

(1973) 12 BOM CK 0005
In the Bombay High Court
Case No : Sp. C.A. No. 507 of 1973

Punjabrao and others

APPELLANT

Vs

V.M. Molkar and others

RESPONDENT

Date of Decision : 11-12-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1974) MhLj 428

Hon'ble Judges : C.S. Dharmadhikari, J;B.N. Deshmukh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

C.S. Dharmadhikari, J.—The petitioners, who are the Assistant teachers in the primary schools run by Badnera Municipal Council, were appointed by an order dated 20-7-1972 issued by the President of the Municipal Council on purely temporary basis. These appointments were made by the President subject to the sanction of the competent authority. Before making these appointments, the Municipal Council in its general meeting held on 25-9-1970 passed a resolution delegating its powers u/s 76 (2) (a) and section 76 (3) (a) and (b) of the Maharashtra Municipalities Act to the President of the Municipal Council and the Standing Committee respectively. Thereafter advertisements were issued as per rule 9 of the Recruitment Rules framed under the C. P. and Berar Municipalities Act, 1922. A Selection Committee was also constituted consisting of four members which scrutinised the applications received and interviewed the candidates who had applied for the posts. Such interviews were held by the Selection Committee on 30-6-1972 and 2-7-1972. The Selection Committee recommended the names of the petitioners and accordingly the appointment orders were issued in their favour. The Standing Committee of the Municipal Council by its resolution dated 28-7-1972 accepted the recommendation of the Selection Committee and approved the appointments of the petitioners in the posts of the Assistant teachers as made by the President of the Municipal Council

subject to the sanction by the Competent Authority, namely, the Standing Committee in the present case. Thus the petitioners were duly appointed by the Municipal Council, Badnera as the Assistant teachers in the primary schools. After these appointments were made, the Municipal Council has written a letter to the Director of Municipal Administration dated 23-8-1972 seeking sanction to the newly created posts. With this letter the Municipal Council has attached the copies of the relevant resolutions. In the meantime it seems that the Municipal Council was superseded and by an order dated 4-10-1972 issued by the State Government u/s 313 of the Maharashtra Municipalities Act, 1965 an Administrator was appointed. The Director of the Municipal Administration vide his letter dated 18-10-1972 directed the Municipal Council, Badnera to obtain a certificate of Deputy Director of Education, Amravati Division, in respect of the necessity of the additional staff, their qualifications and pay scale etc. and send the same to his office for consideration. A copy of this letter of the Director of Municipal Administration was also sent to the Deputy Director of Education, Amravati Division, for information and necessary action. The Municipal Council, Badnera has also approached the Deputy Director of Education, Amravati Division, in this behalf and by letter dated 2-11-1972 the Deputy Director granted sanction for additional 3 posts of the Assistant teachers in the year 1972-73. A reminder was sent by the Chief Officer of the Municipal Council, Badnera to the Director of the Municipal Administration vide letter dated 21-12-1972 and a copy of the said letter was also endorsed to the Deputy Director of Education, Amravati Division, for sending the necessary certificates. Thereafter it seems that by letter dated 3-1-1973, the Administrator of the Municipal Council, Badnera was informed by the Deputy Director that in all there are 87 classes in the primary schools run by the Municipal Council, Badnera, and therefore, there should be only 87 teachers in the said classes. From the record produced before us by the Administrator of Municipal Council, it seems that this was the only correspondence which the Municipal Council as well as the Administrator had with the Director of Municipal Administration as well as the Deputy Director of Education, Amravati, in this behalf and as yet no orders have been received from the Director of Municipal Administration sanctioning the creation of the posts by the Municipal Council, Badnera.

2. Thereafter all of a sudden by an order dated 29-3-1973 the Administrator of the Badnera Municipal Council informed the petitioners that since their services are no longer required by the Municipal Council, they are terminated with effect from 1st May 1973. It is this order of termination which is being challenged in this writ petition by the petitioners.

3. According to the petitioners, in view of the recruitment Rules framed under the C. P. and Berar Municipalities Act, 1922, which are still in force, and particularly rule 14 of the said Rules, their appointments were on probation, though the order issued by the Municipal Council stated that they are being appointed temporarily. According to the petitioners, in view of the provisions of the said Rules, the appointments to the posts could be on probation alone, and

therefore, the order of the Administrator treating them as temporary employees, and therefore, terminating their services is illegal and is liable to be quashed and set aside. It was further contended by the petitioners that the termination of their services by the Administrator is based on extraneous reasons and amounts to fraud on Statute. According to the petitioners, their services were required by the Municipal Council and on that ground also the order of their termination of services is illegal and liable to be set aside.

4. On the contrary in the return the Administrator has tried to justify his order of termination on the various grounds. According to the Administrator, after his appointment as an Administrator u/s 313 of the Maharashtra Municipalities Act, he found several irregularities and illegalities in the matter of appointments of the Assistant teachers. He further found that their services were not required at the end of 30th April 1973. In any case, according to the Administrator, the petitioners were appointed temporarily and in terms of their contract of service, as disclosed by the appointment orders, their services were liable to be terminated at any time. It was further contended on behalf of the Administrator that the present expenditure on the establishment of the Municipal Council comes to about 84 per cent, of the total receipt, which is spent over the staff while the permissible expenditure is required to be 42 per cent of the receipts and it was with a view to reduce the expenditure and to bring it as far as possible to the lower limit the Administrator having found that the services of the present petitioners not being required he issued the orders of termination. According to the Administrator, the Municipal Council required the services of only 55 teachers, in the Marathi Primary Schools whereas it had 60 teachers in its service, and therefore, the services of the present teachers were not required by the Municipal Council. So far as the contentions raised by the petitioners regarding the interpretation of Rules framed under the C. P. and Berar Municipalities Act are concerned, it was contended on behalf of the Administrator of the Municipal Council that the said Rules also stood repealed in view of the enactment of the Maharashtra Municipalities Act, 1965. Further it was contended that assuming that the Rules are saved and are still in force, the Rules framed by the State Government u/s 25 (9) of the C. P. and Berar Municipalities Act go beyond the rule making power of the State Government, and therefore, are ultra vires. In any case, according to the Administrator, the very appointments of the petitioners were not made in accordance with these Rules, and therefore, the appointments themselves are illegal and ab initio void. According to the contentions raised by the Administrator, an employer has got an inherent power to appoint an employee temporarily and terminate his services when his services are no longer required. In the present case the petitioners were not appointed to any specific posts which were required to be created as per provisions of section 76 of the Maharashtra Municipalities Act, 1965. As the appointments of the petitioners were made by the then Municipal Council without following the procedure prescribed by section 76 (1) of the Maharashtra Municipalities Act, 1965 they had no legal right to the post nor they have any locus standi to file the

present petition. According to the Administrator, the posts were created by the Municipal Council without the necessary sanction of the Director of Education as contemplated by sub-section (1) of section 76, and therefore, their very appointments were void and did not confer any legal right upon them. According to the Administrator, even under the old Rules framed under the C. P. and Berar Municipalities Act, 1922, it was obligatory on the part of the Municipal Council to appoint a Selection Committee as per provisions of the said Rules. In the case of the petitioners the Selection Committee was not appointed by the Municipal Council, but was appointed by the President. The said Committee consisted of only 4 members whereas, according to the Rules, it should be of 5 members. Therefore, even if it is assumed that the said Recruitment Rules are still in force, then the Municipal Council had failed to follow the said Rules. The appointments made contrary to the provisions of the said Rules, therefore, will be bad in law and cannot confer any legal right upon the petitioners to any of the posts which can be enforced in this writ petition under Articles 226 and 227 of the Constitution of India.

5. For properly understanding the main controversy involved in this petition, it will be necessary to reproduce some of the provisions of the C. P. and Berar Municipalities Act, 1922. The relevant provisions of section 25 of the said Act read as under:-

25 (1) A committee may employ such officers and servants as may be necessary and proper for the efficient discharge of its duties, and may make bye-laws providing for the delegation of powers, duties and functions to such officers and servants and regulating their procedure, appointment, pay, leave, leave allowances and other conditions of service.

Then sub-section (9) of section 25 is as Under:-

25 (9) The Provincial Government may make rules under this Act prescribing the qualifications of candidates for employment as officers and servants under sub-section (1).

The State Government had framed the Rules under sub-section (9) of section 25 and section 176 (1) of the C. P. and Berar Municipalities Act and the said Rules were known as "The Municipal Officers and Servants Recruitment Rules". These Rules are at page 206 of the M. P. Municipal Manual. Section 176 (1) of the C. P. and Berar Municipalities Act, 1922 reads as under:

176(1) In addition to any power specially conferred by this Act, the Provincial Government may make rules generally for the purpose of carrying into effect the provisions of this Act.

The relevant rules with which we are concerned in this writ petition are rules 9, 10, 14 and 15 which are as under :

9. When an appointment is to be made to any post, the Municipal Committee shall invite applications by a notice to be published at the committee's office and

in one or more leading newspapers.

10 (i) The selection of candidates for appointment will be made by the municipal committee from amongst the candidates recommended by a selection committee constituted for the purpose by the Municipal Committee.

(ii) The selection committee shall consist of five members of whom one shall be either the President or a Vice-President of the Municipal Committee, who shall also be the Chairman of the selection Committee.

Provided that no person in the service of the Government shall be co-opted unless a resolution to that effect is passed by the Municipal Committee.

(iii) The selection committee Shall:-

(a) consider all applications received and interview such candidates as it may consider suitable for appointment; and

(b) submit to the Municipal Committee a list consisting of such number as may be fixed by the Municipal Committee of candidates whom it has selected in order of preference.

14. Candidates appointed to a post shall be on probation for two years. Probationers may be confirmed after two years, subject to their fitness for confirmation. If, at the end of the probationary period, the probationer is found unfit, the Municipal Committee shall, if he is a direct recruit, dispense with his services and if he has been recruited by transfer, revert him to his old post.

15. Notwithstanding anything contained in these rules, a Municipal Committee may appoint any person to any post specified in rule 6 for a period not exceeding six months in all:

Provided that he is in the opinion of the committee competent to discharge the duties of the post to which he is appointed.

It was not disputed before us that these rules did apply to the Municipal Council, Badnera, at least before coming into force of the Maharashtra Municipalities Act, 1965. The C. P. and Berar Municipalities Act, 1922 stood repealed by virtue of the provisions of Chapter XXVIII of the Maharashtra Municipalities Act, 1965. Section 343 specifically provided that subject to the provisions of this Chapter the Central Provinces and Berar Municipalities Act, 1922, as in force in the Vidarbha region of the State shall, on the appointed day, stand repealed. Obviously this repeal was subject to the provisions of section 346 of the Maharashtra Municipalities Act, 1965. Sub-section (1) of section 346 reads as Under:-

(i) any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law, regulation or form held, made, issued, imposed or granted by or in respect of an existing Council under any of the repealed laws or any other law for the time being in force in the area of such existing Council, and in force immediately before the appointed day, shall, in so far as it is not inconsistent

with the provisions of this Act continue to be in force as if made, issued, imposed or granted in respect of the corresponding area of the successor Council until superseded by an authority competent so to do:

Provided that-

(i) no rule made under any of the repealed laws in respect of an existing Council and in force immediately before the appointed day shall be deemed to be inconsistent with the provisions of this Act by reason only of the fact that under this Act it is permissible to make only a bye-law or any other instrument other than a rule in respect of the matter provided for in such rule;

(ii) the provisions of clause (i) of this proviso shall mutatis mutandis apply to any bye-laws, regulations or any other instruments made under any of the repealed laws in respect of an existing Council and in force immediately before the appointed day.

According to Shri Chandurkar, the learned counsel for the Administrator, the Rules framed under the C. P. and Berar Municipalities Act, known as Recruitment Rules, were inconsistent with the provisions of the Maharashtra Municipalities Act, and therefore, were not saved by section 346 (1) or its provisos. According to Shri Chandurkar, as per the provisions of the Maharashtra Municipalities Act and particularly section 76 (2) (b) the qualifications, pay, allowances and other conditions of service and the method of recruitment of any such officers and servants is to be determined by general or special order made by the Director in this behalf. Therefore, under the Maharashtra Municipalities Act, 1965 the State Government or the Municipal Council had no authority, power or jurisdiction either to frame Rules or Bye-laws for this purpose. This being the position, the Rules framed under the repealed Act by the State Government will be inconsistent with the provisions of the new Act, and therefore, cannot be saved. On the construction of proviso (i) to sub-section (i) of section 346 it was contended by Shri Chandurkar that the phrase used "or any other instrument other than a rule in respect of the matter provided for in such rule" will not cover the general or special order which is contemplated to be issued by the Director of Education u/s 76 of the Maharashtra Municipalities Act. He further contended that even section 25 (1) in the C. P. and Berar Municipalities Act, 1922 contemplated framing of only bye-laws for this purpose and not the Rules, and therefore, after the repeal of the C. P. and Berar Municipalities Act, 1922, the Rules framed there under also stood fully repealed and abrogated. It is not possible for us to accept this contention of Shri Chandurkar.

6. It is no doubt true that by the Maharashtra Municipalities Act, 1965, the C. P. and Berar Municipalities Act, 1922, as in force in the Vidarbha Region of the State, stood repealed, but while laying down the consequences of replacement of the existing Council and the effect of repeal, the Legislature specifically provided that no rule made under any of the repeal laws in respect of the existing Council and in force immediately before the appointed day shall be deemed to be

inconsistent with the provisions of the Maharashtra Municipalities Act, 1965 by reason only of the fact that under this Act it is permissible to make only a bye law or any other instrument other than a rule in respect of the matter provided for in such rule. The phraseology used "any other instrument" will have to be understood in the context in which it is used by the Legislature. The said words are used together with the terms rule and bye-laws, which are in the nature of subordinate legislation.

7. The Supreme Court had an occasion to consider true import of the word "instrument" in *Sree Mohan Chowdhury Vs. The Chief Commissioner, Union Territory of Tripura*, . While considering as to whether the President's order is an instrument or not, the Supreme Court Observed:-

The General Clauses Act does not define the expression "instrument". Therefore, the expression must be taken to have been used in the sense in which it is generally understood in legal parlance. In Stroud's Judicial Dictionary of Words and Phrases (Third Edition, Volume 2, page 1472), "instrument" is described as follows:

An "instrument" is a writing, and generally imports a document of a formal legal kind. Semble, the word may include an Act of Parliament.....

The expression is also used to signify a deed inter Parts or a charter or a record or other writing of a formal nature. But in the context of the General Clauses Act; it has to be understood as including reference to a formal legal writing like an order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority. We have no doubt in our mind that the expression "instrument" in section 8 was meant to include reference to the order made by the President in exercise of his constitutional powers.

8. Thus it is clear to us that the word "instrument" used in section 346 of the Maharashtra Municipalities Act will include the formal legal writing like an order made u/s 76 of the said Act. Therefore, until the Rules framed under the C. P. and Berar Municipalities Act are superseded by the Director of Municipal Administration by issuing an order as contemplated by section 76 of the Act, in our opinion, the said Rules will continue to be in force as if made or issued in respect of the corresponding area of the successor Council until they are superseded by an authority competent to do so. It is an admitted position that the Director of Municipal Administration has not issued any general or special order laying down any qualifications, pay, allowances and other conditions of service or the method of recruitment of any of the officers or servants working under the Municipal Council, Badnera. In this view of the matter, in our opinion, the recruitment rules framed under the C. P. and Berar Municipalities Act, 1922 are still in force and are neither repealed nor abrogated.

9. It was then contended by Shri Chandurkar that even if it is held that the said Rules are in force the Rules framed by the State Government u/s 25 (9) of the C.

P. and Berar Municipalities Act, 1922, known as Recruitment Rules, and particular rules 14 and 15, are ultra vires of the powers conferred on the State Government by the said enactment because the said rules go beyond the rule making power of the State Government. As already observed, these Rules have been framed by the State Government u/s 25 (9) as well as section 176 (1) of the C. P. and Berar Municipalities Act, 1922. According to Shri Chandurkar, under sub-section (9) of section 25 it was open for the Provincial Government to make rules prescribing the qualifications, pay, allowances and. other conditions of service of candidates for employment as officers and servants. The said provision had not conferred any right upon the Provincial Government to frame the Recruitment Rules as such, and therefore, the Rules, known as Recruitment Rules, and particularly rules 14 and 15, are ultra vires as they are beyond the rule making power of the Provincial Government. It is not possible for us to accept this contention of Shri Chandurkar, because the said Rules have been framed by the State Government u/s 176 (1) of the C. P. and Berar Municipalities Act, 1922. The said provision confers a general rule making power upon the State Government to make Rules for the purpose of carrying on into effect the purposes of the Act. The general power conferred upon the State Government cannot be curtailed by any of the provisions of section 25 of the Act, because the said power is in addition to any powers specifically conferred upon the State Government by the said Act.

10. The Supreme Court had an occasion to deal with such a question in Afzal Ullah Vs. The State of Uttar Pradesh, . In this context, while dealing with the provisions of U. P. Municipalities Act, 1916, it was observed by the Supreme Court as under:

Even if the said clauses did not justify the impugned bye-law, there can be little doubt that the said bye-laws, would be justified by the general power conferred on the Boards by section 298 (1). It is now well settled that the specific provisions such as are contained in the several clauses of section 298 (2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by section 298 (1), vide AIR 1945 156 (Privy Council) . If the powers specified by section 298 (1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated u/s 298 (2) control the general words used by section 298 (1). These latter clauses merely illustrate and do not exhaust all the powers conferred on the Board, so that any cases not falling within the powers specified by section 298 (2) may well be protected by section 298 (1), provided, of course, the impugned bye-laws can be justified by reference to the requirements of section 298 (1).

Similar view has been taken by the Supreme Court in Om Prakash and Others Vs. Union of India (UOI) and Others, .

11. The power conferred upon the State Government under sub-section (1) of section 176 of the C. P. and Berar Municipalities Act, 1922 is in addition to any power conferred by the Act. This position is made further clear by sub-section (2)

of section 176 wherein the Legislature had made it clear that the provisions of sub-section (2) of section 176 are in particular and without prejudice to the generality of the foregoing power. The appointments of officers and servants are contemplated by sub-section (1) of section 25 of the C. P. and Berar Municipalities Act, 1922 for efficient discharge of the duties of the Municipal Council. The Municipal Council is empowered to employ such officers and servants as may be necessary and proper for the efficient discharge of its duties and this is the purpose for which officers and servants are usually employed by the Municipal Council. Therefore, the Recruitment Rules framed by the State Government u/s 176 (1) of the C. P. and Berar Municipalities Act are meant for the purpose of carrying into effect the provisions of the Act. Even under the new Act, namely, the Maharashtra Municipalities Act, a power to employ officers and servants is conferred upon the Municipal Council for the efficient execution of its duties under the Act. Therefore, in our opinion, the Rules framed by the State Government u/s 176 (1) of C. P. and Berar Municipalities Act are within the rule making power conferred upon the State Government and therefore are not ultra vires of their powers.

12. Then it was contended by Shri Chandurkar that u/s 25 (1) of the C. P. and Berar Municipalities Act, 1922, only bye-laws could have been made for making a provision regarding the appointment etc. and other conditions of service of the officers and servants. As section 25 (1) only contemplated framing bye-laws, according to Chandurkar, by implication it was not open for the State Government to frame Rules in that behalf in exercise of their power conferred by sub-section (1) of section 176. It is not possible for us to accept this contention of Shri Chandurkar also.

13. This is not a case wherein the Municipal Council had already framed the bye-laws laying down the procedure of recruitment of employees or laying down other conditions of their service. It is an admitted position that there are no bye-laws in this behalf. Therefore, we are not concerned in this case as to what would have been the position if there were bye-laws and the Rules on the same subject and in case of a conflict between the bye-laws and the Rules which of them will prevail. In the present case no bye-laws have been framed by the Municipal Council and the State Government has framed the Rules for the purposes of recruitment of the various officers in the employment of the Municipality in general. Even if the bye-laws were to be framed it is clear from the provisions of section 178 of the C. P. and Berar Municipalities Act, 1922 that all the bye-laws for which the provision is made in the said Act have to be made by the Committee in a special meeting and they are to be consistent with the Act and the Rules framed thereunder. In the absence of any bye-laws being framed by the Municipal Council, in our opinion, it was open for the State Government to frame Rules by virtue of the power conferred upon it under sub-section (1) of section 176 of the C. P. & Berar Municipalities Act, 1922, and therefore, the Rules framed by the State Government under the said provisions of the Act are within the rule making power conferred upon the State Government by section 176 (1)

of the said Act.

14. Then a grievance is made by Shri Chandurkar that assuming that the said Rules were applicable to the employees working in the Municipal Council, Badnera, the then Municipal Council had failed to follow the said Rules and in effect the appointments of the petitioners were made in contravention of the provisions of the said Rules themselves, and therefore, the appointments being bad in law are void ab initio and will not confer any legal right upon the petitioners. According to Shri Chandurkar, the rules 9 and 10 of the Recruitment Rules clearly show that it is the Municipal Council who has to invite application by a notice to be published in the office of the Council or in one or more leading newspapers and then it is the Municipal Council who has to appoint a Selection Committee consisting of 5 members of whom one shall be either the President or the Vice-President of the Municipal Council who shall also be the Chairman of the Selection Committee. In the present case the applications were invited by the President himself and not by the Municipal Council as such. Further the Selection Committee was also appointed by the President and not by the Municipal Council as contemplated by rule 10 of the Rules. Further the said Committee consisted of four members only and not five. Therefore, it is quite clear from the record that the Municipal Council has not followed the provisions of rules 9 and 10 before making the appointments of the petitioners. These contentions raised by Shri Chandurkar will have to be read in the context of the submissions made by the parties before us. It is quite clear from the record that the Municipal Council in its general meeting held on 25-9-1970 passed a resolution delegating its power to the President and the Standing Committee as contemplated by section 76 of the Maharashtra Municipalities Act and thereafter the application were invited as per provisions of rule 9 of the Rules. A Selection Committee was also constituted under the order of the President for the said purpose, which scrutinised the applications, interviewed the candidates and made a recommendation. It is no doubt that the said Selection Committee consisted of four members only instead of five as contemplated by rule 10. However, it is further clear that after the recommendations were made by the Selection Committee the whole matter was placed before the Standing Committee which was competent to make the appointments and the entire matter was considered by the Standing Committee and the appointments made by the President and the procedure followed in this behalf was duly approved and adopted. This shows that the action taken by the President was not only rectified but was duly adopted by the Standing Committee which was competent to make appointments. Thus the requirements of the Rules have been substantially complied with. It has also not been shown to us that any real prejudice has been caused to the Municipal Council on account of the lacuna in constituting the Selection Committee. It is also not the case of the Administrator that while making the appointments the Municipal Council had not followed the procedure prescribed by the Rules. Any such defect or irregularity will not vitiate the appointments made by the Municipal Council when it is not affecting the merits of the matter. As observed by the Supreme Court in

Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, .

It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.

This Court had also on an occasion to consider this aspect of the matter in *Modern Builders Vs. Hukmatrai N. Vadirani*, wherein the following observations from Maxwell on Interpretation of Statutes were quoted with approval:

It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may perhaps be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by consideration of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature...

In the present case if there was any negligence in this behalf it was on the part of the Municipal Council itself. The Municipal Council cannot be allowed to take advantage of its own wrong, more so when there has been a substantial compliance with the provisions of the rules and the action taken in that behalf has been duly rectified and adopted by the competent authority. Therefore, only because the Selection Committee was either appointed by the President or consisted of only 4 members instead of five we do not think that there has been any contravention of the provisions of the Recruitment Rules which could nullify the appointments made by the Municipal Council in this behalf. In this view of the matter it is not possible for us to accept this contention of Shri Chandurkar.

15. Thereafter it was contended by Shri Chandurkar that the present petitioners were employed temporarily and their services could have been terminated in terms of the contract or according to the conditions of their service incorporated in the orders of appointments themselves. According to Shri Chandurkar, the services of the petitioners have been terminated in view of conditions of their service as incorporated in the said orders of appointments themselves.

16. As already observed, it is quite clear to us that these appointments have been made by the Municipal Council as per the provisions of the Recruitment

Rules framed under the C. P. and Berar Municipalities Act, 1922 which are still in force. Rule 14 of the said Rules in clear terms lays down that any candidate appointed to the post shall be on probation for two years and rule 15 only empowers the Municipal Council notwithstanding contain in the said Rules to appoint any person to any post specified in rule 6 for a period not exceeding six months in all. The petitioners were appointed as teachers in the primary schools run by the Municipal Council which are the posts specified in rule 6 of the Recruitment Rules. This Court had an occasion to consider the true import of these Rules in *The Municipal Committee, Anjangaon v. The Collector Amravati* Special Civil Application No. 324 of 1961, decided on 19-7-1962. While interpreting these Rules this Court observed as follows:

Under the Municipal Manual and the recruitment rules which govern the Municipal Committee in the matter of employment, the rules permit a person to be employed as a temporary servant for a maximum period of six months. Apart from that, in order to infer that the appointment is temporary it should normally indicate the period of appointment. In the absence of any such limitation of the period of appointment, it is difficult to see that the person is appointed temporary in view of the specific rules of recruitment in the case of the Municipal Committee here. Rule 14, on the other hand, to which reference is made by the Collector, is specific and enjoins that all candidates for appointment to the posts shall be on probation for two years. Possibly, this is one method by which the rules ensured security of tenure. Unless, therefore; the Municipal Committee were to make byelaws in the matter of recruitment to its own services permitting appointments of employees as temporary servants, it is not possible to hold that any of these employees were appointed temporary. We do not attach any importance to the use of the word "temporary" by the Secretary in the communication by him intimating to the appointees that they were appointed temporary. We doubt whether the President also could have made the appointments temporary without indicating the period for which they were appointed. This period should in no case exceed six months in making such appointments.

In the present case also the appointments have been made under these Recruitment Rules, and therefore, prima facie it appears to us that these appointments will be governed by rule 14 of the Recruitment Rules. In this view of the matter it was not open for the Administrator of the Municipal Council to treat these petitioners as purely temporary employees and then terminate their services in view of the alleged appointment order.

17. It was then contended by Shri Chandurkar that as the appointments of the petitioners were made by the Municipal Council without obtaining the sanction from the Director, the said appointments are illegal in view of the provisions of section 76 (1) of the Maharashtra Municipalities Act. For this proposition he has relied upon a decision of this Court in *Smt. Sushilabai w/o Shankar v. The Municipal Council, Khapa* Special Civil Application No. 528 of 1973, decided on

24th August 1973.

18. In our opinion, the law laid down in the said decision will not be applicable to the facts and circumstances of the present case. In that case the Municipal Council had made arbitrary appointments and that was one of the reasons why the said Municipal Council was superseded and an Administrator was appointed. Thereafter an action was taken by the Collector u/s 308 of the Act for suspending the execution of the orders issued by the then Municipal Council. This order of suspension issued by the Collector was duly confirmed by the Director. The Municipal Council had never approached the Director of the Municipal Administration for according any sanction to the posts created by it. After the execution of the said order was suspended u/s 308 of the Act, the orders of termination were issued on the specific ground that the appointments were illegal and there was no sanction by the Director of the Municipal Administration. Therefore, the orders issued in that case were in the nature of correcting a mistake and there was no question of according any sanction of the Director of Municipal Administration to the posts created by the Municipal Council, because the Director was never approached for any such sanction and on the contrary the Director himself was a party to the suspension of the execution of the order as he confirmed the order of suspension passed by the Collector. In these circumstances it was held that the said appointments did not confer any legal right upon the petitioners in that case. In the case before us this is not the position. As a matter of fact, according to the Municipal Council itself, five petitioners were appointed in the clear vacancies caused due to the retirement of the teachers, and therefore, there were existing posts to that extent. The Deputy Director of Education vide his letter dated 2-11-1972 had sanctioned 3 additional posts. There was a budget sanction for the year 1973-74 for these teachers. The appointments, in these circumstances, were made by the Municipal Council, Badnera after following the prescribed procedure laid down by law. Immediately thereafter they approached the Director for sanctioning the posts which were created. Such a sanction could have been granted by the Director u/s 337 of the Act ex-post facto. As a matter of fact acting on this letter of the Municipal Council, the Director had made a query from the Municipal Council and had asked them to approach the Deputy Director of Education for necessary certificate. The Director was, therefore, seized of the matter and the question of granting ex-post facto sanction was under his active consideration. In these circumstances it cannot be said that the appointments made by the Municipal Council were ab initio void or illegal. At the most some of these appointments might become voidable if ultimately the sanction is not granted by the Director, who is empowered to grant ex-post facto sanction.

19. It was then contended by Shri Chandurkar that the services of the petitioners were terminated because it was found that their services are no longer required by the Municipal Council and further the creation of the said posts by the Municipal Council had no sanction as contemplated by section 76 of the Act. From the material placed before us it is quite clear that 5 teachers had retired

before the present petitioners were appointed as teachers. By letter dated 2-11-1972 the Deputy Director of Education has permitted the Municipal Council to engage 3 more teachers. It is pertinent to note at this stage that the Deputy Director of Education, who is respondent No. 2 to this petition, has filed a separate return and has contended that the sanction was granted for 3 additional teachers. It was also contended on behalf of the Deputy Director in para 2 of his return that as regards the position of the session 1973-74, the Deputy Director has no knowledge as to whether there are enough students so that the petitioners can be absorbed. Further it is submitted on behalf of Deputy Director that the Petitioners services are not liable to be terminated if they were appointed in clear vacancies and it appears that out of 9 petitioners, five were appointed in place of 5 confirmed teachers who were retired. After the appointments of the petitioners the Municipal Council vide its letter dated 23-8-1972 had sought sanction to the posts created by it as per provisions of section 76 of the Act. In the said letter also it was specifically stated on behalf of the Municipal Council that 5 teachers were appointed in the vacancies caused due to retirement of 5 teachers. In the budget estimate for the year 1973-74 the Municipal Council had sought sanction for 87 teachers. This matter regarding granting of sanction to the posts created by the Municipal Council is still under consideration of the Director of Municipal Administration. The Director of Municipal Administration by his letter dated 18th October 1972 had sought certain information from the Municipal Council, Badnera and had directed the Municipal Council to obtain certificate of Deputy Director of Education, Amravati in respect of the need for additional staff, their qualifications pay-scale etc. Thereafter a reminder was sent by the Chief Officer to the Director of Municipal Administration for granting the necessary sanction. The Deputy Director of Education was also approached in this behalf and the Deputy Director of Education, Amravati Division, by his letter dated 3-1-1972 informed the Administrator of the Municipal Council, Badnera that there are in all 87 classes of the primary schools in the Municipal Council, and therefore, there should be 87 teachers. Thus from the material placed before us it is quite clear that the whole matter is under consideration of the Director and it is open for the Director to grant ex post facto sanction to the posts created by the Municipal Council. Section 337 of the Maharashtra Municipalities Act Specifically lays down that where by or under the said Act the previous sanction of any authority is required in respect of any staff or expenditure and such previous sanction is not obtained, such authority may accord ex-post facto sanction, if it is satisfied that such action was bona fide and has not caused or is not likely to cause injury to any person or that the action taken was in public interest. Prima facie it appears to us from the correspondence between the Municipal Council, Director of Municipal Administration as well as the Deputy Director of Education that the Municipal Council acted bona fide in making these appointments. Section 49 of the Maharashtra Municipalities Act lays down obligatory duties of the Municipal Council and it is one of the obligatory duties of the Municipal Council to undertake and make reasonable provision for establishing and maintaining the

primary schools. With a view to make a proper provision in this behalf a specific provision was made in the budget for the year 1973-74 and it seems that the said budget was sanctioned by the Director of Municipal Administration. In the budget for the year 1973-74 a provision has been made for 87 teachers. The strength of the students upto October of the year 1973, even according to the respondent No. 1, Municipal Council, was 2312. Therefore, having regard to the strength of the students and the classes of the primary schools run by the Municipal Council, in our opinion, the Municipal Council had acted bona fide in making these appointments after following the prescribed procedure. On the contrary, the Administrator who is the successor-in-office of the Municipal Council has acted hastily without waiting for the orders from the Director of the Municipal Administration, more so when the said question was under his consideration. Therefore, in our opinion, the whole action taken by the Administrator of the Municipal Council is premature and is uncalled for at this stage. The respondent No. 1, Administrator is hereby directed to proceed with the correspondence initiated by the Municipal Council for getting the necessary ex-post facto sanction from the Director of the Municipal Administration. After the final orders are passed in this behalf by the Director of the Municipal Administration, it will be open for the Administrator to take appropriate steps in accordance with law with due advertence to the observations made hereinbefore. Till the matter is finally decided by the Director of Municipal Administration, it was not open for the Administrator to treat the petitioners as purely temporary employees and terminate their services for any of the reasons stated in the orders and argued before us.

20. In the result, therefore, this petition succeeds. The orders passed by the Administrator, Municipal Council, Badnera, terminating the services of the petitioners Nos. 1 to 9 are hereby quashed and set aside. The petitioners will be entitled to their costs from the respondent No. 1, Administrator, Municipal Council, Badnera.