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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9329/2015

- 1 Trimurti Balak Mandir Shikshan Sanstha,
Shastri Nagar, Aurangabad.
(Through its Secretary)
Smt.Pushpa Arun Dixit,
R/o Plot No. 23, Shastri Nagar,
Jawahar Colony, Aurangabad.
- 2 The Head Master,
Trimurti Balak Mandir
(Primary School),
Plot No.P-107, Bajaj Nagar,
Waluj, Aurangabad.

...Petitioners...

Versus

- 1 Smt. Vithabai Bhikan Desale,
@ Vithabai w/o Rajendra Chavan,
Age - 47 years, Occu-Service,
R/o H. No. 175/176, Mhada Colony,
N-2, Near "Swami Samarth Mandir,
Opp. Dhoot Hospital, Aurangabad,
Dist. Aurangabad.
- 2 The Education Officer (Primary),
Zilla Parishad, Aurangabad.
- 3 The Deputy Director of Education
(Primary Section),
Osmanpura, Near Deogiri College,
Aurangabad, Dist. Aurangabad.

...Respondents...

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Shri R.J. Godbole, Advocate for petitioners.
Shri Sanket S. Kulkarni, Advocate h/f Shri G.R. Ingole
Patil, Advocate for respondent no.1.
Shri D.K. Rajput, Advocate for respondent no.2.
Shri D.R. Korde, AGP for respondent no.3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 22.03.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner – management has challenged the impugned judgment dated 1.1.2015 delivered by the School Tribunal, Aurangabad, by which the Appeal No.3/2009 filed by respondent no.1 – employee has been allowed and she has been granted reinstatement with consequential benefits from the date of her oral termination, which is 23.12.2008.

3] After considering the strenuous submissions of the learned Advocates for the respective sides, I find that this case is a classic example of an unscrupulous employer exploiting a teacher employee, who has been

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working in the said school for more than five years.

4] The contention of Shri Godbole, learned Advocate for the petitioner – management, can be summarized as under:-

a] Respondent no.1 – employee was allowed to work only to gain experience as a teacher.

b] She was inducted as an extra teacher only for the purpose of enabling her to gain experience.

c] There was no advertisement and no applications were called for.

d] She was not allowed to sign on the Muster Roll as she was an extra teacher.

e] Management is unaware whether her monthly wages are paid.

f] Since she was an extra teacher, her proposal for approval was not forwarded to the Education Department.

g] Though the letter of appointment dated 16.6.2003 was given to the employee, the said letter is insignificant as the said appointment

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order was issued only for enabling her to gather experience.

h] She was never treated as a beneficiary of the appointment order dated 16.6.2003.

i] The management expected this employee to gather experience and join some other school.

j] The employee desires to harass the management and, therefore, she filed her appeal.

k] Since she was an extra teacher, she was orally terminated from service.

l] Though the appointment order dated 16.6.2003 was issued in her name, it was only for an honorarium of Rs.3,000/-.

m] Though the appointment order dated 16.6.2003 is not disputed, the same deserves to be discarded as according to the management, the employee had never worked.

n] There was no vacancy for accommodating the employee in the said school.

o] Though the qualifications of the employee are not disputed, she had no right to employment.

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p] Since she was an extra teacher, the management is not required to follow any procedure of termination laid down under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

q] Reliance is placed upon the judgment delivered by this Court in the matter of *Deelip Uttamrao Bhosale v. Secretary, Mahatma Phule Shikshan Prasarak Mandal Kingaon & others* dated 10.3.2016 (**Writ Petition No.2531/2011**).

r] Reliance is also placed upon the judgment of this Court in the matter of *Anna Manikrao Pethe v. Presiding Officer, School Tribunal, Amravati* (**1997 (3) Mh.L.J., 697**).

s] Reliance is also placed on the judgment of this Court in the matter of *President, Late Shri Ramchandra Patil Shikshan Sanstha, Kunikonur & others v. Haiderali Mahmadhanif Inamdar & another* (**2008 (4) Mh.L.J., 159**).

t] Reliance is also placed on the judgment in *Chandramani Devraj Tiwari v. The Secretary, SMR.R.B. Tiwari Sanskrutik Kendra & others* (**2007**

(6) Mh.L.J., 667).

5] Shri S.S. Kulkarni alongwith Shri G.R. Ingole Patil, learned Advocates for the employee, submit as under:-

a] The employee possessed the requisite qualification of S.S.C., D.Ed. and belongs to the Other Backward Class category.

b] She was appointed as a teacher on 16.6.2003 by the management indicating to her that the procedure of appointment was followed.

c] She believed in the appointment order dated 16.6.2003 and reported for duties.

d] She has been continuously working from the date of her appointment till her oral termination dated 23.12.2008, which is after a period of five and half years.

e] The employee had filed an application seeking appointment and the management had appointed her by the order dated 16.6.2003 after properly interviewing.

f] The stand taken by the employer that she

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was appointed as an extra teacher is false and vexatious.

g] There were examinations for Grade IV to Grade VII and the employee was appointed as an Examiner for the examinations held in December, 2006, January, 2007 and February, 2007. Had she not been a regular employee, she would not have been given the work of an Examiner by the petitioner – establishment.

h] The appointment order dated 16.6.2003 is not disputed or denied.

i] Document at Exhibit 4/7 indicates that the employee had worked as an Examiner in Raja Shivaji Vidyalaya, Bajaj Nagar, Aurangabad, for the scholarship examination.

j] The employee was relieved from daily duties to undergo training as in-service candidate in the Sarva Shikshan Mohim by letter dated 21.1.2007, which was issued by the Education Extension Officer for the period of training from 16.12.2006 to 17.12.2006.

k] She had also completed her environmental

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training under the aegis of the employer.

l] The fact that the employee possessed requisite qualification was also not denied by the management.

m] She was a trained teacher as per Rule 2(k) of the MEPS Rules, 1981.

n] The oral termination of the employee in itself indicates the illegality committed by the management.

o] The defence u/s 5 of the Act was not set up by the management.

p] After having worked for more than five years and after the employee was orally terminated, that the management has taken a stand for the first time before the Tribunal that the employee was appointed as an extra teacher for gaining experience.

q] The decision in the case of *Anna Pethe*, cited by the employer, was considered by the learned Full Bench of this Court in the case of *St.Ulai High School v. Devendraprasad Jagannath Singh (2007 (1) Mh.L.J., 597)*.

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r] Reliance is placed on the judgment of this Court in the matter of *Sadhana Janardhan Jadhav v. Pratibha Patil Mahila Mahamandal & others* (2013 (1) Bom.C.R., 269) wherein the Division Bench has concluded that a defence u/s 5 of the MEPS Act ought to be taken by the employer and the issue as to whether the appointment of an employee was after following the legal procedure should not be mechanically framed in every matter.

s] Reliance is placed on the judgment of this Court dated 15.12.2015 in the matter of *Mrudula Martand Palashikar v. Jijamata Primary School & others* (Writ Petition No.1026/2015) to contend that the relaxation of upper age limit is permissible under Rule 9(4)(a) of the 1981 Rules.

t] Reliance is placed upon the judgment of the Full Bench of this Court in the case of *Ramkrishna Chauhan v. Seth D.M. High School & others* (2013 (2) Mh.L.J., 713) to contend that the appointment order issued by an employer can

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neither be disputed by the employee nor the employer.

6] I have considered the submissions of the learned Advocates, as have been recorded hereinabove, and have gone through the judgment impugned and the record available.

7] The appointment order dated 16.6.2003 has not been disputed. A glance at the appointment order indicates that it is issued under Rule 9(5) under Schedule D under the 1981 Rules.

8] Clause (1) of the appointment order indicates that the management was pleased in appointing the respondent no.1 – employee as a teacher from 16.6.2003. She was held entitled for all allowances as may be granted by the Government.

9] Clause (2) of the order states that she was likely to be terminated at any time.

10] Clause (3) of the order indicates that the provisions of the Maharashtra Employees of the Private Schools (Conditions of Service) Act, 1977 r/w MEPS Rules, 1981, were applicable to the services of the employee. There is no contention by the petitioner – management that the appointment order was illegal or was issued unauthorizedly by the signatory to the order.

11] Rule 9 under the 1981 Rules pertains to the appointment of the teaching staff. Same reads as under:-

"9. Appointment of Staff"

(1) The teaching staff of the school shall be adequate having regard to the number of classes in the school and the curriculum including alternative courses provided and the optional subjects taught therein.

(2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee:

Provided that, appointments in leave vacancies of a short duration not exceeding three months, may be made by the Head, if so authorised by the School Committee.

(3) Unless otherwise provided in these rules

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for every appointment to be made in a school, for a teaching or a non teaching post, the candidates eligible for appointment and desirous of applying for such post shall make an application in writing giving full details regarding name, address, date of birth, educational and professional qualifications, experience, etc., attaching true copies of the original certificates. It shall not be necessary for candidates other than those belonging to the various sections of backward communities for whom posts are reserved under sub-rule (7) to state their castes in their applications.

(4) The age limit for appointment to any post in a school be as follows, namely :

(a) for an appointment to be made to any post in a primary school, a candidate shall not be less than 18 years of age and more than 28 years of age, and in the case of candidate belonging to Backward Classes he shall not be more than 33 years of age.

Provided that, upper age-limit may be relaxed in case of women, ex-servicemen and persons having previous experience with the previous permission of the Deputy Director.

(b) for an appointment to be made to any post in any school other than primary school, a candidate shall not be below the age of 18 years.

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(5) A letter of appointment order in the Form in Schedule "D" shall be issued to a candidate appointed to the post. A receipt in token of having received the appointment order shall be obtained from the candidate appointed.

(6) Every employee shall within three months of his appointment, undergo medical examination by a registered medical practitioner named, if any, by the Management or otherwise by any registered medical practitioner. The expenses of medical examination shall be borne by the Management. The appointment shall be conditional pending certificate that he is free from any communicate disease and that he is physically fit to be so appointed.

(7) The Management shall reserve 52 per cent. Of the total number of posts of the teaching and non-teaching staff for the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes as follows, namely :-

(a) Scheduled Castes	13 per cent;
(b) Scheduled Tribes	7 per cent;
(c) De-notified Tribes (A)	3 per cent;
(d) Nomadic Tribes (B)	2.5 per cent;
(e) Nomadic Tribes (C)	3 per cent;
(f) Nomadic Tribes (D)	2 per cent;
(g) Special Backward Category	2 per cent;
(h) Other Backward Classes	<u>19 per cent;</u>
	52 per cent.

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(8) For the purpose of filling up the vacancies reserved under sub-rule (7) the Management shall advertise the vacancies in at least one newspaper having wide circulation in the region and also notify the vacancies to the Employment Exchange of the District and to the District Social Welfare Officer (and to the associations or organizations of persons belonging to backward classes, by whatever names such associations or organisations are called and which are recognized by Government for the purposes of this sub-rule) requisitioning the names of qualified personnel, if any, registered with them. If it is not possible to fill in the reserved post from amongst candidates, if any, who have applied in response to the advertisement or whose names are recommended by the Employment Exchange or the District Social Welfare Officer (or such associations or organizations as aforesaid) within a period of one month the Management may proceed to fill up the reserved post in accordance with the provisions of sub-rule (9).

(9) (a) In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from

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any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward Classes.

(b) In the case of a non-teaching post, if a person the particular category of Backward Classes is not available, the Management shall make efforts with regular intervals to fill up the post within the period of five years and the post shall not be filled up during that period by appointing any other person who does not belong to the respective category of Backward Class.

(10) (a) The Management shall reserve 24 percent of the total number of posts (or vacancies) of Heads and Assistant Heads for the members of Scheduled Castes, Scheduled Castes converts to Buddhism, Scheduled Tribes, De notified Tribes as follows, namely :

- (i) Scheduled Castes and Scheduled Castes converts to Buddhism - 13 per cent.
- (ii) Scheduled Tribes including those living outside the specified areas - 7 per cent.
- (iii) Denotified Tribes and Nomadic Tribes - 4 per cent.

(b) In case it is not possible to fill in the post of a Head or Assistant Head for which a vacancy is reserved for a person belonging to the Castes and Tribes specified in clause (a), the post may be filled in by promoting a candidate from the other remaining categories

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in the order specified in clause (a), so however that the percentage of filling up such vacancies does not exceed the limit laid down for each category. If candidates belonging to any of these categories are not available, then the vacancy or vacancies -

(i) of the Head may be filled in by promoting any other teacher on the basis of seniority-cum-merit after obtaining previous approval of the Education Officer;

(ii) of the Assistant Head shall be kept unfilled for a period of three years unless such vacancy or vacancies could be filled in by promotion of any teachers belonging to such Castes or Tribes becoming available during that period."

12] Rule 9(5) mandates that a letter of appointment in form Schedule D shall be issued to a candidate appointed to the post. As such, the appointment order has clearly made the employee believe that an appointment was made under Rule 9(5) and in form Schedule D. There is no dispute that the said appointment order was neither withdrawn nor had the management taken a stand that it was issued by an unauthorized person or an incompetent authority.

13] The fact, however, cannot be ignored that the management did not tender a copy of this appointment order to the Education Department and did not move a proposal for the approval of the employee's services. No explanation on this count is forthcoming except that, after her oral termination and when the employee had put in five and half years in service, the management states before the Tribunal for the first time that the employee was never appointed by virtue of the appointment order and was a teacher appointed only for gaining experience.

14] In the course of the hearing of this matter, it was put to the learned Advocate for the petitioners as to whether there is any rule or provision, which enables the management to engage an employee by issuing an appointment order only for the purposes of gaining experience, the learned Advocate was unable to offer an explanation except that the management found it fit to issue the appointment order dated 16.6.2003.

13] The fallacious stand taken by the management has

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been further exposed by the record available and which was produced before the Tribunal. The management had contended that the employee was never in service, that she was an extra employee and was, therefore, not in the employment of the petitioners. This stand has been exposed by the record produced before the Tribunal, which indicated that the said teacher was deputed for undergoing training under two different schemes as an in-service candidate and she had also functioned / discharged duties as an Examiner in the scholarship examinations conducted by the petitioner – school.

16] If the concerned teacher was an extra teacher, as contended by the petitioners, it is beyond comprehension that she was permitted to officially function as an Examiner in the scholarship examinations. These are such instances, which expose the falsity in the stand taken by the management.

17] It also cannot be ignored that the respondent – employee was permitted to work for five and half years. A consequential inference from the facts available is

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that the employee was appointed by virtue of the appointment order dated 16.6.2003. An oral termination in itself would indicate that the management on the one hand, desired to dispense with the services of the teacher and on the other hand did not have the courage to take a stand on her termination by issuing an order of termination. It is unconscionable that any employer could be permitted to illegally terminate an employee under oral orders and then put forth a host of factors only when the employee challenged the termination before the School Tribunal.

18] The petitioners have placed reliance on an unreported judgment of this Court in the matter of *Deelip Uttamrao Bhosale* (supra). In the said matter, the employee had suffered an adverse judgment before the School Tribunal and had claimed to be a Sports Teacher for a period of only two years. There were no factors before the Tribunal to indicate that he had functioned as an Examiner and was appointed in the manner in which the respondent no.1 – employee in this case has been appointed. The said judgment would, therefore, not be

applicable to this case.

19] Reliance has been placed upon the judgment of this Court in the matter of *Anna Manikrao Pethe* (supra). In the said case, the employee was appointed purely on temporary basis for the period 1.7.1986 to 30.4.1987. After the conclusion of the academic year, the employee was discontinued by efflux of time. Thereafter, again an appointment order on purely temporary basis was issued for periods 1.7.1987 to 30.4.1988 and from 1.7.1988 to 30.4.1989. The employee was not a trained teacher. The appointment order itself indicated that his engagement was for a temporary period.

20] The facts of the case in hand indicate that an appointment order was issued under Rule 9(5) and in the form prescribed under Schedule D of the 1981 Rules. The facts indicate that for five and half years, there was no termination of the respondent – employee after the completion of any academic year. The facts in this case also indicate that the respondent no.1 – employee had functioned / performed duties as an Examiner in the

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scholarship examinations and was also deputed for training as an in-service candidate. I, therefore, do not find that facts in the case of *Anna Manikrao Pethe* (supra) are similar to the facts in this case.

21] The petitioners have also relied upon the judgments in the matter of *Haidarali Mahmadhanif Inamdar* (supra) and *Chandramani Devraj Tiwari* (supra). In the case of *Chandramani Devraj Tiwari*, the learned Division Bench of this Court came to a conclusion that an illegality was committed by mutual consent by the employee and by the management. It was concluded that such an illegality committed by mutual consent in order to project the employee as a regular employee was not being appreciated by this Court and it was, therefore, concluded that in such situations, the employee cannot take advantage of the documents available.

22] Respondent no.1 – employee has relied upon the judgment of this Court in the matter of *Sadhana Janardhan Jadhav* (supra). This Court has considered the judgments delivered earlier in the cases of *Anna Manikrao Pethe*

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(supra) and *St.Ulai High School* (supra) alongwith several other judgments. The respondent no.1 – employee has relied upon the contents of paragraph nos.18, 19 and 22, which read as under:-

"18. We thus find as revealed in the facts of this case that, the approach of the Tribunals in framing the preliminary issue as to whether appointment was as per Section 5 of the MEPS Act and the Rules and dismissing the same only on that ground by relying on Para 15 of the judgment in *Anna Pethe's* case, is unwarranted. The observations in Para 15 of the Judgment in *Anna Pethe's* case, therefore, will have to be read in the context of law laid down by the Apex Court right from the year 1975, which went unnoticed in the case of *Anna Pethe*. We, quote the following paragraphs from the judgment of the Hon'ble Apex Court in the case of *National Council for Cement Vs. State of Haryana - (1996) 3 SCC 206*, as under :

"12. We, however, cannot shut our eyes to the appalling situation created by :::
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LPA No.149/2012 such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and

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proceedings in the reference are stayed which continue to lie dormant till, the matter relating to the preliminary issue is finally disposed of.

13. This Court in *Cooper Engineering Ltd. v. P.P.Mundhe* - (1975)2 SCC 661) in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

14. Again in *S.K.Verma v. Mahesh Chandra* - (1983)4 SCC 214) this Court strongly disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and :::
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LPA No.149/2012 defeat the purpose of adjudication on merits.

In *D.P.Maheshwari v. Delhi Administration and Ors.* - (1983) 4 SCC 293 the Supreme Court observed thus in the following

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extracted portion of para 1, -

"1...There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues..."

"....Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part - adjudication is really necessary and :::: Downloaded on - 09/06/2013 19:28:01 :::: 15 LPA No.149/2012 whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down."

19. We do not find any reason why the same

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tenet of law enunciated by the Supreme Court in case of labour disputes majority of which are 'service matters' should also not apply in relation to 'service-matters' of all employees of private schools who institute appeals before the specially created 'School Tribunal' under MEPS Act, 1977. We, therefore, hold in the light of the law laid down by the Apex Court that the preliminary issue as to whether the appointment of the appellant is made in accordance with Section 5 of the MEPS Act and the Rules there under, should not be framed mechanically in the first place and should be framed only if it arises and is properly substantiated in the pleadings of the parties to the appeal and further at that the School Tribunal should decide all the issues at the same time without trying any or some of them as preliminary issues.

22. The Tribunal has also recorded a finding that refusal of approval by the Education Officer did not render the appointment of the appellant invalid, which, in our opinion, is in consonance with the Full :::: Downloaded on - 09/06/2013 19:28:01 :::: 19 LPA No.149/2012 Bench decision in the case of *St.Ulai High School and Anr.* (cited supra). We, therefore, reject the submissions advanced by learned Counsel for Respondent no.4 that the appellant

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did not discharge the initial burden of proof and we further reject the submission to set aside the adverse findings recorded by the Tribunal and the learned Single Judge against the interest of Respondent no.4."

23] It is thus apparent that the learned Division Bench of this Court while considering the case of *Anna Pethe* (supra) has relied upon an earlier judgment delivered by the Hon'ble Supreme Court in the case of *National Council for Cement Vs. State of Haryana - (1996) 3 SCC 206*) wherein the Apex Court had observed that the time had come for the Courts to refrain from shutting its eyes to the appalling situations created by preliminary issues being raised before the Tribunals with regard to the appointments of the employees. This Court, therefore, concluded that the framing of preliminary issues under the MEPS Act proceedings in every case is unwarranted and dismissed the appeals by relying on paragraph no.15 of the judgment in *Anna Pethe's case* (supra). This Court, therefore, concluded that the observations of this Court in the case of *Anna Pethe* were to be read in the context of the law laid down by the Apex Court.

24] The petitioners have now taken an another stand that the respondent no.1 – employee was over-aged. This was not the stand of the petitioners when the order of appointment was issued. Similarly, this Court in the matter of *Mrudula Martand Palshikar* (supra) has considered Section 9(4)(a) that the employer in the matters of employment of lady teachers can make an application to the Education Officer for relaxation of age and the same is permissible in the light of the law applicable. In this backdrop, the petitioners are at liberty to make such an application to the Education Officer for seeking relaxation in the age, if so advised.

25] Insofar as the act of the petitioners in not submitting the proposal to the Education Department for approval, would no longer be an obstacle in the path of otherwise eligible candidates, who are working as Assistant Teachers or trained teachers, in the light of the ratio laid down by the learned Full Bench of this Court in the case of *St.Ulai High School* (supra). It is held by the learned Full Bench that the absence of

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approval or refusal to grant approval can neither be a ground for terminating the service of an employee nor can it be a ground for refusing to continue an employee, who is otherwise eligible.

26] In the instant case, from the pleadings of the petitioners before the Tribunal, it is apparent that the petitioner – management has not taken a stand that the employee was not qualified and could not have been regularized on account of lack of requisite qualifications. Per contra, it has come on record and which has been appreciated by the School Tribunal that the respondent no.1 – employee had the requisite qualification and there was no obstruction for her being continued in employment.

27] In the judgment of the learned Full Bench in the case of *Ramkrishna Chauhan* (supra), it has been concluded that if the parties accept the terms and conditions stipulated in the appointment order, it would not be open for the employee to challenge the appointment order as being contrary to the rules or on the ground that the

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terms and conditions stipulated therein were not legally valid. This conclusion of the learned Full Bench cannot, in isolation, be made applicable to the employee alone. The law would have to be made applicable in given circumstances to both the litigating sides on the principle of equality. If the employee cannot question the terms and conditions of appointment order once it has been accepted, the employer also needs to be precluded from questioning its own appointment order issued to the employee on the basis of which the employee, as in this given case, has worked for five and half years.

28] In the light of the judgment of the learned Full Bench, the petitioner – management is precluded from questioning its own appointment order issued to the respondent – employee, as if this is permitted, it would surely result in giving a latitude to the management to perpetuate the illegality and play a fraud on an employee by first issuing an appointment order in accordance with the rules and after five years or more take a stand that the said appointment order was never implemented.

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29] In the light of the above, I do not find that the impugned judgment could be termed as being perverse or erroneous. Merely because a different view could possibly be taken, would not render the impugned judgment erroneous.

30] In fact, from the facts of this case, I have no hesitation in concluding that this management has attempted to defeat the legal right of the respondent – employee by orally terminating her services after having put in five and half years and by taking an unusual and unconscionable stand that she was appointed only to enable her to gather experience and was an extra employee, turning a blind eye to the fact that she was also performing her duties as an Examiner in the scholarship examinations.

31] This petition is, therefore, dismissed with costs quantified at Rs.25,000/- to be paid to the respondent no.1 – employee within a period of eight weeks from today. All consequential benefits that the respondent no.1 – employee is entitled to pursuant to the

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impugned judgment of the School Tribunal shall be made available to her. Rule is discharged.

32] At this juncture, learned Advocate for the respondent no.1 – employee submits that this Court had directed the management to deposit back wages as a condition for staying the impugned judgment. An amount of Rs.2,43,800/- has been deposited in this Court on 12.10.2015. Advocate Shri Godbole on behalf of the petitioner – management submits that since the management may take a chance before the Hon'ble Supreme Court, the respondent no.1 – employee should not be allowed to withdraw the said amount.

33] In the light of the same, the respondent no.1 – employee is permitted to withdraw the said amount after a period of four weeks from the date of this judgment, but subject to any order that may be passed by the Hon'ble Apex Court.

(RAVINDRA V. GHUGE, J.)