

(1982) 03 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 2633 of 1981

Vanmala S. Aney

APPELLANT

Vs

National Education Society, Khamgaon and others

RESPONDENT

Date of Decision : 16-03-1982

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(13), 3, 9(1)
Constitution of India, 1950 — Article 226
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 16, 2(12), 2(13), 2(9), 3
Trusts Act, 1882 — Section 5, 6

Citation : (1982) MhLj 403

Hon'ble Judges : V.V. Joshi, J;A.A. Ginwala, J

Bench : Division Bench

**Advocate : A.B. Oka, for the Appellant; C.G. Madkholkar and R.V. Patil for
Respondent Nos. 1 and 3 and W.M. Sombre, Govt. Pleader, for the Respondent**

Final Decision : Allowed

Judgement

A.A. Ginwala, J.—By this petition under Article 226 of the Constitution the petitioner who is serving as headmistress of Shri Arjun Khimji National High School and Junior College at Khamgaon, run by the National Education Society (respondent No. 1) challenges the constitution of the Committee set up to enquire into the charges framed against her and the order suspending her, as contravening certain provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the Act" and "the Rules" respectively).

2. In order to appreciate the rival contentions of the parties it will be convenient at this stage to set out the relevant provisions of law. The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 which has been placed on statute book for regulating recruitment and conditions of service of employees of all private schools in this State, except certain

employees of minority schools, whether receiving any grant-in-aid from the State Government or not, has been brought into force with effect from 15-7-1981. Sub-section (1) of section 4 of the Act empowers the State Government to make rules providing amongst others for conditions of service of such employees. In particular sub-section (6) of section 4 provides that no employee of a private school shall be suspended, dismissed or removed or his service shall not be otherwise terminated or he shall not be reduced in rank by the management, except in accordance with the provisions of the Act and the rules made in that behalf. Clauses (e) and (f) of sub-section (2) of section 16 of the Act empowers the State Government to make rules regarding the duties of such employees, Code of Conduct, disciplinary matters and the manner of conducting enquiries.

3. In exercise of this power the State Government, has made rules known as the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. These Rules have become effective from 16-7-1981. Sub-rule (5) of rule 28 makes an employee liable to be punished for misconduct, moral turpitude, wilful and persistent negligence of duty or incompetence. These terms are defined in that sub-rule. Rule 28 specifies the penalties which can be imposed for the above said lapses. Rule 31 classifies them into minor and major penalties, reduction in rank and termination of service being major penalties. Rule 33 prescribes the procedure for inflicting major penalties. Sub-rule (1) thereof which alone is relevant for our purpose is as follows:--

33. Procedure for inflicting major penalties -

(1) If an employee is alleged to be guilty of misconduct or misbehavior of a serious nature and if there is a reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employee under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer, in the case of the Junior College of Education and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall, subject to the provisions of sub-rule (5) stand suspended with effect from the date of such order.

It may be mentioned here that sub-rule (5) deals with suspension due to detention in custody pending criminal trial, preventive detention or imprisonment. Rule 34 deals with the various aspects of subsistence allowance, while Rule 35 lays down the conditions of suspension. It is in the following terms :

35. Conditions of suspension--

(1) In cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in

rule 33.

(2) The period of suspension shall not exceed four months except with the prior permission of such appropriate authority.

(3) In cases where the employee is suspended with prior approval, he shall be paid subsistence allowance under the Scheme of payment through Co-operative Banks for a period of four months only and thereafter, the payment shall be made by the Management concerned.

(4) In case where the employee is suspended by the Management without obtaining prior approval of the appropriate authority as aforesaid, the payment of subsistence allowance even during the first four months of suspension and for further period thereafter till the completion of enquiry shall be made by the Management itself.

(5) The subsistence allowance shall not be withheld except in cases of breach of provisions of sub-rules (3) or (4) of Rule 33.

4. Rule 36 provides for constitution and functioning of an Inquiry Committee where the Management decides to hold an enquiry in cases where major penalties are to be inflicted. In this petition we are concerned with sub-rules (1) and (2). They are as under :--

36. Inquiry Committee:

(1) If an employee is allegedly found to be guilty of misconduct or misbehaviour of serious nature, and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases, where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head concerned by registered post acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the enquiry, the Management shall authorise the President of the Management and the Chairman of School Committee to nominate two members on the Inquiry Committee one each from the Management and from the School Committee respectively and the President, and the Chairman shall communicate the names of persons so nominated to the Chief Executive Officer within fifteen days from the date of the decision of the Management. The third member of the Inquiry Committee shall be a person nominated by the employee concerned from

amongst the members of the Management or from amongst the employees of any private school. Where an enquiry is proposed to be held against the Head referred to in sub-rule (1) the Inquiry Committee shall consist of three members of whom one member shall be the President of the Management and two other members shall be nominated each one by the School Committee and the Head.

In order to understand these sub-rules correctly it is necessary to note the meaning which is attached to some of the terms occurring therein. The word "management" has been defined in section 2(12) of the Act, in relation to a school not administered by the State Government or local authority, to mean the person or body of persons administering such school, whether incorporated or not and by whatever name called. "Head" has been defined in section 2(9) of the Act to include inter-alia principal, head master or headmistress of a school. Clause (c) of Rule 2(1) defines "Chief Executive Officer" to mean the Secretary, Trustee, Correspondent or a person by whatever name called who is empowered to execute the decisions taken by the Management. Clause (i) of Rule 2(1) defines "School Committee" to mean a committee constituted in accordance with the provisions of Schedule "A" appended to the Rules.

5. Applying these terms to the facts of the present case, Management would mean the respondent Society or its Executive or Governing Body as constituted under its Articles of Association; Chief Executive Officer would mean the Secretary of the respondent Society; and Head would mean the present petitioner. There is a School Committee of the School of which the petitioner is the Headmistress. It has been impleaded as respondent No. 3 in this petition. The petitioner disputes the constitution of this Committee.

6. As said above schedule "A" appended to the Rules prescribes the constitution and function of the School Committee. Only paras (1) and (2) of this Schedule are material for our purpose and it will be better to reproduce them in extenso:

1. (a) Every School shall have a School Committee which will be responsible to Government for the management of the school. There shall be different School Committees for (i) Primary School, (ii) Secondary School including Higher Secondary class; if any, (iii) Junior College section attached to Senior College and (iv) Junior College of Education.

(b) A Society or Trust conducting a large number of schools shall have a Co-ordination Committee for all the Schools conducted by the Society or Trust or for a group of schools of Society or Trust in addition to the School Committee of each such School.

2. The School Committee shall consist of--

(a) Four representatives of the Management consisting of the President of the governing body or his nominee and three members nominated by the Governing body. The President of the governing body or his nominee shall be the Chairman of the Committee;

(b) One member from amongst the permanent teachers from the same school only in order of seniority by annual rotation;

(c) The Head of the School, who shall be ex-officio Secretary of the School, shall be responsible to keep a record of the proceedings of the Committee's meeting:

Provided that, in the case of a school run by a Trust which is registered as public trust the four representatives referred to in clause (a) shall consist of four founder members, if there are such members available. If there is one or more, but less than four such founder members the three or other requisite number of members shall be nominated by the founder members so as to make the total number of members four on the School Committee for such school.

To conclude this part of the Judgment it may be mentioned here that the Secondary School Code was the precursor of a bulk of the provisions contained in the Act and the Rules. The mode and manner of taking disciplinary action against an employee of a school were laid down in para 77.3 of that Code. However, since after the commencement of the Act and the Rules on 15th and 16th July, 1981 such matters would be governed by the provisions set out above.

7. In this legal background we may now turn to a few facts about which there is little dispute. In or about the month of January 1943, seven persons formed themselves into a Society by subscribing their signatures to a memorandum of association and filing the same with the Registrar, Joint Stock Companies, C.P. and Berar. The said Society was named as "The National Education Society, Khamgaon" and its object was to give instruction and diffuse useful knowledge to the public and to conduct the National Education Societies High School, Khamgaon and to conduct educational institutions for Commercial and other purposes. It was registered under the provisions of the Societies Registration Act, 1860 on 21-1-1943. On the application of the Bombay Public Trusts Act, 1950 to the region of the State, the said Society came to be registered as a public trust as u/s 2(13) of the said Act the phrase "public trust" is defined to include a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860. Section 9(1) of the Bombay Public Trusts Act states that for the purposes of that Act, charitable purpose includes "education" amongst others. This is how respondent No. 1 Society (hereinafter referred to as the respondent Society) came to be designated as a public trust.

8. For the District Level to National Level sports meet in 1979, the School headed by the petitioner had entered a Kabaddi team. The rival teams had complained that two of the players were above the prescribed age and one who was not a student of the said School had impersonated a student. It appears that after holding an informal inquiry the then President of the respondent Society administered a warning to the concerned staff including the petitioner. By his letter dated 5-5-1980 the Collector and Chairman of the District Sports Council, Buldhana, told the President that mere warning was not sufficient punishment for

the "grave offence" and that the institution ought to have taken serious notice of the affair and ought to punish the concerned staff severely. This was followed by a letter from the Deputy Director of Education, Amravati on 14-5-1981 in which he asked Management to take action against the petitioner and two other teachers under para 77.3 of Secondary School Code and submit a report to him within seven days. In pursuance of this the Secretary of the respondent Society by his letter dated 25-6-1981 called upon the petitioner to submit her explanation about the alleged lapses on her part. The petitioner submitted her reply on 2-7-1981. In the meeting of the Governing Body of the respondent Society held on 7-8-1981, the reply of the petitioner was considered and having found it not satisfactory, it was decided to nominate Seth Damji Anandji Vikramsi and Seth Mahavirprasad Asaramji, being members of the Governing Body on the Inquiry Committee as required by para 77.3 of the said Code. It was also resolved to ask the petitioner to nominate her representative on the said Committee within 15 days. It is alleged by the respondent Society in its return that this decision was taken in ignorance of the fact that the Act and the Rules had come into force on 15th and 16th July, 1981 respectively and it came to the knowledge of the management in the middle of August, 1981. Hence in a subsequent meeting held on 25-8-1981 the Governing Body resolved to institute an enquiry against the petitioner and the two teachers and to appoint an Inquiry Committee for that purpose under the said Act. It was further resolved that the Inquiry Committee in so far as the petitioner was concerned would consist of the following members:--

- (1) President of the National Education Society Khamgaon will be the convenor,
- (2) As proposed by the President of the School Committee of Shri Arjun Khimji National High School and Junior College, Khamgaon, the member of the School Committee, Shri Seth Damji Anandji Vikramsi will be the member.

The petitioner nominated Shri Somvanshi, Head Master of the Bharat High School, Amravati as her representative on the Inquiry Committee. The membership of the Governing Body of the respondent Society underwent a change in the general election held on 29-9-1981. The offices of President and Vice-President came to be occupied by some other persons. Hence on 1-10-1981 it was resolved to substitute the newly elected President for the former President. However, on 3-11-1981 the petitioner was informed that the following members had been deputed by the newly elected Governing Body on the Inquiry Committee already substituted:

- (1) President: Shri Seth Anandji Narpar Nagda or in his absence
Vice-President: Shri Fatechand Champaklal Mehta.

- (2) Shri Seth Damji Anandji Vikramshi
(Member from the School Committee).

Thus the Inquiry Committee which ultimately emerged consisted of:

- (1) President or in his absence the Vice-President.
- (2) Seth Damji Anandji Vikramshi as member of the School Committee.
- (3) Shri Somvanshi, nominee of the petitioner.

It is this composition of the Inquiry Committee, which is under challenge in this petition.

9. Coming to the facts regarding the suspension of the petitioner, it appears that after the receipt of the letter dated 14-5-1981 from the Deputy Director for holding enquiry against the petitioner under para 77.3 of the Code, the management approached the Education Officer (Respondent No. 2) for permission to suspend her, as without it would not be possible to get hold of the record from her. The Education Officer declined to grant the permission on the ground that it would be possible to take custody of the record without suspending the petitioner. By his letter dated 7-11-1981 the President renewed the request for permission to suspend the petitioner for the grounds mentioned therein. However, without waiting for the permission of the Education Officer, the Governing Body of the respondent Society suspended the petitioner with immediate effect on or about 15-11-1981 and she was informed accordingly by the President on 15-11-1981. In his letter dated 21-11-1981 the President informed the Education Officer that the petitioner was so suspended because the meeting of the Inquiry Committee was to be held on 17-11-1981 and the management was convinced that no enquiry could be held until she was suspended. The petitioner has challenged this order of suspension.

10. The objection to the composition of the Inquiry Committee proceeds on the ground that the School Committee itself is not properly constituted as required by para 2 of Schedule A and hence Seth Damji Vikramshi who has been nominated by such an invalidly constituted School Committee could not validly be a member of the Inquiry Committee. In this connection Mr. Oka, the learned counsel for the petitioner, heavily relies on the proviso to the said para. He submits that the respondent Society is a trust which has been admittedly registered as a public trust under the Bombay Public Trusts Act, 1950 and at least three founder members of this trust whose names are given in para 15 of the rejoinder filed by the petitioner are alive and available. According to Mr. Oka these three "founder members" ought to have been at least three of the four representatives of the management as required by the said proviso.

11. On the other hand Mr. Madkholkar the learned counsel for respondent Nos. 1 and 3 submits that the respondent Society is and never was a trust but is a Society incorporated as such and registered under the Societies' Registration Act. It has been registered as public trust not because it is a trust, express or constructive, for a public religious or charitable purpose, but because of the fact that a Society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, is included in the term "public trust" as defined in section 2(13) of the Bombay Public Trusts Act. In these

premises, according to Mr. Madkholkar, the proviso to para 2 of Schedule A of the Rules has no application and it cannot be said that the School Committee has not been duly constituted and for that reason the composition of the Inquiry Committee is bad.

12. In order to resolve this controversy it is necessary to see if the respondent Society is a trust as contemplated by the said proviso. The term "trust" is neither defined in the Act nor in the Rules. It is also not defined in the Bombay Public Trusts Act, 1950. However, section 2(2) of the latter Act states that those words and expressions which are used in that Act but not defined therein shall have the same meaning as assigned to them in the Indian Trusts Act, 1882. Section 3 of the Trusts Act, provides that a trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. Halsbury says that a trust in the modern and confined sense of the word is a confidence reposed in a person with respect to property of which he has possession or over which he can exercise power to the intent that he may hold the property or exercise the power for the benefit of some other person or object. Underhill has defined trust to mean "as equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property) for the benefit of persons (who are called beneficiaries or cestuis que trust) of whom he may himself be one and any one of them may enforce the obligation". (Underhill's Law relating to Trusts and Trustees, 13th Edition, page 1). As has been observed by a Division Bench of this Court in *D.R. Pradhan v. The Bombay State Federation of Goshaias and Panjrapoles* 58 Bom. L.R. 894, there can be no trust without property and there can be no trust without obligation attaching to property. From all this it would appear that property is sine qua non for the creation of a trust. Property is nucleus of a trust.

13. Let us then see how a trust is created. Section 5 of the Indian Trusts Act provides that no trust in relation to immoveable property is valid unless declared by a non testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by will of the author of the trust or of the trustee. It further says that no trust in relation to moveable property is valid unless declared as aforesaid or unless the ownership of the property is transferred to the trustee. Section 6 of that Act lays down that subject to the provisions of section 5 a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (Unless the trust is created by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee. It would thus appear that a mode has been provided for the creation of a trust. Thus besides property there has to be a trustee, an author of the trustee and an instrument. The formation of the trust has to go through all these formalities.

14. As regards the respondent Society it has not been shown that there is any testamentary or non-testamentary instrument under which it has been designated as trustee in respect of any property. No instrument creating a trust has been produced. On the other hand the petitioner herself has produced copies of the Memorandum of Association and Articles of Association under which the respondent Society has been formed and registered under the Societies Registration Act. By no stretch of imagination it is possible to say that these documents are instruments of trust as they satisfy none of the requirements set out above. The only conclusion which can be drawn on the basis of these two documents is that the institution is not a Trust but a Society.

15. Mr. Oka, however, submits that the respondent Society has to be termed as a trust because it has been registered as a public trust and is for all purposes a trust. In other words, according to him, if it is a public trust, it necessarily follows that it is a Trust. In para 7 above we have pointed out that at the inception the respondent society was formed or incorporated as a Society which came to be registered as such under the provisions of the Societies Registration Act, 1860 and subsequently by virtue of the extending definition of "public trust" u/s 2 (13) of the Bombay Public Trusts Act, 1950 which by using the word "includes" also takes within its fold a society formed for a religious or charitable purpose and registered under the Societies Registration Act, it was registered as a Public Trust under the Bombay Public Trusts Act. In short, the respondent Society did not come to be registered as a public trust because it was a trust prior to that, but because it is a Society which answers the description in the concluding portion of the definition of "public trust". But for this definition it would not have been registered as a public trust. Now the proviso to the second para of Schedule-A appended to the Rules (see para 6 above), would operate on "a Trust which is registered as a public trust". It does not apply to a Society which is registered as a public trust. This very Schedule contemplates Society as an entity different from a Trust. In this connection reference may be had to clause (b) of para 1 in which the words "Society or Trust" have been used at three places. This indicates that the rule making authority makes a distinction between a Society and a Trust. Obviously the proviso applies to an institution which was a trust prior to its registration as a public trust. If the intention was to apply it also to a society which is registered as a public trust the language employed in the proviso would have been "a school run by a Society or Trust which is registered as a public trust" as that would have been in consonance with the language used in clause (b) of para (1). But not using the word "society" in the proviso though it has been used in the said clause, clearly indicates that the rule making authority did not intend to bring a Society registered as public trust within the ambit of the proviso. If the intention of the rule making authority was to bring all institutions whether Societies or Trusts which are registered as public trusts, within purview of the proviso, it would have said "a registered public trust" or "a public trust which is registered as such" instead of saying "a Trust which is registered as public trust" particularly when in clause (b) of para (1) it has referred to Trust as

well as Society.

16. Another submission which has been advanced by Mr. Oka in support of his contention is that the words "founder members" occurring in the said proviso provides a clue to interpret the word "Trust" used therein. He submits that the term "Member" is more appropriately used in relation to a Society than a Trust, and the use of the word "member" according to Mr. Oka is a pointer to suggest that the rule making authority had a Society in mind more than a Trust. The use of the expression "founder members" in relation to "trust" in the same provision looks rather incongruous. This expression does not find place in the Indian Trusts Act or the Bombay Public Trusts Act. It is also not defined in the Act or the Rules. Perhaps the said proviso is the only place where it has been used. In this context it will have to be ascribed a meaning in relation to the word "trust" which precedes it, rather than the other way round. In that case it will mean those persons who have founded the trust. Such a construction would be more in keeping with the object of the proviso. It seems that the proviso has been inserted with the purpose of giving adequate and controlling representation to those who have created the trust by parting with their property, in the management of the affairs of the School. It is not, therefore, possible to uphold this submission of Mr. Oka.

17. In view of what we have said above we do not find any force in the contention that the Inquiry Committee has not been validly constituted because the composition of the School Committee violates requirements of the said proviso.

18. Now coming to the question of the suspension of the petitioner, it is submitted on her behalf, relying on sub-rules (1) of Rules 33 and 35 that it is imperative on the part of the management to obtain prior permission or approval of the appropriate authority before it orders suspension of an employee. According to the petitioner, these provisions are mandatory and any infraction thereof would render the order ineffective and void. It is urged that the order suspending the petitioner is void and of no effect since admittedly prior permission of the Education Officer (respondent No. 2) had not been obtained. In fact the respondent Society had written to respondent No. 2 to accord permission to suspend the petitioner pending the enquiry, but suspended her without waiting for it.

19. On the other hand Mr. C.G. Madkholkar for respondent Nos. 1 and 3 submits that the said provisions are merely directory and their violation, at the most would make the suspension irregular, but in no case void or inoperative. In this connection he lays stress on sub-rule (4) of rule 35, which provides that if the management suspends an employee without obtaining such prior approval, it has to pay the subsistence allowance even during the first four months, which it would have been spared if it had obtained such approval as provided in sub-rule (3). Mr. Madkholkar submits that apart from the omission to provide that any suspension in breach of sub-rule (1) of Rules 33 and 35 would be void or

inoperative as a consequence, sub-rule (4) of Rule 35 condones such a lapse on the part of the management on condition that it pays the subsistence allowance which it would not have been otherwise required to pay. As a further extension of this submission Mr. Madkholkar argues that sub rule (4) of Rule 35 by implication permits the management to suspend its employee without obtaining prior approval on pain of paying the subsistence allowance for the whole period. According to him, the provision for obtaining prior approval or permission has been made with a view to safeguard the public fund against payment of subsistence allowance in cases where the managements indulge in frivolous suspensions, rather than to protect the interests of the employees He further submitted that in the present case the first respondent had acted bona fide inasmuch as it did approach the second respondent for permission prior to the impugned suspension, but it had to resort to suspension without waiting for the permission as the meeting of the Inquiry Committee was scheduled for 17-11-1981 and no effective enquiry could be held without suspending the petitioner.

20. It would appear from sub-rule (1) of Rule 33 (quoted in para 3 above) that in cases involving major penalties the management has first to decide whether it should hold an enquiry and place the employee under suspension. If it decides to suspend him, it has to authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or in case of an employee attached to a Junior College of Education or Technical High School of the Deputy Director of Education. In the present case since the petitioner is not attached to Junior College of Education or Technical High School, the appropriate authority to grant permission would be the Education Officer, who is the second respondent herein. Rule 35 (quoted in para 3 above) prescribes the conditions of suspension and sub-rule (1) thereof specifically provides that in case where the management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority. At this stage we may note that sub-section (6) of section 4 of the Act lays down that no employee of a private School shall be suspended, dismissed or removed or his service shall not be otherwise terminated or he shall not be reduced in rank by the management, except in accordance with the provisions of the Act and the rules made in that behalf. Reading these provisions together and particularly noting the language employed therein, it prima facie appears that they are imperative and mandatory. The words "after" in the rule 33 (1) and "only" and "prior" in rule 35 (1) read in the light of section 4 (6) are a clear pointer in that direction.

21. No universal rule can be laid down to determine whether a particular provision in a statute or rule is mandatory or directory. The words of the statute must first be considered and then the nature, context and object of the statute as well as the consequences of various constructions. In each case one must look to the subject matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. The intention of the Legislature must be ascertained and given effect to even

though mandatory or directory words are thereby given their opposite meanings. However the Court should not depart from the literal meaning of such words unless the intention of the Legislature to give them a different meaning is clearly evident. If the provision involved relates to some immaterial matter, where compliance is a matter of convenience rather than substance, or directs certain actions with a view to the proper, orderly and prompt conduct of public business, the provision may be regarded as directory; but where it directs acts or proceedings to be done in a certain way and indicates that compliance with such provision is essential to the validity of the act or proceeding, or requires some antecedent and prerequisite conditions to exist prior to the exercise of the power, or be performed before certain other powers can be exercised, the statute may be regarded as mandatory. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory. (See The Construction of Statutes by Harl T. Crawford pages 515-16 and Haridwar Singh Vs. Bagun Sumbrui and Others, .)

22. In the first place it may be noticed that sub-section (6) of section 4 of the Act is couched in negative words. It prohibits inter alia the suspension of an employee of a private School except in accordance with the provisions of the Act and the Rules. It is a key to unlock the meaning of the relevant provisions. It is in the light of this provision that the relevant rules will have to be looked to and construed. This sub-section is a clear indication of the intention of the Legislature. In this context it would be apt at this stage to look to the object of the legislation which is amply clear from the preamble of the Act. The first para of the preamble says "it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular and the institution and the society in general, effectively and efficiently. Though the second para is not relevant for our purpose we may refer to it in order to have a clear idea of the whole object of the Act. It says, "it is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their mite for improving the standard of education". It is thus evident that this salutary piece of legislation has been brought about with the avowed object of providing security and stability of service to such employees for bettering the standard of education which is so vital for the progress of the nation. It takes the relations between the management and employees of private schools out of the purview of the general law of master and servant and puts them on the pedestal of statutory protection. It saves the employees from the whim and caprice of their employers and the policy of hire and fire so often indulged in by the latter. If this be the object and purpose of the enactment they must be given their due weight in construing its provisions including the Rules.

23. Mr. Madkholkar has laid down much stress on the absence of any provision to the effect that any infraction of the provisions contained in rules 33 and 35

regarding suspension would render the suspension void. On the other hand he seeks assistance from sub-rule (4) of rule 35 to justify the power of the management to suspend without prior approval of the appropriate authority. Now, provision for the consequences of violation a statutory requirement is not the sole test to determine if it is directory or mandatory. It is one of the several considerations, which go in this process. If the other tests give a clear indication mere failure to provide for the consequences of the breach of the provision would not make it directory. Sub-rule (4) of rule 35 in a way does provide for breach of sub-rule (1) therein by penalising the management with payment of the subsistence allowance even for the first four months it would not have to pay had it obtained prior approval. It is not possible to construe this sub-rule as conferring an implied power on the management to suspend the employee without obtaining the prior approval or permission of the authority concerned. Such a construction would defeat the very purpose and object of the legislation and render sub-rules (1) of Rules 33 and 35 a dead letter. In that case any management which has enough funds of its own could thwart these provisions with impunity and throw the security and stability of the service of the employee to the winds, which have been so preciously cherished in this enactment. Mr. Madkholkar is not right in saying that the prior approval for suspension is provided for only with a view to safeguard public funds. In this connection it has to be borne in mind that section 3(1) of the Act applies its provisions to all private schools in the State, whether receiving any grant-in-aid from the State Government or not. Now obviously the State would pay subsistence allowance for the first four months only to the employees of those schools which receive grant-in-aid from it. A school not receiving any grant-in-aid would not be entitled to any such subsistence allowance even if it suspends its employee with prior permission of the appropriate authority. It would, therefore, make little difference for such a school whether it obtains or does not obtain the approval for suspension because in any case it will have to pay the subsistence allowance to the suspended employee for the whole period of suspension. In that event the provisions contained in the rules regarding the procedure and conditions of suspension would be inapplicable to such schools, which would be contrary to the mandate of sub-section (1) of section 3 of the Act. It is crystal clear that in letter and spirit the enactment has been put on the statute book for the protection of the services of the employees not exempted u/s 3(2). Acceptance of the construction suggested by Mr. Madkholkar would frustrate the very object and purpose of the statute. On the other hand holding that these provisions are mandatory would advance them.

24. This problem can also be looked at from another angle. Rule 33(1) confers powers on the management to suspend an employee pending disciplinary action against him. However, this power is not absolute. It is hedged by the requirement of obtaining prior permission of the appropriate authority and the conditions laid down in rule 35. It is now well settled that where a power is given to do a certain thing in a certain way the thing must be done in that way or not

at all and that other methods of performance are necessarily forbidden. (See *Nazir Ahmed v. King Emperor* AIR 1936 PC 243, and *State of Uttar Pradesh Vs. Singhara Singh and Others*, . In *Harwar Singh v. Begun Sumbrui* (cited supra) the Supreme Court, quoting Maxwell on Interpretation of Statutes (6th Edition pages 649-50) has observed that where a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority. Applying these principles, therefore, to the provisions regarding suspension under consideration, it is clear that any other mode of suspension is forbidden and that the requirement of obtaining prior permission or approval of the appropriate authority is not an empty formality which can be dispensed with at the sweet will of the management.

25. For all these reasons, therefore, we are clearly of the view that the said provisions regarding suspension contained in the Rules are mandatory and any infraction thereof would render the suspension inoperative and ineffective. Since in the present case admittedly prior permission of the second respondent had not been obtained for suspending the petitioner, the order of suspension made by respondent Nos. 1 and 3 is of no effect and void.

26. In the result, the petition is partly allowed and the order suspending the petitioner as conveyed to her by the letter dated 15th November, 1981 (Annexure D) is hereby quashed and the rule is made absolute in terms of prayer clause (d) only. It is, however, made clear that it will be open to the respondents to suspend the petitioner after following the formalities and abiding by the conditions prescribed in the Rules. In the circumstances of the case each party shall bear its own costs.