

(2014) 03 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 4639 of 2011

State of Gujarat

APPELLANT

Vs

Amarsinh Kanabhai Zala

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Higher Secondary Schools Services Tribunal Act, 1983 — Section 14, 14(1), 14(1)(b)

Gujarat Secondary Education Act, 1972 — Section 36

Citation : (2015) 1 GLH 89 : (2014) LabIC 2185

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Ronak Raval, Asstt. Govt. Pleader, Advocate for the Appellant; S.I. Nanavati, Sr. Adv., Nikhil S. Kariel, Viral K. Shah and B.M. Mangukia, Advocate for the Respondent

Judgement

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C.L. Soni, J.—In this group of petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners-State of Gujarat and the District Primary Education Officer have challenged the order dated 29.10.2010 separately made by the Gujarat Higher Secondary Schools Services Tribunal on identical facts situation in different applications preferred by the respondent No. 1 in each of the petitions. Special Civil Application No. 4939 of 2011 is preferred against the order of the Tribunal passed in Application No. 118 of 2009, Special Civil Application No. 4641 of 2011 is against the order passed by the Tribunal in Application No. 121 of 2009 and Special Civil Application No. 4643 of 2011 is against the order made in Application No. 122 of 2009.

2. Few relevant facts as could be noticed from the order of the Tribunal are stated below:--

2.1. Pursuant to the advertisement issued by Shri. Bhagwanbhai Bhabhabhai

Vidyalaya, now managed by the Administrator-respondent No. 2, respondent No. 1 applied for the post of teacher. Selection Committee was constituted as per the regulation and the respondent No. 1 of Special Civil Application No. 4639 of 2011 was selected pursuant to the interview held on 7.2.1992, respondent No. 1 of Special Civil Application No. 4641 of 2011 was selected pursuant to the interview held on 18.2.1995 and Special Civil Application No. 4643 of 2011 was selected pursuant to the interview held on 19.11.1994. The management then sent proposal to the District Education Officer-petitioner No. 2 for his approval to the selection of respondent No. 1 for their appointment as teacher. Petitioner No. 2 gave approval and based on such approval, respondent No. 1 came to be appointed as teacher in the above-said school. Date of order of appointment of respondent No. 1 of Special Civil Application No. 4639 of 2011 is 14.2.1992, respondent No. 1 of Special Civil Application No. 4641 of 2011 is 14.3.1995 and respondent No. 1 of Special Civil Application No. (sic) 29.11.1994. On 5.4.2005, i.e. after about 13 years of service put in by respondent No. 1 of Special Civil Application No. 4639 of 2011 and more than 10 years of service put in by respondent No. 1 of Special Civil Application Nos. 4641 of 2011 and 4643 of 2011, they received letter from the management that their appointments were not approved by the Audit Branch of the Commissioner of Schools for the salary grant and salary paid to them till 1997 was to be recovered. The said order of the Commissioner was challenged by the respondent No. 1 before the Tribunal. However, since it was pointed out that since the order pertained to audit objection, appeal would lie before the Commissioner. Accordingly, the respondent No. 1 was permitted to file appeal before the Commissioner. It was the case of respondent No. 1 before the Tribunal that the Commissioner did not provide any hearing to them and no order was passed but suddenly, after three and half years, respondent No. 1 received order dated 22.12.2009 from the Administrator of the school terminating the services of respondent No. 1 on the ground that as per the order of the Commissioner dated 11.11.2009 and as per the instructions of the District Education Officer dated 18.12.2009, the service of respondent No. 1 has been terminated with immediate effect. It was the case of respondent No. 1 that neither the Commissioner gave any hearing to respondent No. 1 before passing the order nor even the Administrator gave any hearing or any notice to respondent No. 1 before passing the order of termination dated 22.12.2009. It is the case of respondent No. 1 that since their appointments were after following due procedure of law and getting approval from the District Education Officer and since they had already completed about 14 to 17 years of service, their services could not have been terminated without following the procedure of law as envisaged under Section 14 of the Gujarat Higher Secondary School Services Tribunal Act, 1983 ("the Act" for short) and the order passed by the Commissioner was bad in law as the same was passed without following the due procedure of law. The application filed by respondent No. 1 before the Tribunal was opposed on the ground that No Objection Certificate got by the management for making appointment to the post of teacher was changed by misrepresenting and committing fraud with the office of the District Education Officer and the

respondent No. 1 of each of the petitions were given appointments against the vacancies reserved for other categories of the candidates. The application was further opposed on the ground that since appointment of respondent No. 1 was irregular, it was not approved by the audit department. It was stated before the Tribunal that when such fraudulent act of the management was noticed, the District Education Officer made report for taking over the management in the year 2002 and thereafter, the Commissioner passed order for taking over management and of not granting approval to the appointment of respondent No. 1 and to the salary grant for respondent No. 1 and for recovery of the salary paid to respondent No. 1.

2.2. On the basis of the evidence adduced before the Tribunal, the Tribunal came to the conclusion that the appointment of respondent No. 1 was after NOC, advertisement, selection by the legally constituted Selection Committee and after obtaining prior approval of the DEO. Such legal appointment could not be said to be void ab initio. Therefore, the procedure under Section 14(1)(b) of the Act was required to be followed. On such conclusion, the Tribunal allowed the application of respondent No. 1 and quashed the order of termination dated 22.12.2009 and also the order dated 11.11.2009 passed by the Commissioner of Higher Education and ordered to continue respondent No. 1 in service with regular salary including the past salary, by treating the same admissible for the purpose of grant.

3. I have heard learned advocates for the parties.

4. Learned Assistant Government Pleader Mr. Ronak Raval appearing for the petitioners in all the petitions submitted that though the posts of teachers were reserved for OBC and Scheduled Caste category candidates, for which earlier NOC was asked for by the management of the school, however, the DEO subsequently changed the said NOC on misrepresentation of the management and the respondent No. 1 of each of the petition was beneficiary of such change made in NOC. Mr. Raval submitted that when the posts were meant to be filled in by the reserved category candidates and the same were filled by getting NOC changed fraudulently by the management, the appointment of respondent No. 1 by the management was ab initio void and therefore, no procedure for terminating the services of respondent No. 1 under Section 14 of the Act was required to be followed. Mr. Raval submitted that the fact of fraudulently obtaining NOC could be known by the concerned authorities when the DEO made report in the year 2002 to the Joint Commissioner of Education for taking over the management of the school and only thereafter, necessary action for disapproving the grant of salary of respondent No. 1 could be taken and on the basis of the order of the Commissioner of Higher Education disapproving the salary grant since the services of respondent No. 1 were required to be terminated, consequential order terminating the services of respondent No. 1 was passed by the respondent No. 3 on behalf of the management. Mr. Raval submitted that since the Commissioner of Higher Education had considered

aspects about the NOC and selection of respondent No. 1, no fresh procedure for terminating the services of respondent No. 1 was required to be followed. Mr. Raval submitted that by the act of the management of getting NOC changed, only the respondent No. 1 was benefited and therefore, the appointment of respondent No. 1 could be said to have been obtained by misrepresentation and fraudulent act and therefore, such appointment was null and void and it was required to be cancelled for which no procedure was required to be followed. Mr. Raval submitted that one of the conditions of appointment order issued to respondent No. 1 was that the appointment of respondent No. 1 was subject to the audit and therefore, when during audit, it was found that the selection and appointment of respondent No. 1 was made on the post which was reserved, the Commissioner, being the approving authority, was justified in relying on such audit objection and passed the order disapproving the salary grant for respondent No. 1 and consequently, the respondent No. 3 was also justified in cancelling the appointment of respondent No. 1. Mr. Raval thus submitted that the Tribunal by quashing and setting aside the order of termination as also the order of the Commissioner of Higher Education exceeded in its jurisdiction and therefore, such order of the Tribunal is required to be quashed and set aside by this Court while exercising the powers under Articles 226 and 227 of the Constitution of India.

5. Mr. Raval has relied on the decision of this Court in the case of *Vijaynagar Education Society v. Gujarat Secondary Education Tribunal, Ahmedabad and others*, reported in 1997 (2) GLH 475.

6. Learned senior advocate Mr. S.I. Nanavati appearing with learned Mr. Nikhil S. Kariel for respondent No. 1 in each of the petitions while countering the arguments made by learned Assistant Government Pleader Mr. Raval submitted that the Tribunal has recorded the finding that the appointment of respondent No. 1 was on the basis of NOC given by the DEO and after following the due legal procedure of selection. Mr. Nanavati submitted that the Selection Committee was legally constituted and amongst other candidates who appeared before the Selection Committee, where the Government's representative was also a party, the respondent No. 1 came to be selected. Mr. Nanavati submitted that thus the appointment of respondent No. 1 was legal and for terminating the services of respondent No. 1, procedure under Section 14(1)(b) of the Act was required to be followed. Mr. Nanavati submitted that indisputably, no such procedure was followed and therefore, the Tribunal rightly quashed the order of termination. Mr. Nanavati submitted that there is no allegation or charge of misrepresentation or fraud against the respondent No. 1 on the post of teacher in the school run by the respondent No. 3. Mr. Nanavati submitted that the respondent No. 1 could not have misrepresented or indulged into any fraudulent act as it was only after the advertisement was given by the management for filling the post of teachers, the respondent No. 1 took step to participate in the selection by applying for the post. Mr. Nanavati submitted that when the management asked for NOC obtained from the DEO, the respondent No. 1 was nowhere there nor even it is the case of

the petitioner that respondent No. 1 conspired or associated themselves with management of the school in getting NOC from the DEO. Mr. Nanavati submitted that in absence of the above-said allegation or charge against the respondent No. 1, simply because the respondent No. 1 became beneficiary of appointment, it cannot be said that the appointment of respondent No. 1 was void ab initio. Mr. Nanavati submitted that when the Commissioner of Higher Education passed order in the year 2005 for disapproving the salary grant in respect of the appointment of respondent No. 1, based on which the recovery of the salary paid to respondent No. 1 was sought, almost more than 13 years in the case of respondent No. 1 in first petition and more than 10 years in the case of respondent No. 1 in the second and third petition was completed and when the services of respondent No. 1 were terminated by order dated 22.12.2009, almost more than 17 years in the first case and 14 years in the second and third case were over. Mr. Nanavati submitted that the order made by the Commissioner since affected the conditions of service of respondent No. 1 as regards the salary of respondent No. 1, the Tribunal was within its jurisdiction to entertain the applications of respondent No. 1 even against the order of Commissioner of Higher Education. Mr. Nanavati submitted that for any reason if service of any secondary teacher is required to be terminated, provision of Section 14 of the Act is required to be mandatorily followed. Mr. Nanavati submitted that since no procedure as per Section 14 of the Act was followed before terminating the services of respondent No. 1, the Tribunal could not be said to have committed any error in holding that the order of termination passed against the respondent No. 2 was illegal. Mr. Nanavati submitted that even when the Commissioner of Higher Education passed order for disapproving the salary grant of respondent No. 1, no hearing was afforded to the respondent No. 1. Not only this but the respondent No. 1 was not issued any show-cause notice as regards the charge of misrepresentation or fraud nor the respondent No. 1 was provided any material relied on by the Commissioner of Higher Education for passing the order disapproving the salary grant and for recovery of salary paid to respondent No. 1. Mr. Nanavati submitted that since the order of the Commissioner and the order of the management in terminating the services of respondent No. 1 was based on the allegation of misrepresentation and fraudulent act in getting NOC changed for appointment of respondent No. 1, such action was punitive in nature and therefore, the strict principles of natural justice were required to be followed. Mr. Nanavati thus urged to dismiss the petitions.

7. Mr. Nanavati has relied on the following decisions:--

- (1) In the case of B.M. Shah Education Society v. Shilpaben B. Chauhan, reported in 1997 (2) GLH 618;
- (2) In the case of Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others, ;
- (3) In the case of Bipinchandra P. Patel (Vakil) Vs. Mafatlal Ambalal Prajapati .

8. Learned advocate Mr. Viral K. Shah appearing for the Principal of the school - respondent No. 2 submitted that though the posts were to be filled in by reserved category candidates, at the relevant time, the management got NOC changed so as to facilitate the appointment of respondent No. 1 on the vacant posts of teacher in the school. Mr. Shah submitted that in fact one of the aspiring candidates from the reserved category had approached the Tribunal at the relevant time and though there was interim stay against the management, the management went ahead with the advertisement and filled the post by general category candidates and thus there was straight benefit to the respondent No. 1 on account of the fraudulent act of the management of getting NOC changed. Mr. Shah submitted that on account of mismanagement of the school, the Government decided to take over the management of the school and in the order of taking over the management of the school, the concerned authority has in detail stated as to how the management committed serious irregularity, including illegalities about appointment of teachers in the school. Mr. Shah submitted that when the appointment of respondent No. 1 was made in total disregard of the policy of the Government, such appointment could be said to be null and void and for cancellation of which, no procedure was required to be followed. Mr. Shah submitted that the Commissioner of Higher Education had examined the record pertaining to grant of NOC for appointment of respondent No. 1 and found that the management got NOC changed by misrepresentation and in fraudulent manner and then passed order for disapproving the salary grant in respect of the appointment of respondent No. 1 and therefore, such appointment of respondent No. 1 was disapproved by the competent authority of the State Government. In view of such order of the Commissioner of Higher Education, the appointment of respondent No. 1 since was invalid in the eye of law, the Tribunal was not right in coming to the conclusion that before terminating the service of respondent No. 1, procedure under Section 14 of the Act was required to be followed. Mr. Shah submitted that the Tribunal even otherwise lacked jurisdiction to examine the challenge made against the order passed by the Commissioner of Higher Education as the Tribunal has jurisdiction to examine only the disputes which fall under Section 8 of the Act. Mr. Shah submitted that if the initial appointment of respondent No. 1 was void ab initio, such appointment could not be saved simply on the ground that the respondent No. 1 has served as teacher for long time in the school. Mr. Shah thus submitted that the impugned order the Tribunal cannot stand scrutiny of law.

9. Nobody has appeared for respondent No. 3, who is the Administrator of the school appointed by the Government.

10. Learned advocate Mr. B.M. Mangukia appearing for respondent Nos. 4 and 5 in each of the matters submitted that the management had not committed any illegality in getting NOC from the DEO. Mr. Mangukia submitted that the appointment of respondent No. 1 as teacher was approved by the DEO and therefore, the respondent No. 1 became entitled to serve as teacher and receive salary from the salary grant available to the management.

11. Having heard learned advocates for the parties, it appears that in the selection process undertaken by the school management in the year 1992 and 1995 for recruitment of teachers in the school, the respondent No. 1 had participated with other candidates and got selected for the post of teacher. It is not the case of the petitioners that the respondent No. 1 though not qualified, eligible or less meritorious than the other candidates, still was favoured by the management for appointment as teacher. It appears that the Selection Committee was duly constituted with one representative of the Government and by such Selection Committee, the respondent No. 1 was selected. There was neither any flaw in decision making process by the Selection Committee for appointment of respondent No. 1 nor was the appointment of respondent No. 1 was stated to be contrary to eligibility norms. Therefore, the appointment of respondent No. 1 could not be said to be either invalid or ab initio void. The allegation is that the management illegally changed the channel for filling the vacant post by getting change made in NOC from the DEO. But, based on such changed NOC, when the selection followed, the DEO further approved the selection and for about at least 10 years, no action was taken by any authority. The reason provided was that such illegal act of getting NOC changed could be known only when the management of the school was taken over in the year 2005 but then the respondent No. 1 even if could be said to be beneficiary of the selection procedure based on changed NOC, was not responsible for any act of the management.

12. There is no dispute about the fact that appointment of respondent No. 1 in the year 1992 and 1995, they have been getting regular salary from the salary grant available to the management till they were informed by the management vide letter dated 5.4.2005 that their appointments were not approved for the audit and there was order passed for recovery of their salary. There is also no dispute that even after the above-stated order for disapproving the appointment for salary grant in the audit, the respondent No. 1 continued to serve till the respondent No. 3 passed order dated 22.12.2009 terminating their services. Thus, the respondent No. 1 of first petition has by that time, put in around 17 and respondent No. 1 in other two petitions put in 14 years of service.

13. It is not the case of the petitioners that the respondent No. 1 was involved in the alleged misrepresentation or fraud for change of NOC by the DEO for recruitment of the teachers in the school on vacant posts. It appears that only after the school management gave advertisement on the basis of the alleged changed NOC for recruitment of teachers, the respondent No. 1 by applying for the post of teacher participated in the selection. Since they were qualified to be appointed and found meritorious amongst other candidates, they got selected by the Selection Committee and were appointed after approval by the DEO. Therefore, it cannot be said that the appointment of the respondent No. 1 was illegal. In such view of the matter, it was not open to respondent No. 3 Management to terminate the service of respondent No. 1 simply on the basis of the order made by the Commissioner of Higher Education without following any

procedure under Section 14 of the Act. Therefore, the Tribunal has rightly held such order of termination not in consonance with the procedure of law. There is no dispute about the fact that no such inquiry was conducted before putting end to the services of the respondent No. 1. Though it was case of the petitioners that before the Commissioner, the respondent No. 1 was called for hearing, before passing the order for disapproving appointment for salary grant and for recovery of the salary paid to the petitioners, however it appears that the respondent No. 1 was neither provided any material in connection with the allegation of change of NOC made by the DEO allegedly at the instance of the management nor even there was any real opportunity of hearing to the respondent No. 1. Non-providing the material relied on by the Commissioner of Higher Education and of not giving real opportunity of hearing to respondent No. 1 could be made out from the order of the Commissioner of Higher Education dated 11.11.2009 placed at Annexure-R2 at page 68 in Special Civil Application No. 4639 of 2011. In the said order, two dates of hearing are mentioned, one is 20.11.2006 and second is 17.8.2009. In between these two dates, there was long gap of nearly three years. The order does not reflect as to what hearing took place on first date nor even it reflects as to what were the contentions raised by respondent No. 1 on 17.8.2009. The respondent No. 1 has made serious grievance before the Tribunal that in fact, no hearing at all took place before the Commissioner. From the order of the Commissioner, it appears that the Commissioner took into consideration the record produced by the respondent No. 3-Administrator of the school and recorded finding for passing order disapproving appointment for salary grant. The respondent No. 1 was not given any opportunity to have the copy of any of the documents from the record perused by the Commissioner. The respondent No. 1 had, therefore, no opportunity to meet with the allegations of change in the NOC for filling the posts of teachers from the general category candidates by alleged misrepresentation before the DEO. On above such examination of the record by the Commissioner, the order of disapproving the salary grant and for recovery of the salary paid to respondent No. 1 from the date of their appointment till around the period of 1997 was made. Such order had removed the validity of the appointment of respondent No. 1 and their entitlement to receive salary as regularly and legally appointed teacher. Based on such order of the Commissioner, the services of the respondent No. 1 were put to an end to by the respondent No. 3 Administrator - the management without following any procedure whatsoever. In fact, when the orders by the Commissioner and the Administrator were passed, the management of the school was under the Government. Not only this but by way of salary grant, the respondent No. 1 was receiving salary from the Government through the management. Therefore, it cannot be said that the Tribunal had no jurisdiction to examine the legality or otherwise of the order made by the Commissioner. The above facts would strongly go to suggest that the dispute raised by respondent No. 1 before the Tribunal would encompass within it the order made by the Commissioner of Higher Education as it took away the appointment of respondent No. 1. Therefore, the contention raised by learned

advocate Mr. Viral Shah on behalf of the principal that the Tribunal has no jurisdiction to examine the legality or otherwise of the order of the Commissioner cannot be accepted.

14. The decision cited by learned Assistant Government Pleader Mr. Raval in the case of Vijaynagar Education Society (supra), shall have no application to the facts of the case. In fact, in the said case, the Court found, as a matter of fact, that appointment of teacher was procured by her father and since there was no approval to the appointment by the competent authority, the appointment was ineffective. In such fact situation, the Court held that the provision of Section 36 of the Gujarat Secondary Education Act, 1972 for following the procedure before terminating the service of the teacher, if allowed to be followed, then it would amount to perpetuate illegality.

15. In the case of B.M. Shah Education Society (supra), this Court while examining the issue about following the procedure under Section 14 of the Act has held and observed in paras. 8 and 9 as under:--

8. Likewise no error much less error apparent on the face of record could be contended about the conclusion that the termination order has been made in breach of principle of natural justice. The Tribunal has held that school management has not held enquiry as envisaged under Section 14(1) of the Act. It had not obtained permission of D.E.O. prior to issuance of termination order. Both are statutory requirements. These facts are not disputed before me. However, in this connection the only plea advanced before me was that where termination is affected on the ground of fraud holding of enquiry beyond the stage of giving show-cause notice is not necessary. Reliance was placed on a decision of this court referred to above.

9. Having carefully perused the aforesaid decision I am unable to find any such broad proposition in that. The court in the first instance found that termination of an employee wherein allegation of fraud, misrepresentation or mistakes are stated would amount to visiting the employee with evil consequences and permanently stigmatise him without following the rudimentary principles of natural justice. It would not be an order of termination simpliciter but it would be an order of termination based on the allegations of fraud, misrepresentation or mistake which would disentitle the employee from future employment in any public employment. Such an order therefore cannot be passed without following rudimentary principles of natural justice, namely of informing the party the reason for his termination and providing the opportunity to tender his explanation with evidence and consideration of such an explanation and evidence by the employer. The aforesaid ratio of the decision rather supports the conclusion of the Tribunal that holding of an inquiry before termination of services of an incumbent takes place on the ground of fraud, misrepresentation or mistake is rudimentary.

16. In the case of Bipinchandra P. Patel (Vakil) (supra), though in the context of

Section 40(B) of the Bombay Primary Education Act, this Court has held and observed in paras. 8, 9 and 10 as under:--

8. It is not in dispute that the respondent No. 1 is having requisite qualification to be appointed as Primary Teacher i.e. S.S.C. and P.T.C. It is not in dispute that the respondent No. 1 was appointed by order dated 22.8.1983 after interview process dated 19.8.1983. It is also not in dispute that the respondent No. 1 served with the petitioners management for a period of 20 years. It is also not in dispute that it is the very petitioners management who appointed the respondent No. 1 as far as back in the year 1983. It is also not in dispute that a show-cause notice came to be issued by the petitioners for the first time on 17.1.2003, by which, the respondent No. 1 was called upon as to why his service may not be terminated on the ground that his appointment is made contrary to the provisions of the Bombay Primary Education Act and Rules. Now the question which is required to be considered is whether can the petitioners management take disadvantage of their own wrong and that too after almost twenty years of service. It is required to be noted that it is not case of the petitioners management that the respondent No. 1 is not having requisite qualification and/or there is any other misconduct committed by the respondent No. 1. It is the contention on behalf of the petitioners management that at the relevant time when the respondent No. 1 was appointed as Assistant Teacher on 22.9.83, since Schedule-F was in force which required that the appointment should be made by the Selection Committee and therefore, when the appointment of the respondent No. 1 itself was not in accordance with law he is not entitled to any protection as envisaged under Section 40(B) of the Act and therefore, the Tribunal has materially erred in passing the order of reinstatement. It is also case of the petitioners that Schedule-F was stayed at the relevant time only qua the petitioners who had filed the Special Civil Applications. However, Shri Joshi, learned advocate appearing on behalf of the petitioners has failed to substantiate the said argument and has failed to show anything that the provisions of Schedule-F was stayed only qua the petitioners of those Special Civil Applications. Considering the fact that the Division Bench of this Court upheld vires of Schedule-F by judgment and order dated 1.9.1983 and till then implementation of Schedule-F was suspended, the Tribunal has come to the conclusion that at the relevant time when the respondent No. 1 was appointed, Schedule-F was stayed and therefore, it cannot be said that appointment of respondent No. 1 was illegal and contrary to the provisions of the Bombay Primary Education Act and the Rules. Therefore, it is held by the Tribunal that the respondent No. 1 was entitled to the protection as provided under Section 40(b) (1) of the Bombay Primary Education Act and services of the respondent No. 1 came to be terminated without holding any inquiry and obtaining any prior approval of the competent authority and accordingly, set aside the action of the petitioners in terminating service of the respondent No. 1 by directing the petitioners to reinstate the respondent No. 1.

9. This is a petition under Article 227 of the Constitution of India and there is no

jurisdictional error, much less, an error of law apparently seems to have been committed by the Tribunal which requires interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Even otherwise, considering the fact that the respondent No. 1 was issued interview call letter dated 12.8.1983 and interviews were held on 19.8.1983 and thereafter, he came to be appointed on 22.8.1983 by the petitioners management. But fact remains that the respondent No. 1 is having requisite qualification i.e. S.S.C. and P.T.C. and when the respondent No. 1 was allowed to work as Primary Teacher for twenty years, it is now not open to the petitioners management to terminate service of the respondent No. 1 only on the ground that appointment of respondent No. 1 was not in accordance with law and/or before appointing him, proper procedure was not followed. It is the petitioners management who appointed the respondent No. 1 as back as in 1983. Therefore, the petitioners cannot be permitted to take advantage of the situation and to contend that as they have committed wrong in appointing the respondent No. 1 before 20 years, they may be permitted to terminate services of the respondent No. 1. Permitting them to take benefit of such situation by the petitioners would be allowing the petitioners to take advantage of the wrong committed by them and that too after a period of twenty years which is not permissible. The respondent No. 1 cannot be told after twenty years that when he was appointed before twenty years, no proper procedure was followed by the management. Under the circumstances also, the judgment and order passed by the Tribunal is not required to be interfered with by this Court.

10. So far as the reliance placed on the judgment of the learned single Judge of this Court rendered in Special Civil Application No. 2463 of 1997 is concerned, in the facts of the said case, the petitioners teachers were not possessing any qualification of "Primary Teacher's Training" and that against requirement of 28 teachers for 27 classes, the school had appointed as many as 50 teachers including the petitioners of that Special Civil Application and considering the educational qualification and their seniority, the petitioners' services were terminated with a view to maintaining the students and teachers ratio and in the back drop of the aforesaid facts, the learned single Judge of this Court has dismissed the said Special Civil Applications when services of those teachers were terminated. Under the circumstances, the said judgment will not be helpful to the case of the petitioners in the facts and circumstances of the present special civil application. Similarly, there is not dispute with regard to the ratio laid down in the judgments of the Hon'ble Supreme Court of India but considering the facts and circumstances of the case on hands, the same are also not of any assistance to the case of the petitioners. At the cost of repetition, it is required to be noted that the respondent No. 1 was appointed after interview process and the respondent No. 1 is having requisite qualification and on facts and on appreciation it is held by the Tribunal that at the relevant time when the respondent No. 1 was appointed, implementation of the Schedule-F was stayed. Even otherwise as stated above, considering the fact that the petitioners

appointed respondent No. 1 in 1983 who was having all requisite qualification of becoming a Primary Teacher, cannot be permitted to take stand after a period of twenty years that the respondent No. 1 was appointed dehors the rules. Under the circumstances, the present special civil application requires to be dismissed and the same is dismissed accordingly.

17. In the case of Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others, , the Court held and observed in paras. 16 to 19 as under:--

16. It is settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, ; Tayabhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc., ; M. Meenakshi and Others Vs. Metadin Agarwal (D) by LRs. and Others, ; and Sneh Gupta Vs. Devi Sarup and Others, , this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

17. In State of Punjab and Others Vs. Gurdev Singh, , this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Ellore Rural District Council, (1956) 1 All ER 855 wherein Lord Radcliffe observed:--

An order, even if not made in good faith is still an Act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

18. In Sultan Sadik Vs. Sanjay Raj Subba and Others, , this Court took a similar view observing that once an order is declared non-est by the Court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity. 19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may

not be so for another purpose or another person.

18. In view of the above settled principles of law, no error could be found in Tribunal holding that procedure under Section 14(1)(b) of the Act was required to be followed before terminating the service of respondent No. 1. The Tribunal has rightly quashed the order of the Commissioner on the ground that such order was passed in violation of the principles of natural justice.

19. Ordinarily, when the Court finds in respect of any order adversely affecting the right of the party that the principles of natural justice are not followed, the Court might allow the concerned authorities to follow the principles of natural justice and take decision afresh. However, in the facts of the present case, when there is no allegation of misrepresentation or fraud against the respondent No. 1 in the matter of obtaining changed NOC, for appointment of teacher by the management in the school and since on the day when the services of respondent No. 1 were terminated, the respondent No. 1 in the first matter had almost completed 17 years of service and respondent No. 1 in the other two petitions had completed almost 14 years of services, the Court does not find it appropriate that the petitioners or any other concerned authorities may now follow the legal procedure against the respondent No. 1 for taking decision afresh in connection with their appointments. Therefore, the impugned order passed by the Tribunal in all three matters is required to be affirmed and the petitions are required to be dismissed.

20. At this stage, it is required to be mentioned that pending the applications before the Tribunal, the respondent No. 1 was permitted to work as teacher without claiming salary. But, they have succeeded before the Tribunal and they became entitled to claim salary. However, before this Court, at the time of grant of interim stay against execution of the order made by the Tribunal, the respondent No. 1 requested that if this Court was to grant interim stay against execution of the impugned order of the Tribunal, they might be permitted to continue to work as they were in service on condition that they shall not claim any salary till the matter was to be heard on the returnable date. The Court, therefore, passed the following order dated 16.1.2012:--

RULE returnable on 27th February, 2012 in each of the petitions.

Shri Subhash Barot, learned advocate waives service of notice of Rule on behalf of respondent No. 1 and Shri Viral Shah, learned advocate appearing for Shri Umang R. Vyas, learned advocate waives service of notice of Rule on behalf of respondent No. 2. Direct service is permitted so far as respondent Nos. 3 to 5 are concerned.

NOTICE as to interim relief also returnable on 27th February, 2012. In the meantime, there shall be ad-interim relief in terms of para. 7(c). At this stage, Shri Barot, learned advocate appearing for respondent No. 1 has stated that as the original petitioners are in service by virtue of the interim order passed by the learned Tribunal, they may be continued. However, they shall not claim any

salary till the matter is heard on that day. Under the circumstances, ad interim relief in terms of para. 7(c) with further modification that whatever the position prior to the final decision of the Tribunal, which is impugned in present petitions, be continued.

21. When such order was brought to the notice of the learned advocates appearing for the respondent No. 1, they fairly stated that this Court may provide in the final order that the respondent No. 1 shall not be entitled to salary after the above-said order dated 16.2.2012 till 31.3.2014 as these petitions are disposed of in the month of March 2014 and for that purpose, the respondent No. 1 may even tender their undertakings.

22. In view of the above and considering the facts and circumstances of the case and to see that there may not be any additional burden on the public exchequer, at least for the period from 16.1.2012 when the respondent No. 1 agreed not to claim salary till March 2014, the respondent No. 1 may not be made entitled to salary.

23. For the reasons stated above, the petitions are dismissed. However, the respondent No. 1 in each of the petitions shall not be entitled to claim salary for the period from 16.1.2012 till 31.3.2014. They shall however be entitled to claim salary and other consequential benefits except for the aforesaid period on the basis of the impugned order of the Tribunal. The respondent No. 1 of each of the petition shall file undertaking as stated above before this Court within a period of three weeks from today. Since the respondent No. 1 has been working without salary, the petitioners and respondent No. 3 are directed to comply with the judgment and order of the Tribunal and of this Court within a period of Three Months from the date of receipt of this order. Rule is discharged. In view of the order passed in the main petitions, no orders are required to be passed on the Civil Applications. The Civil Applications stand disposed of accordingly.