching staff.
- (n) It is not the case of the Petitioners that there are adverse remarks about the performance of Respondent No. 1, inasmuch as no adverse remarks have been communicated to Respondent No. 1.
- (o) In fact the document, which was not placed before the School Tribunal indicating continuance of Respondent No. 1 even for the second consecutive academic year, demonstrates that the Management has considered the performance of Respondent No. 1 to be "good".
- (p) Reliance is placed upon the following judgments:--
- (i) Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, .
- (ii) Hindi Vidya Bhavan, Mrs. C.R. Pathak, Principal, Hindi Vidya Bhavan School and Mr. V.O. Somani, Hon. Secretary, Hindi Vidya Bhavan School Vs. Presiding Officer, School Tribunal, Education Inspector, Ramprakash Badlu Mandar and Mithila Azad Security Force, .
- (iii) Shikshan Prasarak Mandal Vs. Presiding Officer, School Tribunal and Another, .

(iv) Yogeshwar Vikas Sanstha and Others Vs. Rajendra T. Shinde and Another, ."

5. I have considered the submissions of the learned Advocates as have been recorded herein above.

6. The following aspects are undisputed:--

"(a) The Petitioner is a minority educational institution, is unaided and recognized.

(b) There is no direct supervision and control by the Education Department over the appointment of teaching and non teaching staff by the Petitioner.

(c) The MEPS Act, 1977 and the MEPS Rules, 1981 are applicable to the Petitioner Institution.

(d) Respondent No. 1 was appointed as an Assistant Teacher for two consecutive academic years.

(e) No appointment order was issued to Respondent No. 1 as a consequence of which she has not been officially communicated in writing that she has been selected and appointed temporarily and has no right to continuance.

(f) The performance of Respondent No. 1 has been good in both the academic years.

(g) The experience certificate dated 23.06.2014 issued by the Management in favour of Respondent No. 1 indicates that her work was satisfactory, she is sincere and hardworking as an Assistant Teacher in the primary section, as observed over two consecutive academic years.

(h) The muster roll which is allegedly forcibly signed by Respondent No. 1 from 16.06.2014 till 02.08.2014, has not been placed before the School Tribunal or before this Court.

(i) Internal documents approving the appointment of Respondent No. 1 dated 15.06.2012, 30.04.2013 and the notice dated 28.04.2014 have not been placed before the School Tribunal."

7. In the light of the undisputed facts as above, the School Tribunal has rightly concluded that Respondent No. 1 was not made aware that her appointment is temporarily made and she would be in employment temporarily for an academic year. In so far as the date of cause of action is concerned, ex-facie it may appear that the disengagement of Respondent No. 1 is from 30.04.2014 going by the notice dated 28.04.2014.

8. However, it is the case of the Petitioner/Management that Respondent No. 1 signed the muster roll upto 02.08.2014 purportedly forcibly. This muster roll, for the reasons best known to the Management, has been kept away from the School Tribunal and was not, therefore, placed on record. Consequentially, going by the case of the Management that Respondent No. 1 signed the muster roll till

02.08.2014 and has been not signing the muster roll from 04.08.2014, rightly led the School Tribunal to conclude that the cause of action is dated 04.08.2014.

9. I, therefore, do not find any reason to interfere with the impugned judgment in the light of the finding of facts by the School Tribunal in the light of the admission of the Management that Respondent No. 1 signed the muster roll till 02.08.2014 and has not been signing the muster roll from 04.08.2014.

10. Section 5(1) and 5(2) of the MEPS Act, 1977 read as under:--

"5. Certain obligations of Management of private schools:--

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

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

(2) Every person appointed to fill a permanent vacancy except [Assistant Teacher (Probationary)] shall be on probation for a period of two years. Subject to the provisions of sub sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

[Provided that, every person appointed as [Assistant Teacher (Probationary)] shall be on probation for a period of three years.]"

11. This Court, in the case of Shikshan Prasarak Mandal (supra), considering the contentions of the Assistant Teacher that he was working continuously for two academic years in the face of the contention of the Management that he was not appointed against any permanent vacant post and was appointed temporarily, has held that such employee shall stand to gain advantage of Section 5(2) of the MEPS Act, 1977 and as such, would be deemed to have become permanent. This Court has also concluded that continuing such teacher for two consecutive academic years led to an inference that he was continued on probation for two years. This Court, therefore, upheld the judgment of the School Tribunal reinstating the employee.

12. The relevant observations of this Court in Shikshan Prasarak Mandal case (supra) in paragraph 7 read as under:--

"7. The provisions of Section 5 of the MEPS Act require management to fill in every permanent vacancy in a private school by the appointment of a person

duly qualified to fill such vacancy and sub-section (2) thereof states that every person appointed to fill a permanent vacancy shall be on probation for a period of two years. The provisions of Rule 10 which stipulate categories of employees state that the employees shall be permanent or non-permanent. Non-permanent employees may be either temporary or on probation. A temporary employee is one who is appointed to a temporary vacancy for a fixed period. Thus, in view of mandate of Section 5 of the MEPS Act, it is apparent that if the management wanted to show that respondent No. 2 was a temporary employee, it was incumbent upon the petitioner management to produce material before it to show that respondent No. 2 was appointed against a vacancy which was of a temporary nature. The perusal of judgment of the School Tribunal reveals that no such material has been produced. In the absence of any such material and the fact that respondent No. 2 was continued for two sessions, the School Tribunal has drawn an inference that respondent No. 2 was continued on probation. The qualifications of respondent No. 2 are not in dispute and also there is nothing on record to gather that his performance or behaviour during this period was not satisfactory. It is in this backdrop that the School Tribunal has found that the order of termination is in violation of Section 5(3) of the MEPS Act and Rule 28(1) of the MEPS Rules."

13. Similarly, in Yogeshwar Vikas Sanstha case (supra), this Court considered the contentions that the letter of appointment mentions temporary engagement of the teacher only for a specific period. This Court relied upon its earlier judgment delivered in the case of the Maharashtra Shikshan Sanstha v. The Presiding Officer, School Tribunal, 2006(7) Mh.L.J. 11 : 2007(2) ALL MR 269 and concluded that such an appointment has to be construed to be an appointment made by the Management on probation. The direction to reinstate as well as grant of back-wages by the School Tribunal was upheld by this Court.

14. The relevant observations of this Court in Yogeshwar Vikas Sanstha case (supra) read as under:--

"6. A perusal of the appointment order which is placed on record indicates that the order was issued on 25.7.1995. The appointment order further mentions that Respondent No. 1 was being appointed for the period from 28.7.1995 to 30.4.1996. However, the Tribunal has concluded on the basis of the evidence and other material on record that there was a clear permanent vacancy which was available and, therefore, Respondent No. 1 ought to have been appointed to the post as a probationer. This is a finding of fact which need not be disturbed by the Writ Court. Under section 5(2) of the MEPS Act an employee who is appointed against a permanent, clear vacancy is liable to be appointed on probation for two years. Thus the initial appointment of Respondent No. 1 ought to have been for a duration of 2 years as a probationer. He would thereafter be entitled to be deemed permanent under the provisions of the Act. The Tribunal has also rightly held that the termination of service was in breach of the MEPS Rules and hence, the order of termination was bad. The Tribunal has rightly concluded that the

petitioner had compelled Respondent No. 1 to resign from duty and in these circumstances came to the conclusion that the termination was bad.

7. The learned advocate for the Respondents brings to my notice the judgment of a learned Single Judge of this Court in the case of *The Maharashtra Shikshan Sanstha & Anr. v. The Presiding Officer, School Tribunal & Ors.*, 2006(7) Mh.L.J. 11 : 2007(2) ALL MR 269, where the learned Single Judge (B.P. Dharmadhikari, J.), sitting at Nagpur bench has held that merely because the appointment order uses the word "temporary" or provides for automatic termination, it does not become a temporary appointment. What is required to be noticed according to the learned Judge is the character of such an appointment; whether the appointment has been made against a clear permanent vacancy or not. The use of the word "temporary" does not indicate that the appointment is in fact a temporary appointment in terms of Rule 10 of the MEPS Rules and therefore, such an appointment is to be viewed as an appointment on probation. In the present case, there is a finding of fact recorded by the School Tribunal that the respondent was appointed against a clear vacancy. That being the position, though the letter of appointment does mention that the appointment is only for a specified period, the appointment must be considered as one on probation."

15. This Court in the matter of *Hindi Vidya Bhavan* (supra) concluded that if an employee is appointed for certain academic years and has the required qualification and eligibility to be appointed, continuance of such an employee for two years renders him entitled to claim deemed permanency under Section 5(2) of the MEPS Act, 1977. The observations of this Court in paragraphs 30 and 34 read as under:--

"30. Upon mere perusal of section 1 of the Contract Labour Act it is clear that it applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour and every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. It further provides that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than 20 as may be specified in the notification. In my opinion, the provisions in this Act are not at all attracted insofar as the petitioner-school is concerned inasmuch as neither it is a case of the petitioners that 20 or more workmen were employed by them on contract basis or there was a notification issued by the appropriate Government applying the provisions of this Act to the school since the number of workmen were less than 20. It is also relevant to notice that neither the school was registered as contemplated by section 7 nor the contractor had obtained a valid licence under section 12 of the Contract Labour Act. Section 9 puts a bar on the principal employer from employing contract labour in the absence of a registration under section 7. In any case if the work for which contract labour is employed is incidental to and closely connected with the main activity of the

industry and is of a perennial and permanent nature, it is well settled, the abolition of contract labour would be justified. Taking over all view of the matter, in my opinion, merely because, there is no notification issued under section 10 , does not necessarily mean that the petitioner-school could have validly engaged Mithila and through Mithila service of the respondent-employees. As noticed earlier that the recruitment and conditions of the service of the employees in private schools are governed by the Act and the Rules and they must be adhere to while appointing members of the staff. The management cannot take advantage of its own wrong to contend that no procedure was followed or an appointment letter was issued and on that ground terminate a member of the staff, who was appointed on permanent post and was holding the required qualification.

34. In Umadevi's case (supra) the Supreme Court was dealing with a case of the workers who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka. The Supreme Court in that judgment began with the following observation that: "Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf." The Supreme Court has further observed that "any public employment has to be in terms of the constitutional scheme." In my opinion, looking at the context in which the Supreme Court has observed that a person who has been appointed otherwise than in accordance with the relevant Rules and Regulations cannot claim permanency in service, that judgment is of no avail to the petitioners. The Act, with which we are concerned in these petitions, was enacted by the State Legislature to regulate the recruitment and conditions of service in certain "Private Schools". The provisions such as the deeming provision in section 5(2) cannot be overlooked, which confers unfettered right on an employee to claim permanency having fulfilled all the conditions contemplated by the Act and the Rules. Appointment of a person in a school otherwise then in accordance with the procedure envisaged in the Act and the Rule would at the most give a ground for the education department not to sanction such appointment and release the grant-in-aid. The appointment of such an employee would not render invalid, if he is otherwise qualified and holds it for two or more years.

(Emphasis supplied)

16. In the same judgment of Hindi Vidya Bhavan case (supra), this Court has also considered the obligations cast upon the Management while making appointments of the teachers. It would be apposite to reproduce the observations of this Court set out in paragraph 35 hereunder:--

"35. If the scheme under sections 4 , 5 , 9 and 11 of the Act in particular are put together and kept in view, it clearly follows that the entire procedure including conditions of service in a private school has been provided for by this Special

Legislation and there is no need to fall back upon the general principles laid down by the judgments of the Supreme Court and High Courts while dealing with cases under the other Acts more particularly when the provisions of the special Act are plain, clear and require no aid for its interpretation from outside. The provisions/scheme of the Act is clear and needs no aid from outside. When the Legislature provides a special statute, as the present, to cover a given situation, there is an obligation on the institution while employing members of the staff to follow the procedure and then obtain the protection which the law intends to confer. The petitioners who had failed to follow the procedure for appointing the respondent-employees cannot obtain protection under the Act and refuse to make them permanent. Similarly, if the proposition canvassed by the petitioners that the tribunal could not have decided the issue of relationship between the appellant and the institution, as employer and employee, in the appeal under section 9 of the Act, no appeal would proceed on merits before the tribunal. The institutions would frustrate the remedy of appeal by taking such a defence/stand in every matter."

(Emphasis supplied)

17. It is undisputed that the Petitioner Institution is not required to look to the Government and seek permission of the Education Department for creation of posts on which teachers could be appointed. By the consent of the parties, I have considered the three documents which have not been placed before the School Tribunal. The first document dated 15.06.2012, which is an internal correspondence between the Principal and the Chairperson of the Institution, indicates that the period of services of newly appointed teachers previously had expired on 30.04.2012. New candidates were called for demonstration lessons and their performance was assessed. Finding their performance to be good, the Principal recommended to the Chairperson of the Institution for approval to appointments of these persons for an academic year. Respondent No. 1 is at Sr. No. 6 in the said list. The said list has been approved by the Chairperson.

18. By the internal communication dated 30.04.2013, the reappointments of teachers (inclusive of Respondent No. 1) which were originally made on 15.06.2012, were recommended considering their good performance. New teachers were sought to be appointed in place of those earlier appointed teachers whose performance was unsatisfactory. Respondent No. 1 is at Sr. No. 9 and the assessment of the Management indicates that her performance was good.

19. The Petitioners have not come before the School Tribunal as well as before this Court to indicate that such temporary teachers, whose performance was good, have been regularized in employment as permanent teachers. The salary as is being paid to these teachers is indicated from these internal correspondence (not placed before the School Tribunal) and are paltry salaries and not as per any recommended pay structure or pay scale. Respondent No. 1 was being paid an amount of Rs. 4500/- per month as an Assistant Teacher which is apparently less than the wages of a peon working in the said school on

the permanent post.

20. I, therefore, see the modus operandi of the Petitioner/Management in engaging teachers for one or two academic years and disengaging them after that academic year is over, so as to pave way for appointment of fresh teachers on temporary basis. The internal correspondence dated 15.06.2012 is, therefore, an eye opener.

21. Rule 20 of the MEPS Rules, 1981 reads as under:--

"20. Provident Fund:

(1) Every employee (not being an employee who has opted for pension) of an aided or unaided school working on a full time basis or every employee employed on part-time basis in more than one school run by the same Management and doing full-time load of work in these schools, shall subscribe to the Contributory Provident Fund under the Contributory Provident Fund Rules (Bombay) as in force from time to time.

(2) Every employee of an aided private secondary school working on a full-time basis who was appointed before the 1st April, 1966 and who had exercised in writing his option for a Contributory Provident Fund Scheme shall subscribe to that Fund as per rules made by Government and are in force in this behalf."

22. It is, thus, apparent from the above stated Rules and in the light of the admitted position, that the Provident Fund contributions of Respondent No. 1 were being deposited in the Provident Fund Account of Petitioner School.

23. Rule 28(1) of the MEPS Rules, 1981 reads as under:--

"28. Removal or Termination of service:

(1) The services of a temporary employee other than on probation may be terminated by the Management at any time without assigning any reason after giving one calendar month's notice or by paying one month's salary (pay and allowances, if any) in lieu of notice. In the case of an employee entitled to vacation, the notice shall not be given during the vacation or so as to cover any part of the vacation or within one month after vacation."

24. Rule 28(1) mandates issuance of one month's notice or one month's pay to a teacher while terminating his/her service. This is not complied with by the Petitioner.

25. Rules 9(7) and 9(8) of the MEPS Rules, 1981 pertaining to reservation of seats and advertisement to be published read as under:--

"9. Appointment of staff :

(7) The Management shall reserve 52 per cent of the total number of posts of the teaching and non-teaching staff for the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes,

Special Backward Category and Other Backward Classes as follows, namely:--

(8) For the purpose of filling up the vacancies reserved under sub-rule (7) the Management shall advertise the vacancies in at least one newspaper having wide circulation in the region and also notify the vacancies to the Employment Exchange of the District and to the District Social Welfare Officer (and to the associations or organisations of persons belonging to Backward Classes, by whatever names such associations or organisations are called and which are recognised by Government for the purposes of this sub-rule) requisitioning the names of qualified personnel, if any, registered with them. If it is not possible to fill in the reserved post from amongst candidates, if any, who have applied in response to the advertisement or whose names are recommended by the Employment Exchange or the District Social Welfare Officer (or such associations or organisations as aforesaid) or if no such names are recommended by the Employment Exchange or the District Social Welfare Officer (or such associations or organisations as aforesaid) within a period of one month the Management may proceed to fill up the reserved post in accordance with the provisions of sub-rule (9)."

26. It cannot, therefore, be disputed in the light of the above Rules that the advertisement is to be published for appointment to such categories which are reserved for particular castes/tribes.

27. The Petitioner has strenuously canvassed that there are no permanent vacant posts. Mere denial is not to be accepted as gospel truth. The Petitioner is sure of the number of permanent teaching staff positions available with it. It was not precluded from bringing before the School Tribunal or even before this Court as to how many permanent positions do they have and as to how many permanent positions have been filled in.

28. As such, being an unaided institution and that too enjoying the minority status under the statute, rendering the Petitioner a free hand in making appointments to the teaching and non teaching staff, leads to the conclusion that the Petitioner/Management is not required to look to any statutory authority for creation of posts. Considering the number of strength of it's students and recognition obtained for imparting education to particular standards, gives freedom to the Petitioner/Management to appoint teachers as may be required according to it's own staffing pattern. The contention of the Petitioner/Management that there was no vacant position is, therefore, purely aimed at refuting and frustrating the claim of Respondent No. 1.

29. The Apex Court in paragraphs 7 and 8 of it's judgment delivered in the matter of Syed Yakoob Vs. K.S. Radhakrishnan and Others, , has considered the scope of interference of this Court in it's supervisory/writ jurisdiction, which read as under:--

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and

the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, ; *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*,).

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of

the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

30. Similar observations are found in the judgment of the Apex Court in the matter of Surya Dev Rai Vs. Ram Chander Rai and Others, .

31. I have scrutinized the impugned judgment of the School Tribunal in the light of the strenuous and lengthy submissions of the learned Advocates for the respective sides and the record available. I do not find that the said judgment could be termed as being perverse or erroneous. I do not find that the impugned judgment could be said to have caused grave injustice to the Petitioner/Management. In fact the impugned judgment has resulted in preventing further exploitation of teachers like Respondent No. 1.

32. In the light of the above, I do not find any merit in this petition. The same is, therefore, dismissed. Rule is discharged.

33. At this juncture, the learned Advocate for the Petitioner submits that the impugned judgment dated 08.07.2015 has not been implemented since status-quo was directed to be maintained by this Court on 12.10.2015. It is prayed that the said status-quo be extended for further period of four weeks.

34. The learned Advocate for Respondent No. 1/Employee opposes the request for extension of status-quo. He further states that there was no "stay" from 08.07.2015 till 12.10.2015.

35. Considering the conclusions arrived at by the School Tribunal and the conclusions of this Court recorded herein above, since it is established that Respondent No. 1 and teachers like her have been exploited by the Petitioner/Management, I am not inclined to continue the status-quo granted on 12.10.2015. The request is, therefore, rejected.