

(2004) 04 BOM CK 0057

In the Bombay High Court

Case No : Second Appeal No. 533 of 2001

St. Ulai High School and Shri Adishakti Hindi Prachar Samitee	APPELLANT
Vs	
Shri Devendraprasad Jagannath Singh and The Zilla Parishad	RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226, 227
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 11, 11(3), 12, 13, 15
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Regulation 19(7), 12, 12(2), 12(3), 16

Citation : (2004) 04 BOM CK 0057

Hon'ble Judges : D.K. Deshmukh, J;D.G. Karnik, J

Bench : Division Bench

Advocate : C.U. Singh, instructed by C.K. Thomas, for the Appellant; R.S. Apte and M.S. Lagu, for the Respondent

Judgement

D.K. Deshmukh, J.—This Second Appeal has been placed before this Division Bench because of the order dated 26-9-2001 passed by the learned Single Judge of this Court. The learned Single Judge by order dated 26-9-2001 framed following substantial question of law and admitted the Second Appeal for final hearing.

"Whether civil suits u/s 9 of the CPC in respect of matters set out in Section 9 of the MEPS Act and Rule 12 thereof is impliedly barred?

2. The learned Single Judge in the order dated 26-9-2001 further observed

"Considering the importance of the question and day to day litigation on the subject pending in various Courts in the State and in order to have clear law and consistency in interpretation of law with regard to maintainability of the civil suit u/s 9 of the C.P.C. in respect of matters set out in Section 9 of the MEPS Act and Rule 12 thereof, I am of the opinion that this matter needs consideration by a

Larger Bench."

3. Pursuant to this order, Hon^{ble} the Chief Justice passed necessary order for placing the Second Appeal for considering the above referred substantial question of law framed by the learned Single Judge before this Bench.

4. So far as facts that may be necessary for deciding this reference are that an employee of School, which is a private school within the meaning of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter referred to as MEPS Act for the sake of brevity) filed a civil suit claiming a decree for declaration that the order issued by the Management terminating his services is illegal and also for an order of mandatory injunction directing the Management to treat the Plaintiff in service continuously and pay him wages accordingly. The civil court entertained the suit and after trial decreed the suit in favour of the Plaintiff/employee. The appeal filed by the Management against the judgment and decree of the trial court was dismissed.

5. Section 9 of the MEPS Act provides for a remedy of an appeal to a tribunal constituted under the Act which is called a "school tribunal" to an employee of a private school who feels aggrieved by an order passed by the Management either dismissing him from services or removing him from services or reducing him in rank or terminating his services as well as when the Management supersedes the employee. The question that arises for consideration is whether because of the enactment of Section 9 the jurisdiction of the civil court to entertain a suit for a decree or declaration that the order passed by the Management either of dismissal, removal or reduction in rank, termination or an order of promotion which results in supersession of the employee concerned is illegal and inoperative and for other consequential reliefs for reinstatement of the employee concerned is barred by necessary implications. It appears that this question was considered by the learned Single Judge of this Court in the case of Janata Janardan Shikshan Sanstha and Anr. v. Dr. Vasant P. Satpute, 1986 MLJ 260, and it was held that because of the provisions of Section 9 of the Act the jurisdiction of the Civil Court to entertain a suit against the order which can be subjected to challenge in an appeal filed u/s 9 is neither expressly barred nor is barred by necessary implication. Another learned Single Judge of this Court considering the same question in a judgment in the case of Rasta Peth Education Society, Pune v. Pethkar Udhaio Bhimashankar, 1994 M.L.J. 725 and came to the same conclusion. It further appears that the same question came up for consideration before another learned Single Judge of this Court in a review petition in the case of Satyawadi Ganpatrao Pimple and Ors. v. Aruna Ganpatrao Narwade and Anr., 2000 (2) M.L.J. 322 and the learned Single Judge came to the conclusion that so far as members of teaching staff of private school are concerned the jurisdiction of the civil court to entertain a suit against the order passed by the Management which can be subjected to challenge in an appeal filed u/s 9 is barred. The learned Single Judge also declared that the case of Rasta Peth Education Society has not been correctly decided and that the judgment of the learned Single

Judge in the case of Rasta Peth Education Society is not good law. It appears from the order of the learned Single Judge passed in this Second appeal dated 26-9-2001 that the present reference has arisen because of these three judgments of the learned Single Judges of this Court. It may be pointed out here that in the reference the provisions of Rule 12 framed under the Act have been referred to. Reference has arisen because Rule 12 provides for preparation of seniority list of the employees working in a private school. In terms of the provisions of that rule after the seniority list is prepared by the management is circulated amongst the employees, the employees are entitled to raise objections and disputes, the management has to refer those disputes to the Education Officer for decision and thereafter the disputes about seniority are to be decided by the Education Officer. It appears from the judgment of the learned Single Judge in the case of Satyawadi Ganpatrao Pimple, referred to above, that the learned Single Judge has held that the decision of the Education Officer under Rule 12 regarding seniority becomes final and therefore the civil court cannot go into the validity or otherwise of that decision. Consequently, the jurisdiction of the civil court to entertain the suit in relation to the finalisation of the seniority list of employees in the private school is also barred. It may be pointed out here that so far as the aspect of Rule 12 is concerned, it did not arise for consideration before the learned Single Judge, who decided the case of Rasta Peth Education Society. It appears that the learned Single Judge, who decided the case of Janata Janardan Shikshan Sanstha, referred to above, also did not consider this question. But the provisions of Rule 12 appear to have been considered by the learned Single Judge of this Court in his judgment in the case of Burondi K. Lodghar v. Vilasrao M. Desai, 1994 (4) Bom. C.R. 294 . It was held that once the question of seniority of an employee is decided by the Education Officer that question cannot be reopened before the School Tribunal in an appeal against the order of supersession filed u/s 9 of the Act. That judgment appears to have been considered by the Division Bench of this Court in the case of Umesh Balkrishna Vispute (Shri) Vs. State of Maharashtra and Others, and the Division Bench has held that the law laid down by the learned Single Judge by his judgment in Burondi K. Lodghar's case cannot be said to be good law and the despite decision of the Education Officer the question of seniority can be reopened before the School Tribunal in an appeal filed u/s 9 of the Act and the Tribunal has the jurisdiction to decide that question being an incidental question.

6. Section 9 of the Act provides for a remedy of an appeal to the School Tribunal to an employee of a private School. Section 9 of the Act reads as under:

9. Right of appeal to Tribunal to employees of private school:

(1) Notwithstanding anything contained in any law or contract for the time being in force, (any employee in a private school,-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion.

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted u/s 8)

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management in any time before the 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in Sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of (Five Hundred rupees) which shall not be refunded and shall be credited to the Constituted Fund of the State.

The term "private school" is defined by Section 2(20) of the Act, to mean a school which is a recognised school established or administered by a management other than the government or a local authority. It is, thus clear that a school which is recognised school which is established and is managed by an authority which is not the Government or local authority is called "private school". The term "school" is defined by Section 2(24) of the Act.

2(24) "School" means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including, technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level;

The term "recognised" is defined by Section 2(21) of the Act. It reads as under:-

"recognised" means recognised by the Director, the Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards.

If all these definitions are read together, it becomes clear that a primary school, secondary school, higher secondary school, junior college of education or any other technical or vocational school which imparts education or training in any faculty or subject below the degree level, which is managed by authority which is

not a government or local authority and which is recognised by the Director of Education or Director of technical Education or Director of Vocational education or Educational Board or the State Board can be called "private school". Thus, in order that the school can be called "private school", the school must be recognised. The Act does not make any provisions for recognition of a school. The provisions for recognition of a school are to be found in the Secondary Schools Code, which lays down elaborate procedure for recognition of a school. It is clear from the provisions of the Act quoted above that even a school recognised by a State Board or a Regional Board of Education is also a private school within the meaning of the Act. According to the provisions of the Maharashtra Secondary and Higher Secondary Board Act in order to get recognition from the State Board or the Regional Board the school has to comply with the conditions laid down by the Secondary Schools Code. It may be pointed out at this juncture that the Supreme Court has considered the question of recognition of school by the State or Secondary or the Regional Boards in its judgment in the case of M.G. Pandke and others Vs. Municipal Council, Hinganghat, Dist. Wardha and others, and has held that because of the provisions of the Secondary and Higher Secondary Education Board Act, the provisions of the Secondary Schools Code have statutory force. Perusal of the provisions of the Secondary Schools Code shows that apart from the aspect of recognition of a school, it also has provisions dealing with conditions of services of the employees in the recognised school. The Supreme Court in its judgment in M.G. Pandke's case has observed thus:

"Assuming that the Regulations under the Act stood repealed, the Code, which was framed by the Maharashtra Government continued to hold the field. It is not disputed by the learned Counsel for the appellants that the Code by itself is not statutory and is in the nature of executive instructions. But he strongly relies on Regulations 19(7)(xvi) of Maharashtra Regulations and contends that the said Regulation makes it obligatory for the Municipal Council Hinganghat to follow the provisions of the Code. It is for the State Government to frame the Code in whatever manner it likes but once the Code is in operation its provisions have to be followed by the Municipal Council Hinganghat under the mandate of Regulation 19(7)(xvi) of Maharashtra Regulations. We see considerable force in the argument of the learned Counsel. The Code has been framed with the purpose of bringing security of service, uniformity, efficiency and discipline in the working of non-Government High Schools. It has to be applied uniformly to the schools run by various Municipal Councils in the State. It is no doubt correct that the Municipal Councils, have the power to frame bye-laws under the Maharashtra Municipalities Act, 1965 but if the field is already occupied under the mandate of statutory Maharashtra Regulations, the Municipal Council cannot frame bye-laws to the contrary rendering the mandate of the Maharashtra Regulations nugatory. We are of the view that the Municipal Council Hinganghat has out stepped its jurisdiction in framing byelaw 4 of the bye-laws. We, therefore, direct that the conditions of service of the appellants shall be governed by the Code as enforced

by Regulation 19(7)(xvi) of the Maharashtra Regulations. Bye-law 4 of the bye-laws shall not be applicable to the appellants."

It is clear from these observations that according to the Supreme Court the Secondary Schools Code has the provisions in relation to the security of services of the employees in non-government school and that the provisions of the Code are statutory.

7. In so far as the provisions of the Act are concerned, they came into force on 10-7-1981. The whole object of the Act is to regulate recruitment and conditions of services of employees in private school. Under the provisions of the Secondary Schools Code, which regulated the conditions of services of the employees in non-government school, an employee of non-government secondary school was provided a remedy of filing an appeal before the Education Officer, Deputy Director of Education and Director of Education against the order of termination, removal, dismissal, reduction in rank or supersession. There was no finality attached to the order passed by the first Appellate authority or by the second Appellate authority. Under the provisions of the Act by Section 9, remedy against the order of termination, reduction in rank, dismissal, removal or supersession was provided to a tribunal constituted under the Act and by virtue of the provisions of Section 12 the order passed by the Tribunal was declared to be final. Thus, one change that was brought about in this regard by the provisions of the Act was that in stead of the officer of the Education Department hearing appeals against the orders passed by the Management, against the employee now the School Tribunal presided over by a Judicial Officer was given power to hear those appeals and second change that was brought about was that the order passed by the School Tribunal was declared to be final and the jurisdiction of the civil court to entertain a suit against the order passed by the School Tribunal was expressly barred.

8. On behalf of the Respondents, it was submitted before us that in a large number of appeals filed before the School Tribunal against an order terminating services of an employee, the management has terminated the services of the employee concerned because the authorities of the Education Department of the Government of Maharashtra have not granted approval to the appointment of the concerned employee. It is submitted that when this Court considers the question about maintainability of a civil suit against the order of termination of services, this Court has also to take into consideration the aspect of termination of services being brought about by the management as a consequence of non-approval of the appointment of the employee concerned. It is submitted that there are certain judgments delivered by this Court which hold that an appeal against the order terminating the services of an employee of a private school whose appointment has not been approved by the Education Department is not competent u/s 9. It is further submitted that in case of non-approval, the order issued by the Management terminating the services of an employee is really a consequential order. The real reason behind the order in the non-approval of the

appointment by the Education Department. Because of certain provisions of the Act, the School Tribunal is not competent to issue any directions to the State Government or its officer. Therefore, the School Tribunal is not in a position to judge the validity or otherwise of the order made by the Officer of the Education Department refusing to approve the appointment and therefore, the employee of a private school in such matters are facing difficulties in as much as they have to file either a civil suit or a writ petition under Article 226 of the Constitution of India before this Court challenging the order passed by the officers of the State Government declining to approve their appointment and then file an appeal against the termination order. It was urged before us by the learned Counsel appearing for both sides that considering the number of matters which are coming before the tribunal belong to this category it is necessary for us to consider this aspect of the matter. It was also urged that any decision rendered by us on the question of maintainability of civil suit and as regard width of the jurisdiction of the School Tribunal will be incomplete if we do not consider this aspect of the matter, because a very large number of appeals that come before the School Tribunal belong to this category.

9. So far as concept of approvals of the authorities of the Education Department to appointment made in a school are concerned, in the Act itself we do not find any provision. Perusal of Sub-rule 2 of Rule 3 of the Rules framed under the Act however shows that it contemplates the management obtaining previous approval of the Deputy Director being obtained by the management to the appointment of a Head Master when a person who is fully qualified for the post is not available for appointment. It may be pointed out here that this is a previous approval and not a post-facto approval. Similarly, Sub-rule (5) of Rule 3 also contemplates prior permission of the Education Department being obtained before making direct appointment to the post of Head Master. Perusal of Rule 6 of the Rules shows that if the management wants to appoint a person as a teacher who does not possess requisite training qualification, it can do so after obtaining previous approval of the officers of the Education department. Thus, whenever approval of the Education department is contemplated by the Rules, it is a previous approval which is contemplated and post-facto approval is not contemplated. In other words there is no provision either in the Act or in the Rules framed thereunder which obliges the management of a private school to obtain a post-facto approval to any appointment made in a private school. Our attention was invited to a judgment of the Division Bench of this Court in the case of *Shailaja Ashokrao Walse Vs. State of Maharashtra and others*, , and specifically to the observations in paragraph 12 of that judgment, which read as under:-

12. Coming to the basic issue regarding approval to the appointment of the teachers by the Education Officer, it is required to be noted that Secondary School Code, M.E.P.S. Act and/or M.E.P.S. Rules do not specifically provide for such approval being granted by the Education Officer or by any authority created thereunder. However, the scheme of the Code, M.E.P.S. Act and the M.E.P.S.

Rules, contemplates a direct supervision by the Education Officer on the strength of the teaching and non-teaching staff in the schools, appointments to be made in the prescribed manner, appointment orders to be issued in the prescribed format, appointments to be made of backward class teachers as specified in Rule 9 of the M.E.P.S. Rules and teachers to be given prescribed pay scales. It is provided in Rule 8(2) of the M.E.P.S. Rules that after the appointment of the teaching as well as non-teaching staff is made, names, particulars, qualifications and experience of the persons so appointed shall be forwarded within a fortnight from the date of each such appointment to the Education Officer and in the case of Junior college of Education to the Deputy Director of Education. It is thus clear that a duty is cast on the Education Officer or the Deputy Director of Education to ensure that teachers with requisite qualifications are appointed and the reservation policy is duly followed by the school managements and that such appointments are made only against existing vacancies as per the sanctioned staffing pattern in the prescribed manner. It must, therefore, be presumed that the scheme of the Code, the Act and the Rules envisage and imply the action of approval by the Education Officer in respect of the appointment of the school teachers.....

as also to what is contained in paragraph 13 of that judgment, which reads as follows:-

13. We are, therefore, of the view that an appointment of a teacher either in the primary school, secondary school, junior college, etc. is required to be approved by the Education Officer and the Education Officer while discharging this duty performs an implied statutory function under the provisions of the M.E.P.S. Rules.

Thus, the Division Bench in Shailaja Walse's case has held that though there is no specific provision either in the Act, the Rules framed thereunder or the Secondary Schools Code, it is implicit in the scheme of the Act, Rules and Secondary Schools Code that appointment of a teacher made in a private school is required to be approved by an officer of the Education Department. This obviously is an approval after the appointment is made and not previous approval, though the Division Bench in Shailaja's case was considering the case of appointments of teachers in primary schools who do not hold requisite training qualification and therefore their appointments would have required previous approval. In this background, now we have to see another judgment of the Division Bench of this Court in the case of Anna Manikrao Pethe Vs. The Presiding Officer, School Tribunal and others, of the judgment the Division Bench has observed thus:-

"While disposing of this petition, we deem it appropriate to observe that when such applications u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, are filed before the School Tribunal by the teachers challenging any act of termination on the part of the Management, it will be necessary for the Tribunal to frame and decide three preliminary issues, viz., whether the School was a recognised school as defined under the M.E.P.S. Act; whether the appointment of the concerned teacher was

made as per Section 5 of the M.E.P.S. Act and the Rules thereunder; and whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the Act as well as the Rules framed thereunder including the Government Regulations issued from time to time regarding reservations etc. These preliminary points are required to be framed and decided before the appeal proceeds on merits and even if such points are not raised by any of the parties to the appeal, it would be proper on the part of the Tribunal to frame such issues suo motu before examining the merits of the case. In case the findings to any of the preliminary issues are in the negative, the appeal must fail then and there itself, so far as the relief of reinstatement/continuation in service is concerned.

Perusal of the above quoted observations of the Division Bench indicates that in each appeal that comes before the Tribunal, one of the preliminary issue that has to be framed by the Tribunal is whether the appointment of the Appellant was approved by the Education Department, and if the Tribunal finds that the appointment was not approved then the Tribunal will not have the jurisdiction to entertain the appeal. It may be pointed out here that perusal of the judgment of the Division Bench in Anna Manikrao Pethe's case shows that the issue about requirement of approval to the appointment of a teacher in a private school did not arise in that case.

10. The position therefore that emerges is that as per the Division Bench of this Court appointment of every teacher in a private school requires an approval from the Education Department and if the services of a teacher who has been appointed in a private school are terminated that order can be challenged before the School Tribunal only if the appointment of that teacher was approved by the Education Department. In other words, the remedy of an appeal to the School Tribunal against the order of termination of services by an employee of a private school is not available if the appointment of that employee was not approved by the Education Department. The corollary is that the Act itself does not provide a remedy to an employee of a private school against an order terminating his services, if his appointment is not approved by the Education Department. Therefore, in the face of the above referred two judgments of the Division Bench there is no question of, because of the provisions of Section 9 of the Act, a civil suit of such an employee being not maintainable before the civil court.

11. It was urged before us that the judgment of the Division Bench holding that approval to the appointment of an employee in a private school by authorities of the Education Department is necessary does not lay down good law. It was urged that whenever the legislature finds it necessary to provide for approval of an outside authority, it made provisions for such an approval and in each case it was previous approval which was contemplated. It was submitted that even the terms on which the grant-in-aid is given to the private school by the State Government also do not contemplate the management obtaining post-facto approval to all the appointments that it makes, and therefore, according to the learned Counsel

appearing for the employee the Division Bench is not right in laying down that in each case of appointment in a private school an approval of the authorities of the Education Department is necessary. It is submitted that such a decision would be contrary to the scheme of the Act and the Rules. It was submitted that the Division Bench has held that such an approval is necessary after finding that the Act, the Rules and the Secondary Schools Code do not have an express provision requiring such an approval. It was submitted that by inference such a requirement cannot be read, especially when according to the judgment of another Division Bench of this Court absence of approval to an appointment deprives the employee concerned of a remedy of filing an appeal u/s 9. We find considerable force in this submission. As observed above, the Division Bench, which has decided Shailaja Walse's case referred to above, noted that the Second Schools Code, Act and the Rules do not specifically provide for appointment of an employee in a private school being approved by the authorities of the Education Department. But the Division Bench held that even though there is no specific provision in the scheme of the Act and the Code such an approval is implicit. Similar situation appears to have been considered by the Supreme court in its judgment in *Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another*, . In that case two persons were appointed as teachers in a private Government aided school recognised by the Government of Karnataka on probation. After some time they were prevented from working by the management. They filed in appeal before the Tribunal. The stand of the management before the Tribunal was that the teachers were appointed on probation subject to the condition that their appointment would be approved by the authorities of the Education Department and as the approval was not granted, they ceased to be in employment. The stand of the teachers was that there is no provision either under the Act or the Rules for obtaining approval of appointment as Asst.teacher and therefore preventing them from working on the ground that their appointments were not approved is not proper. The Supreme Court after going through the provisions of the Act, the Rules and Grant-in-Aid Code found that there is no express provision made obliging the management to obtain any approval for appointment of the teachers. Therefore, in paragraph 9 the Supreme Court observes thus:-

9. We noticed earlier, the appointment and conditions of service of teachers in private Government aided institution are governed by the provisions of the Act and the statutory rules. The said provisions are self-contained Code relating to the appointments of teachers in private aided institutions. The field relating to method of appointment of regular teacher in a Government aided institution is fully covered by the provisions of the Act and the rules and we do not find any provisions in the Act empowering the Government to supplement the rules by executive instructions. It is no doubt true that if the Act had empowered the State Government to issue administrative instructions by way of supplementing the rules by executive instructions. It is no doubt true that if the Act had empowered the State Government to issue administrative instructions by way of

supplementing the rules, the position would be different. In such a case the Government would have power to fill up the gaps in the rules by issuing administrative instructions if the rules are silent on the subject provided the same is not inconsistent with the statutory rules already framed. In the present case, the Act does not empower the State Government to supplement the rules by issuing administrative instructions or orders. In the absence of such provision in the Act, it is not open to the Government to supplement the rules by the executive orders. If we accept the argument of learned counsel for the respondent, it would be repugnant to Sections 3 and 15 of the Act.

The Supreme Court, thereafter, examined the provisions of Rule 16 of the Grant-in-Aid Code and found that the Rule 16 of Grant-in-Aid Code provides for such an approval. Thereafter, the Supreme Court in paragraph 11 observes that:-

11. The aforesaid non-statutory rule was substituted in the Code by Government Order dated 17-6-67 and whereas the statutory Rules governing the method of appointment of teacher came to be published in the Gazette on 31-1-78. It is, therefore, manifest that non-statutory Rule 16 was never intended to supplement the statutory Rules and, therefore, not applicable in the case of appointment of teacher in private Government aided institutions. yet, there is another reason why the non-statutory Rule 16 is not applicable in the case of appointment of teachers in the institution. The administrative instructions pertaining to grant-in-aid for secondary schools have been issued with the object of extending and improving institutions, and for that purpose a sum of money is annually allocated by the Government for distribution as grant-in-aid to schools subject to observance to the conditions specified therein. The conditions embodied in Rule 16 of the Grant-in-Aid Code provide for the conditions under which financial assistance would be made available to the Management of the institution by the Government. If there is a breach of the conditions of the grants-in-aid, it is open to the government either to suspend or cancel the financial grant to the institution. But such breach of conditions of the Grant-in-Aid Code would not make the appointment of a teacher in the institutions invalid when the method of appointment of teachers in the institution is fully covered by the Act and the statutory rules. It is, however, true that for breach of administrative instructions which have no statutory force, a public servant or the person guilty of such a breach can be subjected to disciplinary action; but the same cannot be pressed into service for action which has the effect of modifying the statutory rules. We are, therefore, of the view, that breach of non-statutory Rule 16 would not render the appointments of appellant invalid.

In our opinion, it is clear from the above judgment of the Supreme Court in Dhamanekar's case that if the method of appointment and the procedure of appointment is provided by the Act and the Rules framed thereunder and there is no provision made either in the Act or in the Rules for an approval of the appointment by an outside authority, that requirement of obtaining approval cannot be said to be implicit. In the case before the Supreme Court, at least in

the Grant-in-Aid Code there was a provision for obtaining approval to the appointment. In our case, the division Bench itself has observed that even in the Grant-in-Aid Code there is no such provision. In our opinion, therefore, there is a considerable substance in the submission of the learned Counsel appearing for the teacher/employee that the judgment of the Division Bench in Shailaja Walse's case does not lay down good law.

12. It was further urged that the judgment of the Division Bench holding that an appeal u/s 9 by an employee whose appointment has not been approved is not competent also does not lay down good law. It is submitted that power to make appointment is vested by the Act and the Rules in the management. The appointment made by the management is not made, by the provisions of the Act and the Rules, subject to any approval from any outside authorities. Therefore, denying the remedy of an appeal to an employee whose appointment is not approved by the Education Department would amount to doing violence to the scheme of the Act and the Rules. It was submitted that the question whether the appointment was approved or not and whether for that reason the appeal would be maintainable or not did not arise for consideration before the Division Bench, which issued these directions. We find considerable force in this submission also. Making jurisdiction of the School Tribunal to entertain an appeal dependent on the approval of the appointment of the employee concerned by the Education Department, in our opinion, amounts to legislation by the court, which is not permissible.

13. So far as the jurisdiction of the civil court to entertain a suit in relation to the orders which can be subjected to challenge in an appeal filed u/s 9, the first judgment on the point delivered by this Court appears to be the judgment in the case of Janata Janardan Shikshan Sanshta. Perusal of that judgment shows that the Court held that "There is nothing in Section 9 of the Act, which expressly or by necessary implication takes away that right. What Section 9 of the said Act provides that in such a case the dismissed employee would have an additional remedy namely by way of appeal to tribunal constituted under the said Act and if an employee resorts to such a remedy then the decision given by the tribunal in the appeal would be final and liable to be challenged in any suit or other civil proceedings. It is only where the plain language of a statute either expressly bars or does so by necessary implication that a conclusion can be arrived at that the jurisdiction of the civil court is barred. But such a bar cannot readily be read into the provisions which do not contain any express provision or a necessary implication to that effect.

The second judgment is the judgment of the learned Single Judge of this Court in Rasta Peth Education Society's case. Perusal of paragraph 6 of the judgment of the learned Single Judge in Rasta Peth Education Society's case specifically refers to the judgment of the Supreme court in the case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, and the judgment of the Supreme court in the case of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram

Wadke of Bombay and Others, , as also the judgment of the Supreme Court in the case of Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), and the learned Single Judge in paragraph 7 has observed thus:

7. From the above decisions of the Supreme Court, it is clear that in the absence of exclusionary provision the availability of the remedy by way of appeal under the relevant service rules by itself is not sufficient to infer exclusion of the jurisdiction of the civil court. The jurisdiction of the civil court in such a case would depend upon the conditions indicated above. The remedy available under the Act, will not operate as a bar to the jurisdiction of the Civil Court. Such remedy under the special stature will be deemed to be concurrent leaving it open to the aggrieved person to choose one of them.

In paragraph 8, the learned Single Judge has observed that there is nothing in the scheme of the Act to justify inference of implied exclusion of the jurisdiction of the civil court. Perusal of the judgment of the learned Single Judge in the case of Satyawadi Ganpatrao Pimple and Ors. v. Aruna Ganpatrao Narwade and Anr., 2000 (2) M.L.J. 322 shows that the learned Single Judge has referred to the judgment of the learned Single Judge in Rasta Peth's case and has also noted that in Rasta Peth Education Society's case the judgment of the Supreme court in Dhulabhai v. State of M.P., Premier Automobiles Ltd. v. Kamalkar Shantaram Wadke and the judgment of Rajaramkumar Bhargav have been considered for holding that the jurisdiction of the civil court is not barred. The learned Single Judge, thereafter, proceeds to consider the judgment of the Supreme Court in Dhulabhai's case and Premier Automobiles's case and in the case of Shri Panch Nagar Parakh Mandsaur Vs. Purushottam Das, . The learned Single Judge observed thus in paragraph 7 of the judgment:

7. The principles laid down in the above enunciations of the Apex Court, undoubtedly make it clear that in a special statute if there is no specific bar to the jurisdiction of a Civil Court, it is necessary to examine whether such a jurisdiction is impliedly barred and if the special stature provides for measure to deal with the rights/grievances effectively and gives finality to such orders, the jurisdiction of the Civil Court is impliedly barred. It is, therefore, necessary to examine the issue at hand viz. the bar of Section 9 of the M.E.P.S. Act against maintainability of Civil Suit before the Civil Court on the touchstone of these principles.....

Thereafter, the learned Single Judge examined the provisions of the Act and the Rules framed thereunder and in paragraph 11 has observed thus:-

11. A detail examination of the scheme of the M.E.P.S. Act and the Rules framed thereunder, as has been summarised hereinabove would indicate that sufficient provisions have been made to deal with the grievances relating to the service matters of the employees in the private schools whether aided or unaided and the remedy so provided is, undoubtedly efficacious as well as complete. As has been held by the Supreme Court in the cases of Shri Panch Nagar (supra) and

Dhulabhai (supra) when the provisions of a special statute do not specifically bar maintainability of a suit u/s 9 of the Code of Civil Procedure, it is necessary to examine the provisions of such special statute to find out whether the jurisdiction of Civil Court is impliedly barred and if regards be had to the provisions of the M.E.P.S. Act and the Rules framed thereunder, undoubtedly, the orders passed by the tribunal u/s 9 as well as orders passed by the Education Officer, under Rule 12 of the M.E.P.S. Rules, are final in nature and there is a forum provided to deal with almost every grievance relating to service matters of the employees in the private schools. In a Civil suit filed u/s 9 of the Code of Civil Procedure, the court cannot go beyond giving a declaration or granting relief as may be provided under the Specific Reliefs Act. As against this, the powers given to the tribunal under sections 11 and 13 of the M.E.P.S. Act are by way of a full, complete and speedy remedy, inasmuch as, the tribunal is empowered to substitute the punishment or modify the punishment order and grant relief, including reinstatement in service with or without back wages or part of back wages or compensation. Undoubtedly, such a relief cannot be granted by the civil court while decreeing a suit for declaration etc. It would not be in the interest of employees in the private schools to hold that the remedy of filing a civil suit u/s 9 of the CPC is not barred u/s 9 of the M.E.P.S. Act. The employees in private schools may consist of teaching and non-teaching and so far as non-teaching employees are concerned, they may have a remedy of a dual nature inasmuch as to approach the School Tribunal u/s 9 in respect of the matters provided thereunder or to the Education Officer in respect of the matters provided thereunder or to the Education Officer in respect of the matters provided thereunder or to the Education Officer in respect of the matters regarding seniority or any other grievance and alternatively, to approach the Labour Court/ Industrial Court, under the provisions of the M.R.T.U. & P.U.L.P. Act, 1971. However, so far as the teaching staff is concerned, they have the remedy only under the M.E.P.S. Act and the Rules framed thereunder in respect of the service matters and for both, the teaching as well as non-teaching staff, the remedy of filing a civil suit u/s 9 of the CPC in respect of the matters set out in section 9 of the Act and Rule 12 of the M.E.P.S. Rules is impliedly barred. In view of this enunciations of the Apex Court, as referred to hereinabove. It is, therefore, clear that the law laid down by this Court in the case of Rasta Peth Education Society (supra) can no more be held to be a good law. The view taken by me while disposing the Civil Revision Application No. 930/1999 that a civil suit challenging the order of the reversal, was not maintainable- is correct and the review application, therefore, stands rejected.

From the perusal of paragraph 11 quoted above, it is clear that one of the aspect that has weighed with the learned Single Judge is that in a civil suit filed by an employee a civil court cannot go beyond giving a declaration or granting relief as may be provided under the Specific Relief Act. The court has further observed that the civil court will not be able to grant decree of reinstatement in favour of an employee of private school whose services have been terminated. These

observations of the learned Single Judge were obviously based on a line of judgments of the Supreme Court including the judgment of the Supreme Court in the case of Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, , where the Supreme Court considered the scope of the jurisdiction of the civil court to pass a decree of reinstatement in service of a teacher working in a college affiliated to University. The Supreme Court after considering its judgment in the case of Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, has observed thus in paragraph (17):-

17. On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions- (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law: and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

In so far as an employee of a private school are concerned, undoubtedly conditions of services are governed by the Act and the Rules, and therefore, in terms of what is observed by the Supreme Court in paragraph 17 of its judgment in Vaish Degree College case a teacher would be entitled to institute a suit seeking a decree of reinstatement in service, if the termination of his services is brought about in breach of the Act and the Rules. But such a teacher will have to satisfy one more requirement that the management which has terminated his services is a statutory body. In this regard observations of the Supreme Court in paragraph 16 of the judgment in Vaish Degree College case are relevant. They read as under:-

The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute."

Therefore, before and employee of a private school become entitle to institute a suit claiming a decree of reinstatement in service he will have to satisfy that the management is either a public or a local authority or is a body created under the statute. It appears that this question has been considered by the Supreme Court in its judgment in the case of Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another, in relation to a co.operative bank registered under the Co.operative Societies Act. The Supreme Court in paragraph 4 of this judgment observed thus:-

4. In view of the rival submissions at the Bar, the first question that arises for consideration is, what is the status of the defendant- District Co.operative Bank? The status of the said bank is no doubt of a Co.operative Society, registered

under the U.P. Co-operative Societies Act, 1965 and is constituted under the U.P. Co. operative Land Development Bank Act, 1964. But an examination of the different provisions of the rules, bye-laws and regulations, unequivocally indicate that the State Government exercise all-pervasive control over the bank and its employees and the service conditions of such employees are governed by statutory rules, prescribing entire gamut of procedure of initiation of disciplinary proceedings by framing a set of charges and calumniating in inflicting of appropriate punishment, after complying with the requirements of giving a show cause and an opportunity of hearing to the delinquent. This being the position and in view of the judgment of this Court in U.P. State Co. operative Land Development Bank Ltd. V. Chandra Bhan Dubey , the conclusion is irresistible that the defendant bank is undoubtedly an instrumentality of the State. Once it is held that the defendant is a statutory body and is a State and in the matter of passing an order of dismissal of an employee it did not follow the mandatory provisions of the rules and regulations and the order was passed in gross violation of principle of natural justice, then the third exception to the general principle that contract of personal service cannot ordinarily be specifically enforced, as indicated in S.R. Tewari Vs. District Board Agra and Another, which has also been relied upon in Vaish Degree College case, (1976) 2 SCC 58: AIR 1976 SC 883: 1976 LIC 576 would apply and, therefore, the conclusion of the High Court must be held to be erroneous in the facts and circumstances of the erroneous in the facts and circumstances of the present case. The decision of this Court in Integrated Rural Development Agency Vs. Ram Pyare Pandey, will have no application at all, as in that case the agency in question was held not be an instrumentality of the State nor the State had any control over the affairs of the society and in such case, therefore, the relationship of master and servant is purely one of contract and in that case, the relief of specific performance of contract of service cannot be granted. But the aforesaid decision in our considered opinion, is of no application to the facts and circumstances of the present case. In the aforesaid premises, we have no hesitation in coming to the conclusion that the High Court committed serious error of law in interfering with the judgment and decree of the lower Appellate Court. We, therefore, set aside the impugned judgment and decree of the High Court in Second Appeal No. 683 of 1996 and affirm the judgment of the 1st Additional District Judge, Ghazipur, and consequently, the suit is decreed.

Perusal of the observations of the Supreme Court in above paragraph (4) shows that because in terms of the provisions of the Co. operative Societies Act, the rules and bye-laws, the State Government exercises all pervasive control over the bank and its employees and the service conditions of such employees are governed by statutory rules. The Supreme Court has held that the Co. operative society is an instrumentality of the State, and therefore, an employee whose services are terminated by such Co. operative society in breach of the provisions of the statutory rules governing the condition of service can institute a suit for a decree of reinstatement in service. If we look at the provisions of the Act, the

rules framed thereunder and the provisions of the Secondary Schools Code which have been held to have statutory force by the Supreme Court by its judgment in Pandke's case, the authorities of the State Government exercise all pervasive control over the management. The condition of services of the employees of the private school are governed by the Act and the Rules. The Act and the Rules make elaborate provisions in regard to initiation of disciplinary proceedings etc. In our opinion, therefore, in the face of the judgment of the Supreme Court in Ram Sahan Rai's case referred to above, an employee of the private school now may be entitled to institute a suit in a civil court seeking to institute a suit in a civil court seeking a decree of reinstatement in service. It thus appears that one of the consideration that weighed with the learned Single Judge in Stayawadi's case may not now be relevant in view of the subsequent judgments of the Supreme Court.

14. So far as the orders terminating etc. of an employee are concerned and so far as the Second Schools Code is concerned, there was a remedy of an appeal provided against those orders before the authorities of the Education Department. Similarly, in the Act a remedy of an appeal is provided to the School Tribunal. Under the Secondary Schools Code, the authorities of the Education Department, who were vested with appellate powers had all the powers which the tribunal under the Act possesses i.e. power to set aside the orders and power to grant reinstatement in service. Therefore, in our opinion, it cannot be said that by the Act any new remedy is being provided. The School Code before the commencement of the Act contained provisions regulating the conditions of the services of the employees in recognized non-government schools. The Act contains provisions regulating the conditions of services of an employee of a private school which are essentially a non-government recognized school. The School Code provided an administrative appeal to the authorities of the Education Department against the order of termination etc. and the Act now provides for an appeal to the tribunal constituted under the Act. As observed above, by the Act the nature of the forum is changed namely instead of providing an appeal to the administrative authority now appeal is provided to the judicial authority. Under the Secondary Schools Code by the Code itself no finality was attached to the order passed by the Appellate Authority. However, by virtue of Section 12 now finality is attached to the order passed by the School Tribunal. While Secondary Schools Code was in the field, civil suits were filed by the employees of the non-government recognized school challenging the orders passed by the management in relation to the termination of their services. Perusal of the provisions of Section 15 shows that those provisions contemplate transfer to the tribunal of all the appeals filed by the employees pending before the authorities of the Education Department against orders which can be subjected to challenge u/s 9. It is to be noted here that before us it was stated that when the Act came into force there were several civil suits pending where either orders passed by the management regarding termination of the services of the employees were challenged or where the orders passed by the authorities of

the Education Department in appeal were challenged. But the Act nowhere provides for transfer of civil suits where orders passed by the management were under challenge to the school tribunal. We have seen above that now as a result of judgments of two Division Benches of this Court a remedy of filing an appeal u/s 9 against the order of termination etc. is available to an employee whose appointment has been approved and therefore, obviously an employee whose services are terminated by the management because of non-approval of his appointment by the Education Department will be entitled to institute a civil suit challenging the order of termination of his services. One more feature of the Act and the power of the Tribunal which has to be noted is that u/s 11 the School Tribunal can make an order against the management and that order is binding on the management because of the provisions of sub-section 3 of Section 11 so far as the State Government and its authorities are concerned, the Tribunal cannot make any order which will bind the State Government. The power of the School Tribunal is only to make recommendation to the State Government.

15. It is further to be seen here that the Act does not provide any effective remedy for breach of all the rights that have been created by the Act. An appeal u/s 9 is provided only against the order of termination of services, of dismissal, of reduction in rank and an order of supersession. The Rules make elaborate provisions regarding transfer of an employee, but there is no effective remedy provided by the Act if an employee is transferred in breach of the provisions of the Rules. The Act and the Rules make elaborate provisions regarding the procedure to be followed by the management in making appointment. But if an appointment is made by the management in breach of the provisions of the Act and the Rules, then there is no remedy provided by the Act and the Rules. Several such examples can be given. Therefore, it cannot be said that the Act provides effective remedy for enforcement of all the rights that are created by the Act. The provisions in relation to appointment, holding of departmental inquiry, termination of services were all made in the Secondary Schools code and as per the judgment of the Supreme Court in Pandke's case the Secondary Schools Code has statutory force, and therefore, it cannot be said that by the act any new rights have been created, which were not previously in existence. One more aspect to which we have referred to above, which is relevant and which has not been considered by the learned Single Judge in Satyawadi's case is that the Act while making provision for transfer of matters which matters which were pending on the date of commencement of the Act before the authorities of the Education Department to the tribunal did not make similar provision in relation to the matters which were pending before the civil court on the date of commencement of the Act. Perusal of paragraph (11) of the judgment of the learned Single Judge in Satyawadi's case shows that the judgment of the another learned Single Judge in Rasta Peth's case has been held to (sic) not laying down good law, only because the learned Single Judge who decided Rasta Peth's case did not consider the judgment of the Supreme Court in Shri Panch Nagar Parakh Mandasur's case referred to above.

16. One of the orders against which an appeal can be preferred before the tribunal u/s 9 is an order made by the management superseding an employee in appointment to any post to be filled in by promotion. This clearly indicates that if an employee is not promoted to a higher post in accordance with his rank in the seniority list, he can claim that he has been super sedced by the management and right of an appeal is available to him. So far as the aspect of the management filling in post by promotion is concerned, Rule 3(3)contemplates the post of Head Master of a school being filled in by appointment of the seniormost member of the teaching staff as "Head Master". Rule 3(3) reads as under:-

3(3) The Management of a school including a night school shall fill up the post of the Head by appointing the seniormost member of the teaching staff (in accordance with the guidelines laid down in Schedule "F" form amongst those employed in a school (if it is the only school run by the Management) or schools (if there are more than one school (excluding night school) conducted by it) who fulfils the conditions laid down in Sub-rule (1) and who has a satisfactory record of service.

Perusal of this rule shows that for being entitled to the promotion to the post of Head Master, the teacher concerned must be the seniormost teacher in the school and he must have satisfactory record of service. In other words, promotion to the post of Head Master is to be made by the Management on the principle of seniority-cum-merit. Perusal of Sub-rule (3) of Rule 3 also shows that the seniority is to be reckoned in accordance with the guidelines laid down in Schedule (sic). Similar is the position in relation to appointment to the post of Head-Mistress of a Girls Secondary School or Junior College of Education for Women. Perusal of Rule (5) shows that promotion to the post of supervisor is also to be made on the basis of seniority-cum-merit. So far as "seniority" is concerned, it is apparent from the provisions of Rule 4 as also Rule 5 that seniority is to be reckoned in accordance with the guidelines found in Schedule (f) of the Rules. Perusal of Schedule (f) shows that it refers to Rule (12). It further shows that according to Schedule (f) for the purpose of fixation of seniority of teachers in Secondary Schools, Junior Colleges of Education and Junior College Classes attached to secondary schools and Senior Colleges. Teachers are categorized into several categories from (A) to (H). Categories (A) and (B) consist of persons who are holding the post of Head Master. From categories (C) to (H), the categorisation is made on the basis of educational and training qualification of the teachers. Schedule (f) also contains guidelines for fixation of seniority of non-teaching staff. Then the next relevant provision is Rule 12, which reads as under:-

12. Seniority List- Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule "F". The seniority list so prepared shall be circulated amongst the

members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained.

(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management.

(3) Disputes, if any, in the matter of inter (sic) seniority shall be referred to the Education Officer for his decision.

Perusal of the above quoted provisions of Rule (12) shows that duty is cast on the management to prepare and maintain seniority list of teaching and non-teaching staff in the School as per the guidelines found in schedule (f). Further duty is cast on the management to circulate the seniority list prepared by it amongst the staff members and to obtain their signatures in acknowledgment of having received copy of the list. Any changes that are made in the list are also to be brought to the notice of the staff. Sub-rule (2) of Rule 12 vests a right in the employees of the private school to lodge their objections to the seniority list with the management. It also obliges the management to consider those objections. Sub-rule (3) of Rule 12 shows that if there are any disputes about inter se seniority raised by the members of the staff, the management has to referred those disputes to the Education Officer for his decision. What is pertinent here is that the provisions of the rule themselves do not say that the decision of the Education Officer on any dispute referred to him by the management is final, but it appears from Rule (12) shows that if there are any disputes about inter se seniority raised by the members of the staff, the management has to referred those disputes to the Education Officer for his decision. What is pertinent here is that the provisions of the rule themselves do not say that the decision of the Education Officer on any dispute referred to him by the management is final, but it appears from Rule (12) that the seniority list gets finalized only after the disputes are decided by the Education Officer. A controversy arises when a teacher is promoted according to his rank in the final seniority list, but another teacher who is below him in the seniority list challenges the promotion and disputes the rank assigned to that teacher in the seniority list. The question that arose for consideration before the learned Single Judge of this Court in the case of Burondi Lodghar referred to above was whether the decision of the Education Officer on the placement of a particular teacher in a particular place in the seniority list can be subjected to challenge in an appeal before the School Tribunal. The learned Single Judge of this Court in that case held that the decision of the Education Officer on the dispute is final in relation to the seniority list and it cannot be reopened before the School Tribunal. As observed above that judgment was considered by the Division Bench of this Court in the case of Umesh Vispute and this Court observed thus in paragraph 21 of their judgment:

21. We, after having heard the parties at length and after having considered the aforesaid judgments, are of the considered view that finalisation of the seniority

list in terms of Rule 12 of the Rules is not final and conclusive and not binding on the tribunal and Section 9(1) of the Act has overriding effect as it opens with non-obstante clause and the dispute relating to seniority list can also be considered by the Tribunal as an incidental question while deciding the controversy in regards to the supersession. The dispute relating to supersession in the matter of promotion squarely lies within the jurisdiction of the Tribunal. The view taken by the learned Single Judge of this Court in *Burondi K. Lodghar v. Vilasrao M. Desai* (supra) cannot be said to be a good law. We, therefore, have no difficulty in upholding the jurisdiction of the Tribunal to go into the question of seniority of the teachers. The Tribunal can also go into the question of supersession by the Management while making promotion.

It is clear from this judgment that the Division Bench has held that the decision of the Education Officer on the dispute that is referred to him under Rule 12 is neither final nor conclusive and therefore that controversy can be reopened before the Tribunal in an appeal filed u/s 9 and that controversy can be decided by the School Tribunal, as that question is incidental to the main question raised before the Tribunal namely supersession of the employee while making promotion. It was pointed out to us that while rendering this judgment the Division Bench in *Umesh Vispute's* case did not note the judgment of the Division Bench of this Court in the case of *Saramma Varghese Vs. Secretary/ President, S.I.C.E.S. Society and Others*, , specially what is observed by the Division Bench in paragraphs 30 and 31 of that judgment. Paragraphs 30 and 31 of that judgment reads as under:-

30. Seniority of teachers in Schools is determined in accordance with the Act and the rules. The senior-most member of the teaching staff is appointed as the Assistant-Head of the School. The seniority list has to be prepared and circulated amongst the members of the staff. The circulation of the seniority list is in the nature of a notice to the concerned teachers of their position on the ladder of seniority, so that they are made aware of their position in regard to the prospect of promotions. The management is required to obtain signatures of the teachers in token of having received a copy of the seniority list. The duty of the management to (sic) the signatures of the teachers implies two things-firstly if not objected to, the teacher is bound by the seniority determined by the management and secondly an aggrieved teacher may object to the seniority assigned to him. A specific right to object to the seniority has been created. It follows that such objection has to be adjudicated upon. Rule 12(2) enjoins the management to take into consideration the objections raised to the seniority list. This procedure prescribed by Rule 12 creates an adjudicatory mechanism. That is why Rule 12(2) enjoins the management to consider the objections. Rule 12(3) creates the forum for adjudication of the dispute. The Education Officer, the respondent No. 3 to this petition is the forum. These facts clearly establish the adjudicatory role of the Education Officer. The Education Officer cannot, in the very nature of things, adjudicate upon such a dispute in vacuum of arbitrarily. The act and the Rules provide the guidelines which shall inform the Education

Officer in discharging his adjudicatory function. He is required to follow the rules prescribed by the statute. What is referred to the Education Officer is a "dispute". It follows therefore, that there are rival parties whose competing claims have to be adjudicated upon. This brings into play the principles of fair play and objectivity. The obligation to circulate the Seniority List to the teachers, the obligation of the Management to take into consideration the objection, reference of the disputes as to seniority to the Education Officer, and his duty to decide in accordance with the Rules in Schedule F, create in the Education Officer quasi-judicial authority. He may not possess the trappings of a Court such as the power to issue summons, examine witness and so on. Yet his is a judicatory function together with the facts set out above undoubtedly clothe him with quasi-judicial authority.

31. For the reasons stated in paragraphs 29 and 30 above, we are of the opinion that the Education Officer appointed under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and the Rules made thereunder, is an authority invested with the power to adjudicate upon the disputes in regard to seniority of teachers. He possesses the adjudicatory authority by virtue of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, and the Maharashtra Employees of Private Schools (Conditions of Service) Rule. His office is a creature of the statute. While deciding the disputes as to the seniority he performs quasi-judicial functions. We, therefore, hold that in the discharge of his functions under Rule 12, the Education Officer is a Tribunal within the meaning of Article 227 of the Constitution of India. This Court, therefore, has jurisdiction to entertain the petition and issue appropriate directions.

Perusal of the above observations of the Division Bench shows that the Division Bench has held that while exercising powers under Rule 12 the Education Officer, as a statutory authority, decides disputes between the teachers as to the seniority list and he has all the trappings of a Tribunal and therefore his order is capable of being challenged by filing a petition under Article 227 of the Constitution of India. It goes without saying that if the order of the Education Officer is not final for the purpose of the Act, then a petition under Article 227 of the Constitution of India may not be maintainable. Our attention was also invited to another decision of the Division Bench of this Court in the case of *Atmaram Raghunath Paste v. The Chairman (sic) Gegaon*. 2004 (1) All M.R. 90. In this judgment the Division Bench has referred to the judgment of the previous Division Bench in *Samma's case*. In that case, order was made by the Education Officer fixing seniority of a teacher in a private school. That order was challenged by filing a petition under Article 226 of the Constitution of India before this Court. By the order Respondent No. 7 in that petition was considered to be senior to the Petitioner and the management was directed by the Education Officer to promote the Respondent No. 7 to the post of Head Master. The objection that was raised before the Division Bench was that an appeal against such an order is competent and therefore the order can not be challenged in this Court by filing a Writ Petition. The observations of the Division Bench in

paragraphs 11, 12 & 13 in Atmaram Raghunath Paste's case are relevant. They read as under:-

11. So far as preliminary objection regarding maintainability of petition is concerned, we see no substance in the said argument. Section 9 of the Act is clear, and requires an employee in private school to approach the Tribunal by filing an appeal if he is dismissed, removed or his service is terminated or he is reduced in rank by an order passed by the Management or he is superseded by the Management or he is superseded by the Management.

12. In the instant case, the order which is impugned in the present petition is not passed by the Management but by respondent No. 4. It is true that in pursuance of the said order, a consequential action can be taken by the management and if the petitioner is aggrieved by that action, he can invoke the provisions of Section 9 of the Act and file an appeal. That, however, does not mean that the petitioner cannot make grievance against the order passed by respondent No. 4, impugned in the present petition. Once we hold that the order, which is impugned in the present petition, is passed by respondent No. 4, we have to hold that the petitioner cannot approach the Tribunal by invoking the provisions of Section 9 of the Act. The petition is, therefore, maintainable.

13. In Saramma Varghese, it was held by Division Bench of this Court that a person aggrieved by an order passed by Education Officer may approach this Court by invoking Article 227 of the Constitution, as such officer can be said to be "Tribunal" within the meaning of the said Article and, hence, is subject to supervisory jurisdiction of this Court.

Thus, two Division Benches of this Court have held that while exercising his powers under Rule (12) the Education Officer acts as a tribunal and that order can be subjected to challenge in a petition filed under Article 226 of the Constitution of India. The Division Bench in Vispute's case, however, has taken a view, of course without referring to the judgment of the Division Bench in Saramma's case, that a petition will not be entertained by the Court because there is an alternate remedy of challenging that order before the School Tribunal available to the teacher. The controversy, therefore, is whether an order passed by the Education Officer under Rule (12) can be subjected to challenge in an appeal filed u/s 9. The second question that arises for consideration in view of the question that has been framed by the learned Single Judge in this case is whether a civil suit challenging the order passed by the Education Officer under Rule 12 is maintainable. Answer to this question depends on the answer to the question whether an order made by the Education Officer under Rule 12 of the Rules is to be treated as final under the Act, though the Act and the Rules do not specifically say so. We have indicated above that there appears to be contradiction in the views taken by the Division Benches of this court regarding the nature of the order made under Rule 12 of the Rules. Therefore, no clear answer can be given by us to this question until the apparent conflict is resolved.

17. From what has been observed above, it is clear that in order to answer the issue that is referred to us, not only the judgments of the three learned Single Judges have to be considered but the judgments of the Division Benches referred to above on the aspect of necessity of approval of the appointment of the employees, jurisdiction of the School Tribunal to entertain any appeal by an employee whose appointment has not been approved, the jurisdiction of the School Tribunal to reopen the decision of the Education Officer on the question of seniority, have to be considered. As indicated above we find ourselves unable to agree with view taken by two Division Benches on the question of necessity of approval of an appointment either for its validity or for conferring the jurisdiction on the tribunal. We also find, as indicated above, judgments of the Division Benches in relation to the provisions of Rule 12 of the Rules are not in consonance with each other. In this situation, therefore, if we make an attempt to answer the issue that is referred, we will not be able to give a complete answer.

18. Taking overall view of the matter, therefore, in our opinion, it would not be desirable on our part to express any final opinion on the controversy which we have narrated in detail above. In our considered opinion, it would be in the fitness of things if the entire controversy is considered by a larger Bench which would be in a position to say whether the judgment of the various Division Benches referred to above lay down good law or not? We, therefore, direct the Registrar General to place the papers of this case before the Hon'ble the Chief Justice to consider the question of constitution of a Larger Bench for considering the controversy involved.