
(2010) 04 BOM CK 0148

In the Bombay High Court

Case No : Writ Petition No's. 399, 418 and 419 of 2001

Vidya Bharti Shikshan Sanstha

APPELLANT

Vs

Presiding Officer, Additional School Tribunal and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5, 5(2), 9

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 25, 25(1), 28, 59, 6

Citation : (2010) 3 BomCR 312 : (2010) 112 BOMLR 1658

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : J.S. Mokadam, for the Appellant; A.Z. Jibhkate, for Respondent No. 2, D.B. Patel, AGP for Respondent No. 3 in Writ Petitions Nos. 399 and 419 of 2001 and I.L. Bodade, AGP for Respondent No. 3 in Writ Petition Nos. 418 of 2001, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—These petitioners by Management are directed against the judgments rendered on 21-9-2000 by the learned Presiding Officer, School Tribunal, Nagpur, allowing appeals of respondents No. 2 in each of the three petitions.

2. The petitioner-Society started a School on no-grant basis in 1991 and the School was provided grant-in-aid by the State Government from 1996. Respondent No. 2 in Writ Petition No. 399 of 2001 Sunildatta, who belongs to Scheduled Caste, was appointed as Assistant Teacher from 1-7-1992 in a vacancy meant for that category. He was untrained graduate and completed his Vacation B.Ed. Course in summer of 1995, i.e. after his termination on 30-4-1994. Respondent No. 2 in Writ Petition No. 418 of 2001 - Dileshwari was appointed as untrained Teacher since the beginning of the School. The first

appointment order dated 5-7-1991 was from 8-7-1991 till the end of 1991-92 session. She belongs to OBC category. She too claims to have completed Vacation B.Ed. Course, but by June 1996, i.e. after her termination on 30-4-1994. Respondent No. 2 in Writ petition No. 419 of 2001 - Prahlad too was appointed as untrained teacher with effect from 2-7-1990(?). He belongs to OBC category and claims to have completed Vacation B.Ed. Course in July 1994, i.e. after his termination on 30-4-1994.

3. These respondents claimed that they were appointed on clear and permanent vacancies, had been deputed by the Management for completing B.Ed. and were, therefore entitled to continuation. The petitioner terminated services of respondent No. 2 in these petitions with effect from 30-4-1994 by giving one month's notice on 31-3-1994. The petitioner claimed that the respondents were appointed on year-to-year basis and had not been deputed for B.Ed. Vacation Course by Management and that their services came to an end on expiry of term of appeal.

4. The parties also had a dispute on the question of payment of salary to them. There seems to be some dispute in the Management and three members of Managing Committee, who intervened before the Tribunal, claimed that Secretary P.G. Katre had effected termination of these teachers without there being any resolution by the Management. After termination of respondents No. 2 in these petitions, the group in Management led by Shri P.D. Katre appointed three teachers, who have been joined as respondent Nos. 5 to 7 in these petitions.

5. The learned Presiding Officer, School Tribunal, held, after considering material before him, that the termination of respondents No. 2 in these petitions by notices dated 31-3-1994 was not legal, proper or valid and, therefore, by his impugned judgments ordered their reinstatement with continuity of service. Aggrieved thereby, the Management has filed these petitions.

6. While admitting the petitions on 3-12-2001, it was stated that though the management had not reinstated respondents No. 2 pursuant to orders of the School Tribunal, the Head Master (respondent No. 4 in these petitions) had illegally reinstated them. Since they had been reinstated, stay was granted only for payment of past emoluments.

7. I have heard the learned Counsel for the parties.

8. The learned Counsel for the petitioner submitted that respondents No. 2 in these petitions were untrained and, therefore, not qualified for appointment. Their appointments were made without following prescribed procedure only till the end of academic session and that too by Secretary of the Society and not by Head Master, and that their appointments were not approved by the Education Department. The learned Counsel for the petitioner also submitted that the order of the Tribunal would have the effect of disturbing services of three others, who have the requisite qualification and have been appointed after following proper procedure. He submitted that they had not been made parties to the appeals

before the Tribunal.

9. The learned Counsel for the respondent-teachers submitted that there was no question of joining three other teachers, who were appointed in place of these respondents as parties to the appeals before the School Tribunal, since approval granted to their appointments was subject to result of the appeals. He also submitted that they were not necessary parties. For this purpose, he relied on a judgment of Orissa High Court in *Qaruda Adabar v. State of Orissa and Ors.* reported at 1997(1) E.S.C. 588, a Division Bench of Orissa High Court was considering the necessity of joinder of parties in the context of appointment of a teacher in an aided Educational Institution. In that case, the services of a teacher had been terminated by the Management. The said termination order was quashed by the authorities. As a consequence, the services of a teacher appointed in his place came to an end. The second teacher, whose services came to an end, questioned his termination on the ground that he had not been made a party in the proceedings for quashing termination of the first teacher. The Orissa High Court held that the second teacher could not have claimed to be a necessary party to the earlier proceedings. The learned Counsel for teachers submitted, and rightly in my view, that there was no lis between the two sets of teachers to be tried before the Tribunal. Those teachers, who came to be appointed later were not instrumental in bringing about termination of the respondent-teachers and the respondent-teachers could conceivably have no say in questioning validity of appointment of those substitutes. Hence, there was no question of appeals by the respondents being untenable on account of non-joinder of their substitutes. In any case, since this point was not shown to have been pressed before the Tribunal, it cannot be allowed to be raised before this Court now.

10. The learned Counsel for the petitioner assailed the tenability of appeals filed on behalf of the respondents on the ground that their appointments themselves were invalid.

11. In *Ashok Asramji Gabhane Vs. Presiding Officer, School Tribunal and Others*, , relied on by the learned Counsel for the petitioner, a learned Single Judge of this Court held that the order of appointment, which was not issued by the Head Master or the Secretary of the School Committee, cannot be termed as an appointment order contemplated by Schedule D of the MEPS Rules and no legal right can be canvassed on the basis of such order. In that case, the petitioner was appointed by orders dated 20-6-1991, 16-12-1991 and 24-6-1993. The appointment was against a permanent post and, therefore, the petitioner claimed that he had become a confirmed employee in terms of Section 5(2) of the MEPS Act. He was relieved for undertaking D.Ed. Vacation Course by the Head Master on 9-5-1993, but was not allowed to resume duties from 1-8-1994 and, therefore, approached the Tribunal. The Tribunal dismissed the appeal. This Court held that the provisions of Section 5 of the MEPS Act for filling up vacancy would apply only if the vacancy is permanent and only in that situation, the

appointment would be on probation for a period of two years. The Court also observed that the petitioner was not a qualified person when he was appointed, and also held that the appointment orders dated 16-12-1991 and 24-6-1993 were not issued by the Secretary of the School Committee and, therefore, were bad in law, since the orders were signed by one Shri Indurkar claiming to be the President of the Trust, when he was not the President. The Court, therefore, dismissed the petition.

12. The observations about appointment order not being signed by the Head Master of the Secretary of the School Committee came in this context. The learned Counsel for the respondent-teachers is right in submitting that even if an order of appointment is not signed by the Head Master or the Secretary of the School Committee, if the Management has approved the appointment, the order cannot be assailed on the ground that it is not signed by the Secretary of the School Committee or the Head Master. If the order is allowed to be assailed on such a technicality, it would amount to allowing the Management to take advantage of their own wrong. In any case, no such plea had been raised by the petitioner before the School Tribunal.

13. The learned Counsel for the petitioner next submitted that in *Anna Manikrao Pethe v. Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati and Ors.* reported at 1997(3) Mh.L.J. 697, a Division Bench of this Court held that while entertaining applications u/s 9 of the MEPS Act challenging termination, it will be necessary for the Tribunal to decide three preliminary issues, viz., whether the school was a recognized school as defined under the MEPS Act; whether the appointment of the concerned teacher was made as per Section 5 of the MEPS 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. It has been held by a Full Bench of this Court that requirement of approval from the Education Officer need not be insisted upon by the Tribunal for entertaining the applications u/s 9 of the MEPS Act. There is no dispute that the School did in fact have recognition. Therefore, the only question that remains is whether appointment of respondents was made as per Section 5 of the MEPS Act and Rules made thereunder.

14. There is no dispute that respondents No. 2 in all the three petitions were untrained and also that they belong to backward classes. There is also no doubt that these respondents had completed their vacation B.Ed. courses after their services were terminated. It is the contention of the learned Counsel for the respondents that having deputed respondents for Summer B.Ed. Course, the petitioner was estopped from questioning appointments of the respondents on the ground that they lacked training qualification. The learned Counsel for the petitioner submitted that the petitioner had never recommended or deputed the respondents for vacation B.Ed. Course, and that it may be the Head Master, who was hostile to Management, who might have recommended the petitioner for vacation B.Ed.

15. The learned Counsel for the respondents submitted that in fact the only defence raised by the petitioner before the School Tribunal was about failure to obtain the Management's permission for B.Ed. Course. He submitted that Rule 25 of the MEPS Rules does not require the Management's consent for such deputation and previous permission of the head is enough. Rule 25(1) of the MEPS Rules may have absolutely no bearing on deputation for obtaining essential training qualification. Sub-rule (2) of the said Rule would make it clear that there would be no question of a teacher lacking training qualification at appointment seeking permission to pursue such a course. He has to only intimate the Head of his intention to join such a course.

16. The learned Counsel for the respondents next submitted that the petitioner was estopped from questioning lack of qualifications in the respondents and also their eligibility to continue. For this purpose, he relied on a number of judgments.

17. In Letters Patent Appeal No. 85 of 2002 arising out of Writ Petition No. 2433 of 2000 decided on 24-1-2003, a Division Bench of this Court observed that the Government Resolution dated 10-2-1994 had not been noticed by the learned Single Judge, whereby the date for acquiring necessary qualification had been extended to 1-6-1995 and that the teacher concerned had acquired the necessary qualification in the month of July 1994. Therefore, by consent, the judgment and order of the learned Single Judge had been set aside.

18. In *Shri Sant Gajanan Maharaj Bahuuddeshiya Shikshan Prasarak Mandal, Khaparwada and Anr. v. Devendra Bhagwani Matode and Ors.* (Writ Petition No. 1727 of 2007 decided on 8-10-2008), respondent No. 1 was untrained at the time of his employment or even till his termination. Permission from the Education Department had not been obtained before making his appointment. The School Tribunal set aside the termination of the said teacher, who had been deputed for B.Ed. Course by the Head Master without any authority from the Management. This Court held that the last appointment order of the respondent-teacher dated 19-6-1999 was for an year. However, in 1998-2000, the respondent- teacher had been given a deputation certificate for doing his vacation B.Ed. Course with an undertaking dated 16-3-1998 that the respondent would be continued in service till the completion of his training course and thereafter he would be absorbed in service upon completion of course. This Court held that in the absence of plea of fraud, the Management was bound by this deputation certificate and, therefore, refused to set aside the order passed by the School Tribunal and dismissed the Management's petition.

19. In *Pralhad Vitthalrao Bhusari Vs. New Ideal Education Society and Others*, , the Court was considering a case similar to that in *Shri Sant Gajanan Maharaj Bahuuddeshiya Shikshan Prasarak Mandal, Khaparwada and Anr. v. Devendra Bhagwani Matode and Ors.* (Writ Petition No. 1727 of 2007 decided on 8-10-2008). Since the deputation certificate had not been produced before the School Tribunal, this Court remitted the matter back to the School Tribunal for a fresh decision.

20. In *Dr. S.R. Ambedkar Samiti and Another Vs. Ku. M.L. Lonkar and Others*, , the Court was considering the case of untrained teacher whose services were continued from year to year from 1986-86 to 1988-89. The teacher had joined D.Ed. course for acquiring the requisite qualification after obtaining permission from the Management. The teacher had sought medical leave which had been granted. But when the teacher sought to join the duties at the end of the leave period, she was told that her services were terminated, contending that the teacher had failed to report for duties even after the expiry of the leave period. The teacher had claimed that she had sought extension of medical leave by a letter sent under certificate of posting. The Tribunal held that there was a presumption that the letter was duly served upon the Management. The Tribunal also held that one month's notice as required under Rule 28 of the MEPS Rules was not given and, therefore, set aside the order of termination. This Court upheld the order of the Tribunal observing that contrary to the requirements of the Rules, there could be no condition stipulating that the services of the employee could be terminated without notice.

21. The learned Counsel for the petitioner submitted that none of these judgments would be applicable since there is nothing to show that the respondents had ever been deputed by the petitioner for Vacation B.Ed. Courses. According to him, all that the respondents have relied on is an experience certificate issued by the Secretary of the Management. There is no undertaking by the Management to employ the respondents or to continue them till they completed their B.Ed. Course. He submitted that the petitioner had simply terminated the services of the respondents as per Rule 28 of the MEPS Rules, as the term of their appointments had come to an end. He submitted that the only question which the Tribunal was entitled to examine was whether this termination was invalid.

22. The learned Counsel for the respondents submitted that in *Renukacharya Prathamik Shala v. Shanta Bhimrao Patil and Ors.* reported at 1998 I CLR 72, a Division Bench of this Court held that a teacher, who had put in ten years of service and had in the meantime acquired requisite training qualification was rightly ordered to be reinstated by the School Tribunal and that the services of such teacher could not be terminated under Rule 28 of the MEPS Rules.

23. I have carefully considered these submissions. First, in these cases, there is nothing to show that the Management had ever undertaken to continue to employ the respondent- teachers after they complete their B.Ed. Course. Secondly, the Government Resolution dated 10-2-1994, which extended the time for acquisition of training qualification to untrained teachers, would not apply to the respondents, since the respondents had not been appointed before 10-2-1989. This extension was granted in terms of Rule 6 of the MEPS Rules, where a proviso was inserted for enabling untrained teachers to obtain prescribed training qualification at their own costs before 1-6-1987. Thus, the responsibility to obtain training qualification even in respect of teachers, who

were already in employment before the MEPS Rules came into force or before 10-2-1989, was on the teachers themselves and there was no responsibility on the Management to get them trained. In order to overcome the paucity of trained teachers if certain concessions were given, they could not be used by untrained teachers to insist that irrespective of their not being qualified, they should be continued because they had subsequently obtained training qualification. In any case, it has to be stated again that the respondents in these cases completed their B.Ed. Course only after their termination. The question of estoppel could have been raised in appropriate case, if the Management had held out a promise to the teacher concerned that he would be continued to be employed during and after the completion of B.Ed. or D.Ed. Course. The authorities in the State had been insisting upon the Managements to give an undertaking to continue such candidates in their Schools during the period in which the concerned teachers were to complete their B.Ed. Course probably because the State did not want seats in such Vacation B.Ed. Course to be blocked by the persons, who were teachers only in the name-sake for the purpose of by-passing the admission procedure to regular B.Ed. Course. Therefore, such insistence by the State while approving deputation to B.Ed. Course cannot to be invoked by the teachers themselves to claim a right to hold the post for which they were not qualified. Therefore, all the arguments of the learned Counsel for the respondents in this behalf have to be rejected. At the cost of repetition, it has to be pointed out that the respondents have not filed on record any such undertaking by the Management that the respondents would be continued to be employed by the Management during or after completion of their B.Ed. Course.

24. This takes me to the question about the status of the respondents as persons not holding the requisite qualification at the time of their appointment.

25. The learned Counsel for the respondent-teachers also relied on a judgment of this Court in Writ Petition No. 631 of 1993 delivered on 23-4-1993, where the Court observed that it could not be forgotten that under Clause 59 of the Secondary School Code, an untrained teacher was also eligible to be appointed, subject to his obtaining training qualification within a period of five years from the date of appointment.

26. Applicability of Clause 59 of the Secondary School Code after MEPS Act and Rules came into force is doubtful. Only if a matter is not covered by any provision of MEPS Act or Rules could one resort to the Secondary School Code for guidance. Under the MEPS Act, and particularly Schedule B of the Rules, there is no question of an untrained person being eligible to appointment. Since as a fact, there may be some untrained teachers in a School, they have been dealt with in Schedule F about fixation of seniority. Such inclusion does not result in amendment to Schedule B, which prescribes qualifications for various categories of teachers.

27. The learned Counsel for the petitioner submitted that the respondents had not been appointed by following prescribed procedure of issuing an

advertisement and subjecting them to a selection process. He also submitted that the respondents were admittedly untrained at the time of their appointment and, therefore, could not be said to have been appointed in accordance with Section 5 of the MEPS Act and hence their services are liable to be terminated. For this purpose, he relied on a judgment of this Court in *Priyadarshini Education Trust and The Head Master, National Urdu High School Vs. Ratis (Rafia) Bano*, in which the Court has observed as under:

Para 12 :...In view of the provisions as contained in Section 5 of the MEPS Act and Rule 9 of MEPS Rules read with Articles 14 and 16 of the Constitution and the observations of the Hon'ble Apex Court in the reported judgment which guide us, we draw following conclusions;

(i) "duly appointed, in the manner prescribed" would be an appointment of a person who is eligible (qualified for the post) for appointment, who is selected by due process of selection i.e. by competition amongst all eligible and desirous candidates, and who is appointed on a permanent vacant post. In other words, inviting applications, as also holding of screening tests, enabling all eligible and desirous candidates to compete for selection and appointment, is a must.

(ii) Once an eligible candidate (duly qualified as required) is selected by selection process as above, for filling in a permanent vacancy, there is no option for the management and it is obligatory on it to appoint such person on probation for a period of two years. It is neither open for the management to appoint him for one academic year or any period shorter than two years probation period, nor it is open for Education Officer to grant approval for such shorter period. [in fact, in view of the requirement as in Clause (I) above, the process of grant of approval by Education Officer should begin with examination of selection process and its validity.]

(iii) The candidate thus selected with due process and appointed on probation shall enjoy status of deemed permanency on completion of two years, unless extension of probation is informed, or termination is ordered.

(iv) The appointment of a person not belonging to reserved category, in a post reserved for a particular category, because the candidate of that category is not available, shall be absolutely temporary and on an year to year basis, governed by Sub-rule (9) of Rule 9, although in a permanent vacancy.

In view of this judgment of Division Bench, there can be no doubt that even for filling up a vacancy from open category, an advertisement would have to be issued. Contrary view taken by the learned Single Judges in *Nita Ramesh Danane v. Dombivali Mitra Mandal and Ors.* reported at 2009 (1) Mh.L.J. 796, and *Jagdamba Education Society, Nagpur v. Rajendra s/o Baburao Golhar and Ors.* reported at 2009 (2) Mh.L.J. 522, cannot be followed. In any case, respondents No. 2 in the three petitions do not belong to open category and, therefore, for filling up those vacancies, an advertisement was must.

28. The learned Counsel for the respondents/teachers relied on the following judgments, to support his contention that the respondents/teachers were validly appointed and that their services could not be terminated.

29A. In Writ Petition No. 604 of 1993 decided on 4-3-1993 (Anjuman Faroh-E Taleem and Anr. v. Hafizul Rehman Abdul Hamid), the respondent-teacher was appointed as a honorary teacher on 1-10-1985 and continued from year to year. His services were terminated on 30-3-1990. On appeal, the Tribunal set aside the order of termination and directed payment of difference of emoluments as also reinstatement. The respondent was an untrained teacher having only the qualification of S.S.C. The Management contended that since the teacher did not have D.Ed. qualification, he could not be reinstated. Relying on a Government Resolution dated 20-7-1990, the Division Bench directed the petitioner to give necessary facilities and permission to the respondent to complete D.Ed. Course by correspondence and reduced the entitlement to previous emoluments payable to the teacher to 50%.

29B. In Shrawan Kumar Jha and Ors. v. State of Bihar and Ors. (Civil Appeals Nos. S321-22 of 1990) decided by the Supreme Court, the Court was considering the appeals by 175 teachers, who were supposed to have their qualifications verified before joining the service. Their appointments had been subsequently cancelled. The Supreme Court held that they should be heard before giving a finding as to whether the appellants were validly appointed as Assistant Teachers.

29C. The learned Single Judge of this Court in Jagdamba Education Society, Nagpur v. Rajendra s/o Baburao Golhar and Ors. reported at 2009 (2) Mh.L.J. 522, where too even after noticing the judgment of the Division Bench in Priyadarshini Education Trust and The Head Master, National Urdu High School Vs. Ratis (Rafia) Bano, , this Court held that the procedure prescribed for the purpose of recruitment would be applicable only to those Institutions, which are admitted to grant-in-aid and not to the Institutions, which are not admitted to grant-in-aid. It is doubtful whether such distinction between the Schools admitted to grant-in-aid and the Schools not getting grant-in-aid could be still made after the pronouncement by this Court that for the purpose of the MEPS Act and particularly invoking the jurisdiction of the School Tribunal, the question as to whether the Schools get grant-in-aid or not is relevant. Therefore, the procedure prescribed including the requirement of publishing an advertisement, which has been highlighted by the Division Bench in Priyadarshini Education Trust will have to be followed. This is particularly so because in the scheme of things, a School, which does not get grant-in-aid in initial stages is gradually admitted to grant-in-aid, as has happened even in the present case.

29D. In Madhukar Balkrishna Badiye and Others Vs. State of Maharashtra and Others, , on which the learned Counsel for the respondent- teachers placed reliance, on facts, the Court came to the conclusion that the appointment of teacher concerned could not be said to be in a temporary vacancy, since she had been appointed by a vacancy created by exit of a person holding the permanent

post. Such are not the facts in the present case. Till the School received permanent recognition, there would be no question of there being a permanent vacancy.

30. The learned Counsel for the petitioners submitted respondents/teachers would not alter the fact that there was nothing to show that the respondents were duly appointed, which burden was on the respondents and no amount of case law could relieve them of this burden. He placed reliance on a judgment of this Court in *Rayat Shikshan Sanstha and Another Vs. Yeshwant Dattatraya Shinde*, , in which it has been observed as under:

Para 3 : Admittedly there is no evidence on record that the appointment of the respondent was made after following the procedure laid down in the M.E.P.S. Act and Rules. The Tribunal has come to a conclusion that the said appointment was made on a clear and permanent vacancy. Admittedly, no advertisement was issued, nor any interview was held and, as such, cannot be said that the appointment was made on a clear and permanent post. The Tribunal, however, came to the conclusion that the appointment was made on a clear and permanent vacancy because the management was not in a position to produce the relevant material on record. In my view, the burden of establishing that the appointment was made on a clear and permanent post that too after following the procedure laid down under the Act and Rules, is squarely on the Appellant and not on the management. The Tribunal, therefore, in my view, committed an error of law, which is apparent on a face of record.

In view of this, the learned Counsel for the petitioner submitted that it was for the respondents to show that they had been appointed on clear and permanent vacancies after issuing appropriate advertisement, which they had not done.

31. In view of the pronouncement of the Division Bench in *Priyadarshini Education Trust and The Head Master, National Urdu High School Vs. Ratis (Rafia) Bano*, , for claiming protection, an employee has to be duly appointed, i.e. only if he is eligible and qualified for holding the post. There is no doubt that B.Ed. degree is the prescribed qualification for the posts on which respondents No. 2 were appointed. They did not possess this qualification. In face of this judgment of Division Bench, reliance by the learned Counsel for respondents No. 2 on unreported judgment of this Court in Writ Petition No. 631 of 1993 delivered on 23-4-1993 and Rule 59 of the Secondary School Code would not help respondents No. 2.

32. The judgment of Supreme Court in *Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others*, , cited by the learned Counsel for the petitioners, would clear all doubts in the matter. A person who does not possess requisite qualification would not be entitled to claim any right.

33. The Supreme Court held that lack of essential qualification was an illegality, which could not be cured. In that case, the qualifications prescribed required the person to hold B.Ed. degree. The teacher held B.Ed. degree from an Institution

which was not recognized by UGC. He was asked to acquire B.Ed. degree from a recognized University within a period of two years by letter dated 18-2-1993. The teacher obtained a degree by undertaking a correspondence course. The teacher filed a writ petition before the High Court complaining of nonpayment of salary. The High Court directed payment of salary. A contempt petition was filed. Thereafter, the Management started a departmental enquiry on the ground that the petitioner had obtained appointed on the basis of a false and fabricated B.Ed. degree and the services of the teacher were terminated by order dated 12-2-1997. The teacher's petition was dismissed by the High Court on 9-3-1997. The Division Bench dismissed the appeal of the teacher and, therefore, the teacher approached the Supreme Court. In this context, the Court held that the teacher concerned should have had requisite qualification at the time of his appointment and, therefore, dismissed the appeal.

34. The learned Counsel for the petitioner submitted that in face of this judgment of the Supreme Court, there is absolutely no doubt that the respondents could not have been continued as they did not hold requisite qualification.

35. In *Maharashtra Seva Sangh and The Principal, Shree Nutan Prashala Junior College Vs. Shri Shaikh Jamalchand and The Deputy Director of Education, Pune Region*, , on which the learned Counsel for the petitioner relied on, a learned Single Judge of this Court was considering the question of deemed permanency. In that case, the respondent held degrees of MA (Sociology) and MA (Political Science) at the time of his appointment on 5-7-1990 on clock hour basis. His appointment was approved by the Education Officer on 30-3-1991 only by one year by relaxing the condition of having B.Ed. qualification. By order dated 11-6-1991, the respondent was appointed as full time teacher for a period of two years on probation with effect from 15-6-1992. However, the Education Officer granted approval only for one year and refused approval for the next academic year on the ground that the respondent was an untrained teacher. In 1992-93, the respondent had taken admission for B.Ed. course and acquired the said qualification on 24-8-1995. He was continued as part time teacher even in 1995-96, since after refusal of approval of the Education Officer, he had been so appointed. In para 8 of the judgment, the learned Single Judge held that in order to claim benefit of deemed permanency under Sub-section (2) of Section 5 of the MEPS Act, a person must have been appointed on permanent vacancy, must possess qualifications prescribed under Rule 6 read with Schedule B of the MEPS Rules, and the appointment must have been made in the manner prescribed, that is after due process of selection. The Court held that the power to relax the qualification under Rule 6 was restricted to teachers in Secondary Schools and, therefore, refused to apply relaxation to the respondent, who was a teacher in the Junior College. Similar view was taken by the learned Single Judge in *Shri Sawale Motiram Shridhar Vs. Maharashtra Seva Sangh and Others*, .

36. In *Jaimala Bhaurao Ramteke v. Presiding Officer, School Tribunal, Nagpur and Ors.* reported at 2009 (5) Mh.L.J. 333, on which reliance is placed by the learned

Counsel for the petitioner, a learned Single Judge of this Court held that while filling up a permanent vacancy, the procedure prescribed must be followed scrupulously and that when the School is recognized on an year-to-year basis, appointments of the teachers would be approved by the Education Department only for the particular year during which the School had recognition. After considering several judgments, the Court ruled that mere approval by the Education Officer does not cure the illegality or irregularity in the appointment.

37. Since the respondents belong to the backward classes and since one of the respondents also claim accommodation in the woman's quota, it is obvious that an advertisement was mandatory in view of the judgment of the Division Bench in Priyadarshini Education Trust. In view of this, reliance by the learned Counsel for the respondents on the judgment in Nita Ramesh Danane v. Dombivali Mitra Mandal and Ors. reported at 2009 (1) Mh.L.J. 796, is misplaced. In that case, even after noticing the judgment in Priyadarshini Education Trust and The Head Master, National Urdu High School Vs. Ratis (Rafia) Bano, , the Court observed that there was no requirement for advertising a post in open category and that the employee had applied for a post which was not a reserved post, since it was an isolated post and, therefore, allowed the employee's petition. It is not shown that the respondents had been appointed after any such selection process. Further since the orders of appointments were themselves for a limited period, they could not claim that they had been appointed on probation or that their appointments had, therefore, fructified into permanent appointments. In fact, the learned Counsel for the respondent- teachers submitted that there was no case of deemed permanency or no deeming status of probation claimed by the respondents. All that they claimed was continuation in service and that their services should not be terminated.

38. The learned Counsel for the respondents also placed reliance on a judgment of this Court in Hindi Vidya Bhavan, Mrs. C.R. Pathak, Principal, Hindi Vidya Bhavan School and Mr. V.O. Somani, Hon. Secretary, Hindi Vidya Bhavan School Vs. Presiding Officer, School Tribunal, Education Inspector, Ramprakash Badlu Mandar and Mithila Azad Security Force, . The Court was dealing with a case of a wholesale departure by a Management by resorting to contract workers. Hence, this judgment is not applicable to the present case.

39. The learned Counsel for the respondent-teachers has placed reliance on my judgment in Janta Education Society and Anr. v. Prakash Babarao Shingane and Anr. 2010 (1) Mh.L.J. 329, in which has been held as under:

Para 2 : Facts, which are material for deciding this petition, are as under:

Respondent No. 1 was M.Com., B.P.Ed. when he was first appointed in a Junior College on 2-8-1985 on a fixed salary of Rs. 250/- per month for a period up to 30-6-1986. His appointment was approved by the Deputy Director of Education for the subjects of Commerce and Physical Education on a pay scale of Rs. 250-450/- for the Academic Session 1985-86. This appointment was continued

by another order dated 28-6-1986 on a fixed pay of Rs. 500/- for the Academic Session from 1-7- 1986 to 8-5-1987. This too was approved by the Deputy Director of Education for the Academic Session 1986-97. There is a dispute about the next appointment order dated 9-7-1987. According to the petitioners, respondent No. 1 was appointed by order dated 9-7-1987 on a clock-hour basis for the period from 9-7-1987 to 24-3-1988. By order dated 17-10-1988, the Deputy Director of Education approved this appointment on a clock-hour basis at the rate of Rs. 12/- per hour with effect from 9-7-1987 till the end of the Academic Session 1987-88. However, according to respondent No. 1, this order was fabricated and in fact he was appointed from 9-7-1987 to 8-7- 1987 in a clear vacancy. Respondent No. 1 relies on a undated order signed by the President of the Society, which does not mention any pay scale, whereas the petitioners rely on an order signed by the Principal of the College.

After considering several judgments, it was held:

Para 24: I have considered these erudite judicial pronouncements. I have serious doubts if the findings of the Apex Court, in not one, but two judgments, after nothing the provisions of Section 5 of the MEPS Act, could be ignored and it could still be held that an appointment in a clear vacancy must be on probation. The order of appointment, which was under consideration of the Apex Court in Hindustan Education Society and Anr. v. Sk. Kaleem Sk. Gulam Nagi and others has already been quoted in preceding paras. Teachers, who appointment was question in Bharatiya Gramin Purnarrachana Sanstha v. Vijay Kumar and others, was selected and appointed after following procedure for two years in a clear vacancy. Yet, the Supreme Court in these two cases did not hold that the appointments must be held to have been made on probation. It may be audacious for me to ignore this and yet follow contrary findings, which could be reconciled only by distinguishing between a clear vacancy and a permanent vacancy. Every clear vacancy need not be mistaken for a permanent vacancy. When a new School starts, teachers will have to be appointed even before students are enrolled. Such appointments would obviously be in clear but temporary vacancies, since no one would be able to predict if the School would succeed or fail.

40. This position has been considered again in Writ Petition No. 3834 of 2002 decided on 26-3-2010 (Chandrashekhar s/o Dhaniram Patel v. Navshakti Vidyalaya and Ors.) and different view was not found to be warranted.

41. In view of this, since the appointments of the respondents were for a limited period, and were not shown to have been made by following the prescribed period of selection pursuant to an advertisement, and mainly, since the respondents did not possess the requisite qualification at the time of appointments, the School Tribunal was not justified in ordering the respondents' reinstatement or granting them continuity in service, though the Management could always consider whether these respondents could be continued on existing vacancies, since they are serving for almost 18 years now, and have also

acquired requisite training qualification.

42. In view of this, the petitions are allowed. The impugned judgments are quashed and set aside.