

Ashwini

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11703 OF 2019**

- 1. PRAKASH BHAGWAT SHINDE,**
Aged 36 Yrs, Occ Service,
R/o Flat No. G 001, Malini Apartment,
Survey No. 18/2A, Sukh Sagar Nagar
Part II, Katraj, Pune 411 046.
- 2. SAYLEE SUBHASH DAREKAR,**
Aged 31 Yrs, Occ Service, R/o D 13,
Suroshri Apartment, Survey No.
127[P], Near Chaitanya Nagari, Warje,
Pune 411 058.

...Petitioners

ASHWINI
HULGOJI
GAJAKOSH

Digitally signed
by ASHWINI
HULGOJI
GAJAKOSH
Date: 2023.03.20
10:46:10 +0530

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Secretary, School
Education Department, Mantralaya,
Mumbai 400 032.
- 2. THE PRINCIPAL SECRETARY,**
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
- 3. THE DEPUTY DIRECTOR OF
EDUCATION,**
Pune Region, Pune.

4. **PUNE MUNICIPAL CORPORATION, PUNE,**
Through its Commissioner.
5. **THE ADMINISTRATIVE OFFICER/EDUCATION OFFICER,**
Pune Municipal Corporation, Pune.

...Respondents

WITH
WRIT PETITION NO. 3902 OF 2021

1. **VISHAL HANSRAJ YADAV,**
Aged Adult, Occ Service, R/o Moshi,
Tal Haveli, Dist Pune.
2. **MAYURESH PANDIT PARDESHI,**
Aged Adult, Occ Service, R/o S.No. 47,
5/A, Sai Nagari Society, Chandan
Nagar, Kharadi, Pune 14.
3. **SARIKA BALKRUSHNA CHATUR,**
Aged Adult, Occ Service, C/o Arvind
Vilas Jadhav, 3795/5, Bhokarai Nagar,
Fursungi, Tal Haveli, Dist Pune.
4. **SARIKA KISAN BANKAR,**
Aged Adult, Occ Service, R/o Old
Tofkhana, Shivaji Nagar, Pune.
5. **SARIKA TANAJI WALHEKAR,**
Aged Adult, Occ Service, R/o Datta
Nagar, Alandi Mhatobachi, Tal Haveli,
Dist Pune.
6. **JAYASHRI VILAS DARADE,**
Aged Adult, Occ Service, R/o Sai
Vishwa Society, Flat No. B 604,
Ambegaon Bk, Dist Pune.

7. **BHIMRAO BANSILAL RANDHIR,**
Aged 35 Yrs, Occ Service, R/o S.No.
103, Gandhi Nagar, Yerawada, Pune.
8. **RESHMA KRUSHNA KARNE,**
Aged 39 Yrs, Occ Service, C/o Sanjay
Dattatraya Navale, 220, Anand Colony,
Warje, Pune.
9. **VINAYA ANAND PAYGUDE,**
Aged 31 Yrs, Occ Service, R/o Flat No.
301, S.No. 32/2, 'Shree Classic' Napte,
Pune.
10. **BHAKTI ANAND KULKARNI,**
Aged Adult, Occ Service,
R/o 88/2 + 3B, Vrundavan Colony,
Azad Nagar, Kothrud, Pune.
11. **VAISHALI RAMDAS SHINGOTE,**
Aged Adult, Occ Service,
R/o 19B, Krushnaleela Terrace, Near
Mahatra Society, Kothrud, Pune.
12. **SUREKHA NAMDEV YADAV,**
Aged 38 Yrs, Occ Service, R/o A/P.
Gopte Budruk, Tal Haveli, Dist Pune.
13. **ARCHANA RAMDAS KALANE,**
Aged 34 Yrs, Occ Service, R/o House
No. 122, S.No. 93, Ambegaon Kh., Dist
Pune.
14. **SUVARNA KACHARU KALE,**
Aged Adult, Occ Service, R/o Old
Tofkhana, Shivaji Nagar, Pune.
15. **PALLAVI KISAN BAHIRAT,**
Aged Adult, Occ Service, R/o Flat No.
7, 2nd Floor, Prithvi Residency,
Bibwewadi Gaon, Pune.

16. **GANESH SITARAM PARDESHI,**
Aged Adult, Occ Service, R/o S.No. 47,
5A, Sainagari Society, Lane No. 11,
Chandan Nagar, Kharadi, Pune.
17. **NEETA PRALHAD KANSE,**
Aged Adult, Occ Service,
R/o C-2/804, JP Homes, Near Manjari
Stud Farm, Pune-Solapur Road, Pune.
18. **SANGITA RAJARAM BADEKAR,**
Aged Adult, Occ Service, R/o 1/12,
Raigad Building, Ashtagad, Pune-
Solapur Road, Hadapsar, Pune.
19. **PRIYANKA NAMDEO LONDHE,**
Aged Adult, Occ Service, R/o S.No.
153, Raut Nagar, Devachi Uruli, Tal
Haveli, Dist Pune.
20. **MANJUSHA RAMNATH
KHEDKAR,**
Aged Adult, Occ Service, R/o Shanti
Sankul, C-Wing, Malwadi, Warje, Pune.
21. **SANDHYA PADMAKAR BHOR,**
Aged Adult, Occ Service, C/o
Shantaram M Palande, S.No. 15/2,
Sadgurukrupa Colony, Warje Octroi
Naka, Pune.
22. **SANGITA RAMCHANDRA
SALUNKE [HEMGUDE],**
Aged Adult, Occ Service, R/o Lane No.
10, Raigad Colony, Karve Nagar, Pune.
23. **SWAPNA BABASAHEB TAMBE,**
Aged Adult Occ Service, R/o 464/6,
Ingale Nagar, S.No. 18, Warje Octroi
Naka, Pune.

24. **PRIYANKA BABURAO WARADE,**
Aged Adult, Occ Service, R/o Ram
Nagar, Pune.
25. **SMITA GORAKSHNATH DHAGE,**
Aged Adult, Occ Service, R/o Trimurti
Colony, Azad Nagar, Kothrud, Pune.
26. **ABOLI ASHOK KALE,**
Aged Adult, Occ Service, R/o P/404,
Shital Bag, Bhosari, Pune.
27. **ARCHANA DAMODAR
BHALERAU,**
Aged Adult, Occ Service, R/o B-1-5,
Hari Om Society, Sandwik Colony,
Bhosari, Pune.
28. **SHILPA PRAKASH BANGAR,**
Aged Adult, Occ Service, R/o Flat No.
2/5, 3rd Floor, Goyal Residency 'A',
Kaswarwadi, Pune.
29. **JAYASHRI GUNWAT PARANDE,**
Aged 35 Yrs, Occ Service, R/o Row
House No. 2, 'Tulsai' Opp Dattadhyan
Mandir, Pashan, Pune.
30. **SWETA SURYAKANT BADHE,**
Aged Adult, Occ Service, R/o S.No.
173, Flat No. 1001, Prudentia Towers,
Mauli Chowk, Wakad, Tal Mulshi, Dist
Pune.
31. **MANISHA BABASAHEB NARALE,**
Aged Adult, Occ Service, R/o S.No.
18/4, Ekta Colony, Ganesh Nagar,
Thergaon, Tal Mulshi, Dist Pune.

32. **ALKA BABAN VEER,**
Aged 32 Yrs, Occ Service, R/o At
Pilanwadi, Post Rahu, Tal Daund, Dist
Pune.
33. **CHANDRAKANT NARAYAN
DORJE,**
Aged 44 Yrs, Occ Service, R/o 103,
Akshay Glory, Kharadi Bypass,
Chandan Nagar, Pune.
34. **PAWAR SONALI VILAS,**
Aged Adult, Occ Service, R/o Old
Tofkhana, Shivaji Nagar, Pune.
35. **SHILPA AJIT CHAUDHARI,**
Aged Adult, Occ Service, R/o A-202,
Sukhwani Royal, Viman Nagar, Pune.
36. **DEEPALI SURESH MORE,**
Aged 35yrs, Occ Service, R/o
125/2343, Sanjay Park, Airport Road,
Pune 411 032.

...Petitioners

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through the Secretary, School
Education Department, Mantralaya,
Mumbai 400 032.
2. **THE PRINCIPAL SECRETARY,**
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
3. **THE DEPUTY DIRECTOR OF
EDUCATION,**
Pune Region, Pune.

- | | |
|--|-----------------------|
| <p>4. PUNE MUNICIPAL CORPORATION, PUNE
Through its Commissioner</p> <p>5. THE ADMINISTRATIVE OFFICER/ EDUCATION OFFICER,
Pune Municipal Corporation, Pune.</p> | <p>...Respondents</p> |
|--|-----------------------|

APPEARANCES

FOR THE PETITIONER	Mr NV Bandiwadekar, Senior Advocate, with Vinayak Kumbhar, i/b NA Bandiwadekar.
FOR RESPONDENTS NOS. 1 TO 3-STATE	Mrs AA Purav, AGP.
FOR RESPONDENTS NOS. 4 & 5	Mr Rajdeep S Khadapkar.
IN PERSON PRESENT	Mr Shankar Chavan, VD, Desk-22
IN PERSON PRESENT	Mrs Rohini Kirve, Desk Officer, Education Department.

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 24th February 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** There are Affidavits in Reply. Respondents waive service. Rule is made returnable forthwith and the Petitions are taken up for hearing and final disposal.

2. The two Writ Petitions are identical in all material respects. The only reason a second Writ Petition had to be filed was because those Petitioners came to Court later than the Petitioners in the first matter. We will, therefore, take the facts as we find them in Writ Petition No. 11703 of 2019, *Prakash Bhagwat Shinde & Anr v The State of Maharashtra & Ors*.

3. It is perhaps unfortunate that these Petitions have been pending admission in this Court for such a long time. While that might be a factor of the pressures on this Court and the mounting numbers of filings and arrears, the human story behind these Petitions discloses an ongoing and unfolding tragedy. It concerns teachers. What is particularly disturbing is that while the Petitioners have been awaiting a disposal of their Petitions, time has marched on: all of them are now over-age although they are still in service.

4. The sole prayer in the Petitions as originally filed reads thus:

“(b) By a suitable writ, order or direction, this Hon’ble Court be pleased to direct the Respondent Nos. 4 and 5 to immediately implement the order dated 15.4.2017 [EXHIBIT-O] issued by the Respondent No. 1 and accordingly to absorb / accommodate the Petitioners as Primary Teachers on the sanctioned and vacant posts available in Primary Schools of the Respondent No. 4 Corporation and to pay monthly salary to the Petitioners in regular pay scale from the date of the said order issued by the Respondent No. 1, together with all arrears and consequential benefits.”

5. In the main Petition we have taken up as representative, there was an amendment on 17th March 2022 to introduce final prayer clause (c1) challenging a subsequent order of 27th July 2021. Payer clause (c1) reads thus:

“(c1) By a suitable order/ direction, this Hon’ble Court may be pleased to quash and set aside the impugned order dated 27.7.2021 issued by the Respondent No. 1.”

6. The Petitioners seek an order against Respondent Nos. 4 and 5, respectively the Pune Municipal Corporation (“PMC”) and its Administrative Officer / Education Officer to implement the resolution passed by the General Body of the PMC, as also a subsequent order by the State Government in its School Education Department accepting the Resolution of the PMC General Body. The resolution and the order between them regularise the Petitioners’ service as primary teachers and afford them salary in the regular pay scale. The reason for the amendment is that the initial approval and the order of the 1st Respondent is now sought to be reversed and cancelled.

7. We should note a few recent events. The matters appeared before us periodically. We found that Mrs Purav, the learned AGP, was being compelled to seek time. This happened more than once. On 22nd February 2023, we passed the following order:

“1. The recent events in this matter seem to us to be symptomatic of a larger problem. Mrs Purav, learned AGP has more than once sought instructions. She has had to seek time from the Court again and again, although there are Affidavits in Reply by both the School Education Department and the Urban Development Department. She

has given us to understand that she has been told that “the issue” is being taken up at the government. When she called for further particulars and further instructions, she received none. She is evidently expected to repeatedly ask the Court for time resulting in embarrassment to herself and making it very difficult to proceed with the matter.

2. We cannot understand a situation where government at various levels complains about delays and we then find that the government itself is responsible for a significant part of these delays. It is pointless to blame the law officers who appear for the government. Our experience is to the contrary. When Government Pleaders have instructions and have Affidavits, they are always prepared and ready to continue with the cases and the hearings and to conduct the case according to the brief that is in their hands. They are, however, repeatedly impeded because instructions sought do not follow in time and sometimes do not follow at all.

3. Our last order was on 30th January 2023. Mrs Purav sent out an email seeking instructions on 3rd February 2023. She received no information. Then on 15th February 2023 we stood the matter over for passing orders. Immediately thereafter, on 18th February 2023, Mrs Purav again wrote to both departments by email, requesting that a senior responsible officer be deputed to give para wise instructions and to draft and file a further Reply. She also made it a point to say that if instructions were not received then the Court might impose costs on the authority concerned, for which the office of the Government Pleader would not be responsible. We heartily welcome the suggestion. We now propose to implement it.

4. This is a final opportunity not to Mrs Purav but to the officers in Urban Development Department and School Education Department and Sports Department. We are keeping the matters for orders on the supplementary board

on Friday, 24th February 2023. We are making it clear that if Mrs Purav tells us that she has no further instructions then we will proceed on the basis of the Affidavits filed and we will also consider imposing costs on both departments for their failure to give Mrs Purav instructions.”

8. The reason for Mrs Purav seeking instructions is clear even from this limited narrative, although we will set out a more detailed chronology a little later. There is the PMC General Body Resolution. There is its acceptance by the 1st Respondent, the State Government. This is followed, very recently in 2022, by an attempt by the 1st Respondent to reverse course and to cancel its approval to the PMC General Body Resolution. Not only would this put the Petitioners in an extremely precarious situation of great uncertainty, but it equally places Mrs Purav in a particularly unenviable position. She has on the one hand an earlier approval by the State Government. She also has, and this is now on Affidavit, a much later rejection of that PMC General Body Approval and a complete U-turn by the State Government from its earlier stand. This is why she has repeatedly, as we noted, been seeking instructions with a view to file a clarificatory Affidavit so that this constantly shifting stand comes to an end one way or the other. Mrs Purav understands that goal posts cannot be constantly moved around like this. But this is perhaps also the reason why despite every effort on her part, Mrs Purav has received no instructions.

9. Instead, this morning something decidedly strange happened when the matter is listed for orders. We now — and only now — have the appearance on behalf of the PMC and we are now told

across the Bar that the PMC wants to revise, review or reconsider its initial approval with which all this began in the first place. First, we are told that a General Body Approval to the proposed review, recall or rejection of the earlier approval will be required. Mr Bandiwadekar for the Petitioners says this is self-defeating: the General Body does not exist and has been superseded. He then also points out that it is indeed peculiar that despite more than one document showing that the PMC General Body Resolution was not only accepted but was agreed to be acted on, a good seven or eight years down the road, to the very considerable prejudice of these teachers and there are about 93 in all, the entire situation is sought to be turned on its head. Quite literally, the rug is sought to be pulled out from under the teachers' feet.

10. We are not inclined to grant adjournments to engage in this kind of constant swinging of the pendulum from one end to the other. We are not prepared to view these primary teachers as persons who can be footballed from this to that position. Someone has to be mindful of what is it that these teachers do and for whom. It is perhaps surprising that neither the PMC nor the State Government seems to be alive to this consideration. We most certainly are, and we will not allow ourselves to be blinded to the fact that these are *teachers*. They are human beings. They are not merely numbers on a piece of paper. There are entire lives, livelihoods and families at stake.

11. It is no one's case, finally, that any of these Petitioners are guilty themselves of any wrongdoing or have faced any disciplinary

enquiry or are otherwise not entitled to what they seek. To the contrary, the PMC and the State Government have both once expressly approved the regularisation, absorption, and regular pay scales of these teachers. The only reason for this about-turn by both the PMC and the State Government stares us in the face: *neither of these wants to bear the financial responsibility for paying these teachers.* That is all there is to it.

12. Here are the facts. The details of the individual Petitioners and their qualifications are set out in the two Petitions. These have not been questioned. That all the Petitioners were qualified for appointments as teachers in primary schools is also not contentious. The PMC runs several primary schools within its local command area. The 5th Respondent is the PMC's Educational Officer. He is the controlling authority in regard to these primary schools. The 3rd Respondent is the Deputy Director of Education, Pune Region. He has overall control over the affairs of schools within the entire region including in Pune city. The addition of the 2nd Respondent puzzled us initially. He is the Principal Secretary of the Urban Development Department ("UDD") and we asked on a previous date how the UDD was at all concerned with any of this. We now have an answer, and we will address that shortly but for now it is enough to note that the UDD has administrative control over Municipal Councils and Municipal Corporations in Maharashtra. The 1st Respondent is the Secretary in the State Government's Education Department. It is he who is the highest administrative authority regarding the functioning of all schools in Maharashtra. This hierarchical division between the PMC, the UDD that controls the administrative development of urban areas and regional areas, and the School

Education Department that controls the functioning of schools in Maharashtra will prove to be important for the following discussion.

13. On 6th July 2008 the Education Officer (Primary) of the Zilla Parishad, Pune issued an advertisement in local newspapers. This invited applications from candidates who desired to appear for the pre-recruitment CET examination for being recruited or appointed as shikshan sevaks in primary schools for the year 2008–2009. The examination was to be conducted through the Maharashtra State Council for examinations. The teachers were to be appointed in Zilla Parishad Municipal Council schools or in Municipal Corporation Schools and the appointments were to be to posts scheduled to fall vacant by or until 31st May 2009.

14. The Petitioners applied. They appeared for the CET. They were successful. Their marks and grades are again not disputed. All the Petitioners were declared successful. They were thus eligible and qualified for appointment as shikshan sevaks against available vacancies.

15. The PMC runs several primary schools. In 2008–2009 these primary schools were administered by the PMC School Board. This was established under the provisions of the Bombay Primary Education Act 1947 and the Bombay Primary Education Rules 1949. It was this PMC School Board that had exclusive control over the primary schools within the command area of the PMC. On 27th August 2009, the PMC issued an advertisement in local newspapers inviting candidates who were successful at the CET, i.e., those who

had cleared the CET, for an interview. That interview was to be for the appointment of shikshan sevaks drawn from the pool of successful CET candidates in PMC schools. The appointments were clearly stated to be available against leave vacancies in the primary schools, i.e., for the period during which the regular incumbents were on leave. The Petitioners applied. They were called to interviews. They attended. There was a selection procedure and the PMC School Board then selected 93 candidates for appointment as shikshan sevaks. This included the Petitioners. The Petitioners were then issued appointment orders. The individual orders are of different dates but they are common in that the appointments are as shikshan sevaks (the periods may be different) at a stated consolidated honorarium. Every one of those appointment orders said that the appointments were made during the period of leave. Strangely the name of any teacher who were actually on leave was never mentioned in any of the appointment orders. Based on these appointment orders, the Petitioners were assigned duties in different primary schools. These orders were issued by the head of the PMC School Board. The Petitioners reported to the schools in question assigned to each of them. They began their duties in the posts of shikshan sevaks.

16. The period in the initial order of appointment ended. Logically, one might have expected that if the appointment was against a leave vacancy then the teacher who was on leave would have returned and taken up the job. But that did not happen. The Petitioners were issued further appointment orders as shikshan sevaks for another period (by letter of 26th October 2009 for the period of 26th October 2009 to 30th April 2010 in Writ Petition

11703 of 2019 and which appears to be common to the other Petition as well). This was followed by an order issued by the head of the School Board allotting or allocating schools at which the Petitioners would take up their shikshan sevak posts.

17. Again, the same question arises of the mysterious ‘teacher on leave’ never coming back. That leave vacancy seems to have been interminable. For even in subsequent years, similar order were issued to the Petitioners. This continuance began with a period from June 2010 until the end of the academic session just preceding the Diwali vacation of that year. This means that from about August 2009, and for more than a year thereafter, these Petitioners were continued as shikshan sevaks against so-called leave vacancies. We find from the Affidavit in Reply that there is no explanation for this kind of a leave or a leave vacancy of this length.

18. On 18th October 2010, the PMC School Board came out with a circular to the headmasters of all its schools. This said that all shikshan sevaks who had been appointed on leave vacancies should be discontinued during 2010 Diwali vacation, but, and this is the sting in the tail, that they should again be allowed to resume duties in the school after the Diwali vacation from November 2010. There followed similar circulars periodically discontinuing or interrupting and then resuming or continuing the services of the Petitioners, always coinciding with either the summer or Diwali school vacations. Copies of some of these circulars are annexed at Exhibit “C” to the first Petition.

19. The Petitioners followed these directions. They resumed their duties when asked. But in the meantime, the Petitioners and other shikshan sevaks similarly positioned requested the PMC School Board to consider the services they were rendering and had rendered and to make them regular in service against the available vacant posts.

20. The School Board considered this request at its meeting on 15th November 2011. It passed Resolution No. 212. The School Board resolved that considering the provisions of a Government Resolution dated 27th February 2003, i.e., about eight years earlier, of the State Government which prescribed guidelines and procedures for the appointment of shikshan sevaks in primary school, and since these shikshan sevaks were all working on leave vacancies in PMC schools, the board should regularise their services as Assistant Teachers in available vacant posts. Following the State Government's Resolution, this could only be done after they had completed three years in the posts of shikshan sevaks.

21. So there was this request and there was this Resolution. But there was no further action. The Petitioners and other shikshan sevaks pursued the matter as best they could with the PMC School Board. There followed another meeting of that Board on 10th February 2014. This yielded Resolution No. 281. Interestingly, this Board Resolution noted that there was a Resolution No. 500 dated 30th December 2005 of the General Body of the PMC sanctioning 100 posts of primary teachers for the PMC School Board. A total of 74 shikshan sevaks were appointed in 2009. 24 were appointed in

2011 in Marathi and Urdu medium schools. All these followed the selection procedure and were against leave vacancies. Clearly, these shikshan sevaks had completed a tenure of three years. Therefore, approval was granted to regularise them and make them permanent in service. Copies of the resolutions of 15th November 2011 and 10th February 2014 of the PMC School Board are at Exhibit “D” to the first Petition.

22. By a letter of 15th April 2014, following the resolution passed by the PMC General Body and the resolution of the School Board, the School Board submitted a proposal to the PMC for orders for applying the necessary pay scale to shikshan sevaks who were appointed against leave vacancies. That proposal was processed in the PMC School Board, wound its way through various departments of the Municipal Corporation and then resulted in a letter of 13th June 2014 by the School Board with a detailed report to the Chief Accountant of the PMC. That obviously was in response to the almost predictable objections that are typical of every government’s accounts department. The School Board’s report pointed out that considering the service that these shikshan sevaks had rendered, it was necessary to regularise them in service and to pay them the salary in the pay scale. The School Board also pointed out that there were 82 vacant posts of teachers with the PMC School Board and these shikshan sevaks could thus be accommodated in accordance with the provisions of shikshan sevaks scheme while being in complete compliance with the provisions of the Right of Children to Free and Compulsory Education Act 2009(“**RTE Act**”) that had, in the meantime come into force.

23. So far, the conduct of the PMC school board and the PMC General Body was not just unexceptionable but is absolutely on the right track, doing the right thing.

24. On 2nd July 2014, about 57 shikshan sevaks made a joint representation to the Municipal Commissioner of the PMC. They asked for justice. They asked for regularisation or permanency in service. They asked that they be paid the salary as per the pay scale. And then they said that failing all else, they would proceed on a hunger strike. A reply of 10th July 2014 followed from the School Board saying that the proposal had already been sent on to the Municipal Corporation to appoint them as shikshan sevaks and that action would be taken after the PMC arrived at a decision.

25. Nothing happened. Another representation of 1st September 2014 followed and yet another on 10th February 2015. Having waited long enough, some of the shikshan sevaks did go on a hunger strike from 23rd February 2015.

26. This seems to have had the desired effect because these shikshan sevaks or at least those participating or supporting the hunger strike, were called to a meeting by the Municipal Commissioner on 23rd February 2015. A decision seems to have been taken that the shikshan sevaks appointed on leave vacancies would be made permanent in service and to them would be applied the pay scale as per the applicable GR. These shikshan sevaks were promised a decision in eight days. This was communicated by the

Additional Municipal Commissioner (General) by a letter of 23rd February 2015.

27. Even then nothing seems to have happened. The shikshan sevaks then submitted another representation of 6th April 2015, to which the PMC school board replied on 10th April 2015 saying that it was seeking “guidance” from the Director of Education, Pune whether the shikshan sevaks appointed against leave vacancies and who had completed three years as shikshan sevaks could be appointed to Government-sanctioned post in the pay scale. The shikshan sevaks were told that action would be taken after the School Board had received this ‘guidance’.

28. Meanwhile, on 3rd January 2015 the personnel officer of the PMC informed its Deputy Municipal Commissioner that necessary orders could be issued making pay scales applicable to these “leave period shikshan sevaks” so that that proposal could be sent on to the Director of Education, Pune. The Deputy Municipal Commissioner seems to have remarked that instead of seeking approval from the State Government it was necessary ‘to seek guidance’. A proposal for ‘guidance’ ultimately went out on 3rd March 2015. The Director of Education received a letter in response. He sent it sent on to the Deputy Director of Education. The Deputy Director considered the request or proposal or letter, and informed the Municipal Commissioner that it was necessary to act in regard to the appointment of the leave period shikshan sevaks in primary schools of the PMC in accordance with a Government Resolution dated 16th December 2009 of the State Government and in accordance with

prevalent rules and norms. This GR of 16th December 2009 said that except for the area under the Mumbai Municipal Corporation, in all other Municipal Corporations, Zilla Parishads, Municipal Councils, School Boards and Cantonment Boards, the appointment of shikshan sevaks in primary schools was to be made through the CET. The 3rd Respondent, the Deputy Director of Education, informed the PMC's Municipal Commissioner that he had the authority to take the necessary decision and action in the matter.

29. By a letter of 15th December 2015, the PMC informed the Secretary to the Corporation that government approval was necessary to make permanent these leave periods shikshan sevaks and to have the pay scale applied to them. The financial implications of the proposal were also set out. The Secretary was requested to obtain the necessary sanctions.

30. On 19th October 2015, the issue was placed before the General Body of the PMC. It passed Resolution No. 357. A copy is at Exhibit "K". The PMC decided to approach the State Government to seek approval to make these leave period shikshan sevaks permanent in service and to apply to them the pay scale. The Administrative Officer of the PMC school board submitted the proposal to the Municipal Commissioner for being forwarded to the State Government.

31. This is, therefore, the first part of Mr Bandiwadekar's submission, namely, that the General Body of the PMC had

approved the proposal. It remained subject to State Government approval at that time.

32. The Municipal Commissioner of the PMC approved the proposal and on 31st December 2015, sent it to the State Government in its School Education Department. The submission pointed out the approval by the General Body of the PMC. It said that the matter pertained to the service conditions of shikshan sevaks and teachers in primary schools of the PMC and therefore the School Education Department was the only authority required to be consulted. The UDD had itself no locus, voice or concern with these issues. The Municipal Commissioner of the PMC correctly sent the proposal to the State Government's School Education Department.

33. But, for some reason that we cannot understand, the Municipal Commissioner also sent a similar letter of 31st December 2015 to the State Government in UDD.

34. The State Government's School Education Department considered the proposal and concluded that it had to be sanctioned. By its order of 15th April 2017, the School Education Department of the State Government told the PMC that after considering the proposal, directions were being issued. These said, essentially, that the 93 shikshan sevaks appointed during the leave period, i.e., against leave vacancies, should be absorbed on sanctioned vacant posts in primary schools in the prescribed pay scale from the date of the Government order, provided that this absorption was against

available vacancies as per category-wise reservations. It also said importantly that the salary and allowances of these posts would be paid by the Municipal Corporation.

35. Thus, the State Government's School Education Department issued the necessary order of regularisation to the PMC. It was now for the PMC through its Municipal Commissioner to issue orders to the shikshan sevaks in compliance.

36. But for some reason, the Additional Municipal Commissioner then entered into correspondence with both the School Education Department *and* the Urban Development Department on 18th September 2017. He asked whether the concurrence of the UDD was required for this absorption. This delayed the matter much further. The shikshan sevaks protested by a letter of 26th September 2017 and again threatened a hunger strike. They were told that there was correspondence and that a positive decision would be taken within 15 days. They were requested to withdraw their hunger strike. By a letter of 19th January 2018, the UDD told the Municipal Corporation that its proposal had been rejected. It gave no reasons.

37. On the same day, the PMC sent a fresh detailed proposal to the UDD recommending the absorption and application of pay scale to these leave vacancy shikshan sevaks against sanctioned posts.

38. On 2nd May 2017, the PMC School Board issued a circular now saying that for the summer vacation of May-June 2017 the leave

period shikshan sevaks should not be discontinued. These persons have continued as such without a break since.

39. The narrative so far tells us that, by this time, the Petitioners had been working as shikshan sevaks from about 2009 or 2010 until 2017. Repeated applications had been made. Files were being moved from one department to another. The PMC General Body had specifically approved the request of the Petitioners and other shikshan sevaks for regularisation, absorption and application of pay scale. The State Government in the School Education Department had also accepted the same proposal. It had said that applicable GRs and norms required that this request be accepted. Yet, as we have seen, these shikshan sevaks including the Petitioners were entirely left without implementation or a resolution of their grievances.

40. The Bombay Primary Education Act 1947 and its corresponding Rules stood repealed with the enactment of the RTE Act and its Rules of 2011. This resulted in the dissolution of the Corporation School Boards. The administration and running of primary schools thus came to be vested and entrusted to the respective Municipal Corporations and Municipal Councils across the State. Consequently, the PMC was now directly in control of the local affairs of Primary Schools within its command area, these previously being under the PMC School Board. Also as a consequence, the Education Officer of the PMC replaced the earlier Administrative Officer of the PMC School Board. All employees like the Petitioners and other similarly placed shikshan sevaks became employees of the PMC.

41. This is the gravamen of both Petitions. The complaint in paragraph 22 of the first Petition puts it like this:

“22. The Petitioners state that however till date the Respondent No. 4 has not implemented the Resolution passed by its General Body as well as the aforesaid order dated 15.4.2017 passed by the Respondent No. 1 directing to absorb the Petitioners and others in the sanctioned and vacant posts of Primary Teachers and pay them salary in pay scale. Hence the Petitioners are left with no alternative but to approach this Hon’ble Court by filing this Writ Petition under Article 226 of the Constitution of India.”

42. In paragraphs 23 to 25 the Petitioners have summarised their position.

43. There is one more facet. On 30th May 2018, the State Government School Education Department informed the Commissioner of Education, Pune and all Divisional Deputy Directors of Education that the recruitment of shikshan sevaks in Municipal Corporation Schools, Municipalities, Municipal Councils etc., has to be done online through what is called the Pavitra Portal. This, Mr Bandiwadekar submits, and we think quite correctly, is the clearest possible enunciation by the State Government that it is the State’s Primary Education Department that has jurisdictional remit and seizin over primary schools and not the UDD. We do not know to this date why the UDD in this particular case has sought to reject a proposal that has been approved by the State Government’s own School Education Department. No reasons are given by the UDD. Most of all, we do not see where else in the State of Maharashtra the

UDD exercises such control or authority over schools, primary or otherwise.

44. There is other material to indicate that even the financial aid for primary education for Municipal Corporation, Municipal Council schools is disbursed not through the UDD but the School Education Department.

45. We come to subsequent events. The first of these Petitions was filed on 5th November 2019. An Affidavit in Reply came to be filed by the School Education Department on 10th August 2021. It said that by a Government Notification dated 26th June 2014, the Bombay Primary Education Act 1947 had been repealed. This claimed that the School Boards of Municipal Corporations had somehow migrated from the School Education Department to the UDD. This was sought to be invoked in the Affidavit in Reply as justification for the rejection by UDD for the proposal of regularisation.

46. The Petitioners amended the Petition. They challenged this. They point out that even after the repeal of the Bombay Primary Education Act 1947, it is not the UDD that has any administrative or functional control over primary schools. This continues with respective Municipal Corporations and it is the School Education Department of the Government of Maharashtra, not the UDD that has overall administrative control. This strange rationale comes up for the first time in the Affidavit in Reply after the Petition is filed.

47. This Affidavit must be treated with the utmost disparagement. We expect Governments to be responsible in filing Affidavits. There has to be some adherence to reason and logic in answering a Petition. If what this Affidavit says is true then the School Education Department could not be issuing Government Resolutions, Circulars, Letters or doing anything at all in regard to primary schools in Municipal Corporations, Municipal Councils, Zilla Parishads and other authorities. Certainly, given our roster and the number matters that we have today, it comes as the very great surprise to us to hear that it is not the School Education Department which we have been hearing through the learned AGP but it is the Urban Development Department that is running the schools in Maharashtra. Nobody has ever told us this in any other matter. It also does not stand to reason because if this be so, then the School Education Department could not have issued the GRs, Circulars, Letters to which we had referred earlier. Paragraph 30C of the Petition points out that it is the School Education Department that has even after June 2014 issued GRs relating to primary schools in 2014, 2016, 2017, 2019 and 2021. Not a single GR from the UDD relating to primary school is shown. To the contrary, the UDD has issued Circulars and Letters saying that administrative control over primary schools run by local bodies continues with the School Education Department. We find some of these in the Affidavit in Rejoinder to the present Petition. What the Petition demands is entirely reasonable and is just. What the Affidavit in Reply suggests is impossible. It defies logic. It is patently unjust. The UDD has no records of anything in the education and primary education fields. It does not approve teacher appointments. The suggestion seems to be only this: that since the teachers are now corporation employees,

and since corporations are under the administrative control of the UDD, therefore it is the UDD that is in charge of corporation teachers. The suggestion is absurd and has only to be stated to be rejected. It is like saying that since Mumbai is part of India, therefore it is a Union Territory.

48. We began this judgment by pointing out that what we are concerned with here are 93 human beings who have served as teachers, initially appointed as shikshan sevaks, all with unblemished service. They had spent the last 14 years running from pillar to post. Nobody has accused them of fraud or a wrongdoing. On the contrary, we have General Body Resolution of the PMC School Board when it existed, then of the PMC General Body and then of the State Government in its School Education Department (the only one that has any sort of control) approving the representations of the Petitioners. Yet justice continues to elude these Petitioners and others like them.

49. To those in the UDD and now the PMC who would continue to deny these teachers what is just being due, we only say enough is enough. This has gone on too long. It is now an unforgivable travesty that teachers in Corporation schools should be treated like this. If education, especially under the RTE Act, is supposed to be the bedrock of our progress towards a better, more humane and civilised society, then that purpose is not achieved by this continual mistreatment of those who impart education to our children.

50. We most emphatically reject the application for an adjournment to enable the PMC to reconsider its stand. There is no basis for this. There is nothing new that is now on record. That the PMC would have to bear the costs of absorption was known to one and all including the PMC. It cannot suddenly have awoken to this realisation or epiphany that it has a financial burden that it must bear. Indeed it must, and it must discharge it because these are PMC teachers. They render service and have rendered service for 14 years to children in PMC schools. That is all there is to it. That is the whole of it.

51. The UDD would do well to be cautious in what it says on Affidavit in this Court. It is acting entirely outside its remit and has absolutely no role to play in the administration of primary schools or other schools within the command areas of local bodies. We note that the UDD in all its enthusiasm for rejecting the proposal does not care to say why. It does not care to explain how it comes to have jurisdiction or since when. It does not explain how, if it indeed has jurisdiction, it is the School Education Department that is even after 2014 issuing GR upon GR and Circular after Circular—in contrast to the enduring silence in this regard by the UDD. The UDD also does not say what is to be made of the approval granted by the School Education Department. Instead, we are left to pick one of the two departments: the *yes* by the School Education Department and the *no* by the Urban Development Department. Both are on record. The Affidavit in Reply picks one. We have no idea why. Nobody can explain this.

52. And the person who is in the most unenviable position, as we have seen, is Mrs Purav, for she realises fully the contradictions and the dimensions of what is being suggested. She strains every nerve to get proper instructions. All to no avail.

53. We understand what lies beneath. We see the stratagem: the PMC now faces a financial burden. What better way to rid oneself of it than to obtain a 'no' from *some* department of the Government, even if that department has no nexus at all with the subject matter? And now, realizing that this will not wash, the PMC seriously canvasses before us that it proposes to 'review' or 'recall' its previous General Body approval, one that has never been questioned all these years — and that too when there is no General Body in place.

54. We are making Rule absolute. We do not see what choice any court has except to do so. Rule is made absolute in both Petitions in terms of prayers clauses (b) and (c1) set out above.

55. We clarify what we mean. All 93 shikshan sevaks stand regularised with the application of their appropriate pay scale against available vacancies from the date of the order of the School Education Department, i.e., 15th April 2017. We will take it that the application with effect from an earlier date is not approved. Perhaps there is a case to be made on that but there is no such prayer in the Petition and we therefore do not grant it for that limited purpose. All arrears of pay and other benefits are to be computed from that date and are to be disbursed by the PMC to the Petitioner and other

shikshan sevaks within six weeks from today. If the PMC receives any financial assistance from the State Government in this regard, it is open to the PMC to seek reimbursement, but this does not mean that the PMC can withhold payment to the shikshan sevaks and the Petitioners.

56. We clarify that the absorption of the teachers is against vacant seats as they existed on the date of the order of the 1st Respondent, the School Education Department and cannot be rejected on the ground that there are no vacant seats today. They are senior to others who were appointed later. There is no question of rendering these teachers as surplus. If there are others who have been appointed then it is they who will be rendered surplus.

57. There remains the question of what is to be done with the UDD. Its Affidavit is by one Satish Janardhan Moghe, Deputy Secretary in the UDD. We express our strongest disapproval of this Affidavit. The correct approach for the UDD, even if the PMC or its Additional Municipal Commissioner were being over enthusiastic, was simply to respond by saying that the UDD had nothing to do with the subject matter. Mr Bandiwadekar also points out, and as we noted earlier, for everything that the PMC or the Government says, Mr Bandiwadekar has at least one complete answer, viz., that these schools are administered under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 (“**the MEPS Act**”) and its Rules. These are *entirely* controlled and administered — as also framed — by the State’s School Education Department, not the UDD. There are no service rules framed for

teachers by the UDD at any point. It could not have purported to 'reject' the proposal as it did on 19th January 2018. From that date at the very least until today these teachers have been put through even more of this suffering than they should. This approach by the UDD, allowing itself to be made a party to the very serious injury and prejudice to as many as 93 teachers in the PMC, and the failure of the UDD to give Mrs Purav proper instructions is to be censured and deprecated. Our dismay and displeasure must be made known: we will not countenance this conduct and approach. As an exceptional case, therefore, we impose costs of Rs. 50,000 on the State Government's Urban Development Department. These costs are to be paid within two weeks to the State Legal Services Authority. Whether to recover these costs from the deponent of the affidavit is left to the government.

58. A copy of this order is to be sent on to the learned Advocate-General, the Chief Secretary of the State Government and to the Government Pleader for such action as they may think necessary.

(Neela Gokhale, J)

(G. S. Patel, J)