

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9076 OF 2016

VASANT SHIKSHAN PRASARAK MANDAL THROUGH ITS PRESIDENT
AND OTHERS.

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS.

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Advocate for Petitioners : Shri Panpatte V.S.
AGP for Respondents 1 and 2/ State : Shri S.D.Kaldate.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 31st August, 2016

Oral Order :

1 The Petitioners have challenged the order of refusal of approval dated 06.08.2016 passed by Respondent No.3/ Education Officer holding that as 172 surplus teachers in Latur Zilla Parishad are yet to be absorbed and since the Petitioners/ Management is recruiting new candidates thereby, truncating the right of surplus teachers, approval to the appointment of Petitioner Nos.3 and 4 cannot be granted.

2 Petitioner No.1 is the Management of the educational institution. Petitioner No.2 is the School. Petitioner Nos.3 and 4 are the newly appointed teachers who have been refused approval.

3 Shri Panpatte, learned Advocate for the Petitioners, has

severely criticized the impugned order dated 06.08.2016. The contention is that as approval is refused, Petitioner Nos.3 and 4, who are newly appointed teachers with Petitioner Nos.1 and 2/ Management, are unduly facing hardships and their rights are being taken away by the impugned order of the Education Department.

4 He further submits that advertisements were published for recruiting Petitioner Nos.3 and 4. They were appointed on 01.04.2014 and 01.08.2014. Their proposals for approval have been turned down on the ground that there are 172 surplus teachers in Latur district who are eligible to be absorbed in Primary Marathi Schools and they are not being given preference. He submits that this Court, in Writ Petition No.2590/2013 (Gopal Siddheshwar Akhade vs. The State of Maharashtra) vide judgment dated 28.08.2013, has rejected such contentions and has concluded that notwithstanding the effect of Section 5(1) of the MEPS Act, 1977, such newly appointed teachers cannot be declined approval.

5 Shri Panpatte also relies upon the judgment of this Court dated 05.05.2012 in Writ Petition Nos.9885 to 9889 and 9903/2011 (Nilatai Shripatrao Rathod vs. The Education Officer, Primary), the judgment dated 14.07.2015 in Writ Petition Nos.7878 and 7879 of 2014 (Mallinath Melgiri Kante vs. The State of Maharashtra and others) and the

judgment in *Shailaja Ashokrao Walse vs. State of Maharashtra*, 2000(1) BCR 18.

6 The learned AGP appearing on behalf of Respondent Nos.1 and 2 submits that the proviso to Section 5(1) of the MEPS Act, 1977 has not fallen for consideration of this Court in the judgments cited by the Petitioner, except in the case of *Gopal Akhade (supra)*. He submits that when vacancies are to be filled in directly, the surplus teachers have to be absorbed and only when none is available, the Management may appoint fresh hands.

7 I have considered the strenuous submissions of Shri Panpatte and the learned AGP.

8 Section 5(1) read with the proviso which was added by Section 5(a) of the Maharashtra Act 30 of 1987, reads as under:-

“5. *Certain obligations of Management of private schools:-*

(1) *The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:*

[Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the

Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the Officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.]”

9 The opening sentence of the proviso is “*Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from*”. Shri Panpatte submits that this opening sentence means that only when vacancies are to be filled in by promotion, the Management shall ascertain from the Education Department whether, any suitable surplus teacher is available for absorption.

10 I do not find that the said submission is sustainable for the reason that the opening sentence is “*Provided that, unless such vacancy is to be filled in by promotion*” which means, save and except vacancies to be filled in by promotion, the Management is obliged to contact the Education Department to find out whether, any suitable person is available for absorption. I am of the view that this mandate would not be applicable only when any vacancy is to be filled in by promotion.

11 Shri Panpatte specifically relies upon the judgment of this Court dated 28.08.2013 in *Gopal Akhade case (supra)* and submits that this Court has interpreted the said proviso to mean that only in cases of promotion, the Management has to ascertain from the Education Department whether any surplus candidate is available for absorption.

12 In the judgment of *Gopal Akhade case (supra)*, Section 5(1) and the proviso has been reproduced below paragraph 16. The submissions of the Respondent Authorities placing reliance upon the proviso, as a ground for refusing approval as the said Management had refused to absorb the available eligible surplus teachers, have been recorded in paragraph 15.

13 Paragraph 17 of the Gopal Akhade judgment (supra) reads as under:-

“17. *Upon careful perusal of sub-section (1) of Section 5 of the said Act, there is nothing in the said Section which supports the stand taken by respondent/ authorities that the management has to seek prior permission for the appointments of the staff. It is only in cases of promotion, the management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the Officer designated by the Director in respect of schools*

imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.”

14 The learned Division Bench of this Court, in the matter of *Tanaji Madhukar Barbade vs. State of Maharashtra and others*, **(2010) (supp.) Bom.C.R. 814**, dealt with the effect of Section 5(1) and the proviso thereunder and Rules 9 and 12 of the MEPS Rules, 1981. It has been observed in paragraphs 3 and 4 of the judgment as under:-

“3. Sub-section (1) of Section 5 thus casts a duty on the Management to fill in a permanent vacancy by appointment of a person who is duly qualified to fill such vacancy. Proviso to sub-section (1) provides that vacancies except those vacancies which are provided by the Act and the Rules to be filled in by promotion shall be first filled in by the Management by ascertaining from the authorities of the Education Department whether, suitable candidates are available in the surplus cell. Thus, according to provisions of sub-section (1) of Section 5, except those posts which are to be filled in by promotion, first right of appointment is to be given to a person whose name is in the surplus cell. The State Government has framed Rules under the Act. Rule 9 deals with appointment of staff and sub-rule (7) of Rule 9 provides for reservation of post and sub-rule (8) of Rule 9 provides that before filling in any post the Management shall issue an advertisement calling for applications from eligible candidates. It is further to be seen that many of the recognized schools receive grant-in-aid. It is an admitted position that the school with which we are concerned, is admittedly receiving grant-in-aid from

the State Government, therefore, the employees who will be working in the school will be receiving as salary the public funds and therefore, in our opinion, it will also be requirement of Article 14 of the Constitution of India that such posts are to be filled in after giving advertisement, so that all persons who are qualified for the post can apply and are considered. Of course, there is an exception to this General Rules where the Statute provides that the post shall be filled in by promotion. In so far as provisions of the Act are concerned, only one post is permitted to be filled in by promotion, that is the post of Head Master and where there is a sanctioned post of Asst. Head Master, the post of Asst. Head Master. The submission of the learned Counsel appearing for the petitioner is that Schedule "F" makes the provisions for filling in the post by promotion. Perusal of Schedule "F" shows that the State Government has framed that Schedule "F" under Rule 12. Perusal of Rule 12 shows that it deals with preparation and maintenance of seniority list. Parent Rule 12 does not deal with the aspect of filling in the post. The learned Counsel relies on what appears to be under the Heading "Guidelines for fixation of seniority of non-teaching staff". Under that Heading there is a sub- heading "Lower Grade Staff". It reads as under:-

"Lower Grade Staff -- A common seniority list of Laboratory Attendant, Naik, Oilman, Machine Attendant, Peon, Watchman, Chowkidar, Sweeper, Callwoman, Kamathi, Attendant, Laboratory Hamal, Liftmen and such other lower grade staff, if any, shall be maintained on the basis of the dates of their appointment. If any of the lower grade staff improves his qualifications as prescribed either for the post of Laboratory Assistant or Clerk, such employee should be given preference while filling in the said post according to his place in seniority."

4. In our opinion, this provision cannot be said to incorporate provision for filling in the post by promotion. In our opinion, what this provision

provides is that when a vacant post of clerk or Laboratory Attendant is advertised, in case suitable candidate in the surplus cell is not available, then preference shall be given to a person who is already working in a lower cadre who has improved his qualification. The provision contemplates preference being given and not promotion being given. Perusal of the scheme of the Rules shows that when the Rules contemplate the post of Head Master to be filled in by promotion, elaborate provisions have been made in the Rules for filling in the post by promotion. In our opinion, therefore, it cannot be said that Schedule "F" makes the provision for appointment to be made by promotion. In our opinion, only provision made in Schedule "F" is that while making appointment to the post of clerk or Laboratory Attendant preference is to be given to a person who has improved his qualification and who is working in the same school. It is not the intention of the Legislature to do away with the requirements of calling of candidates from the surplus cell while filling in these posts. It is also not the intention of the Legislature to prevent those posts from being advertised."

15 It is, therefore, laid down by the learned Division Bench in Tanaji Barbade case (supra) that Section 5(1) casts a duty on the Management to fill in a permanent vacancy. While doing so, the proviso to Section 5(1) mandates that the Management should ascertain from the Education Officer/ Department whether, there are suitable candidates available in the surplus list maintained by the Education Department in each Zilla Parishad. It is, therefore, ruled that except those posts which are to be filled in by promotion, the first right of appointment is to be given to

a person whose name appears in the surplus list. In fact, it is further concluded that if no eligible candidate is available from the surplus list, in the case of filling in posts of Clerks or Laboratory Attendants, preference shall be given to a person who is already working in the lower cadre and who has improved his qualification. The intent of the Legislature is not to do away with the requirement of calling of candidates from the surplus list while filling in vacancies, save and except those to be filled in by promotion.

16 In my view, considering the fact that the judgment of the learned Division Bench in Tanaji Barbade case (supra) was not cited before the learned Single Judge in the matter of Gopal Akhade case (supra), the learned Single Judge of this Court did not have the benefit of assistance of the ratio laid down by the learned Division Bench in Tanaji Barbade case (supra). In this backdrop, propriety demands that I should follow the view taken in Tanaji Barbade case (supra). The view of the learned Single Judge in Gopal Akhade (supra) is, therefore, per incuriam.

17 The effect of the proviso has been considered by the Honourable Supreme Court in several judgments. In CASIO India Company Private Limited vs. State of Haryana, 2016 (3) Scale 441 : (Civil

Appeal Nos.1410 and 1411/2007 and 5450/2013, decided on

29.03.2016), the Honourable Supreme Court has observed in paragraphs

19 and 20 as under:-

“19. We have reproduced the exemption notification above and referred to the language employed. At this juncture, it is absolutely necessary to understand the language employed in the proviso to the notification. If there was no proviso to the notification there would have been no difficulty whatsoever in holding that the exemption is *qua* the goods manufactured and was not curtailed or restricted to the sales made by the manufacturer dealer and would not apply to the second or subsequent sales made by a trader, who buys the goods from the manufacturer-dealer and sells the same in the course of inter-state trade or commerce. It is pertinent to note that, clause (ii) of sub-rule (n) refers to sale of finished products in the course of inter-state trade or commerce where the finished products are manufactured by eligible industrial unit. There is no stipulation that only the first sale or the sale by the eligible industrial unit in Inter State or Trade would be exempt. The confusion arises, as it seems to us, in the proviso to the notification which states that the manufacturer-dealer should not have charged tax. It needs no special emphasis to mention that provisos can serve various purposes. The normal function is to qualify something enacted therein but for the said proviso would fall within the purview of the enactment. It is in the nature of exception. [See : *Kedarnath Jute Manufacturing Co. Ltd v. Commercial Tax Officer*, AIR 1966 SC 12]. Hidayatullah, J. (as his Lordship then was) in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596, had observed that a proviso is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso is not interpreted as stating a general

rule. Further, except for instances dealt with in the proviso, the same should not be used for interpreting the main provision/enactment, so as to exclude something by implication. It is by nature of an addendum or dealing with a subject matter which is foreign to the main enactment. (See : CIT, Mysore etc. v Indo Mercantile Bank Ltd, AIR 1959 SC 713). Proviso should not be normally construed as nullifying the enactment or as taking away completely a right conferred.

20. *Read in this manner, we do not think the proviso should be given a greater or more significant role in interpretation of the main part of the notification, except as carving out an exception. It means and implies that the requirement of the proviso should be satisfied i.e. manufacturing dealer should not have charged the tax. The proviso would not scuttle or negate the main provision by holding that the first transaction by the eligible manufacturing dealer in the course by way of inter-state sale would be exempt but if the inter-state sale is made by trader/purchaser, the same would not be exempt. That will not be the correct understanding of the proviso. Giving over due and extended implied interpretation to the proviso in the notification will nullify and unreasonably restrict the general and plain words of the main notification. Such construction is not warranted.”*

18 The Honourable Supreme Court (a three judges' Bench) in the matter of *S.Sundaram Pillai vs. V.R.Pattabiraman*, **(1985) 1 SCC 591**, has observed in paragraph 43 as under:-

- “43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:-
 - (1) qualifying or excepting certain provisions from the

- main enactment;
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
 - (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
 - (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”

19 The Honourable Supreme Court in the matter of *Satya Pal Singh vs. State of M.P.*, **2016(1) Supreme Court Journal 691**, has observed in paragraphs 11 and 12 as under:-

“11. We have to refer to the rules of interpretation of statutes to find out what is the effect of the proviso to Section 372 of Cr.P.C., it is well established that the proviso of a statute must be given an interpretation limited to the subject-matter of the enacting provision. Reliance is placed on the decision of this Court rendered by four Judge Bench in *Dwarka Prasad v. Dwarka Das Saraf*, (1976) 1 SCC 128, the relevant para 18 of which reads thus:

“18. ... A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must *prima facie* be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. “Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context” (*Thompson v. Dibdin*, 1912 AC 533). If the rule of construction is that *prima facie* a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand

the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.”

12. Further, a three Judge Bench of this Court by majority of 2:1 in the case of *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591, has elaborately examined the scope of proviso to the substantive provision of the Section and rules of its interpretation. The relevant paras are reproduced hereunder:

“30. Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso

which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

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32. In *Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai* it was held that the main object of a proviso is merely to qualify the main enactment. In *Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality* Lord Macmillan observed thus:

“The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.”

33. The above case was approved by this Court in *CIT v. Indo Mercantile Bank Ltd.* where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha Hidayatullah, J.*, as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

“As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.”

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36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been

within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.”

Thus, from a reading of the abovesaid legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Cr.P.C. must be read along with its main enactment i.e., Section 372 itself and together with sub-Section (3) to Section 378 of Cr.P.C. otherwise the substantive provision of Section 372 of Cr.P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Cr.P.C..”

20 In the above backdrop, it requires no debate that for filling in available permanent vacancies, if the Management intends to select fresh hands, it is obliged to approach the Education Officer and seek information as to whether, any surplus eligible teacher is available for being accommodated on the said post and if such teachers are available, the Management is under a legal obligation to absorb them.

21 Shri Panpatte has strenuously submitted that a specific statement is made in the petition that such an application was filed before the Education Officer for collecting information as to whether, any surplus teachers are available or not. I find from the pleadings set out in the memo of the petition that barring such a bald statement that the request

was made in advance to the Education Officer to send surplus teachers, neither the date of the application is mentioned, nor is the application placed on record. There is no evidence that any such application was served upon the Education Officer. Shri Panpatte submits, on instructions, that such an application was offered to the Education Officer, he has received it, but has refused to grant an acknowledgment. I have no reason to accept such an argument.

22 The case of the Petitioners i.e. the Management as well as the newly appointed teachers, is that their claim has to be considered in the light of the facts of this case. One advertisement dated 23.06.2013 was published in the newspaper by name “Prativyavahar”. No details are set out in the petition as to whether, this newspaper is a daily or weekly or fortnightly or monthly. It is also not stated that such newspaper by name “Prativyavahar” has wide circulation in this part of the State.

23 It is stated that on the basis of the said advertisement, the appointment of Petitioner No.3 was made by appointment order dated 01.04.2014. The appointment order placed on record indicates that Petitioner No.3 was appointed temporarily on honorarium basis for a period of three years. After the expiry of the said period, his appointment would come to an end by the efflux of time and without issuance of any

notice. Details as regards, when were the interviews conducted and who was in the selection committee, how many candidates applied and how were they assessed by the selection committee, are not set out in the petition and there are no documents annexed with this petition paper book.

24 One more advertisement was published in the newspaper “Prativyavahar” on 31.07.2014. The interviews were scheduled on the very next date 01.08.2014 and the appointment of Petitioner No.4 was instantaneously made on 01.08.2014. The appointment order placed on record also indicates that Petitioner No.4 was appointed on an honorarium on purely temporary basis and after completion of three years, her service was to come to an end by efflux of time without any notice for her disengagement. Even in this case, details regarding selection process have not been placed on record and there are no pleadings to that effect.

25 These very Petitioners had approached the learned Division Bench of this Court in Writ Petition Nos.5932/2015 and 6009/2015 seeking a direction to the Education Officer that the proposal dated 19.08.2014 seeking approval of the services of Petitioner Nos.3 and 4, be decided. The learned Division Bench directed the Education Officer to decide the proposal in accordance with law, by it's order dated

07.09.2015.

26 In the above fact situation, it is evident that there is no evidence to indicate that the Petitioner/ Management had complied with the proviso to Section 5(1) of the MEPS Act, 1977. By communication dated 19.08.2014, the Petitioner/ Management forwarded the proposal for seeking approval of Petitioner Nos.3 and 4. It appears from the record that the Education Officer, by communication dated 30.08.2014 had directed the absorption of surplus teachers on two vacant posts. In response to the said letter and another letter dated 10.10.2014, the Petitioner/ Management tried to impress upon the Education Officer that considering the interest of students, Petitioner Nos.3 and 4 were appointed after publishing advertisements and after conducting interviews.

27 It needs mention that on the one hand, the Petitioners have shown concern about the students and their future and on the other hand, one advertisement was published on 23.06.2013 against which Petitioner No.3 was appointed after 10 months on 01.04.2014 and the second advertisement was published on 31.07.2014 against which Petitioner No.4 was appointed on the very next day 01.08.2014. Both these employees have been appointed on honorarium basis. The record, therefore, indicates that the Education Officer had promptly informed the Petitioner/

Management that it had to absorb surplus teachers, which suggestion was resisted by the Petitioner/ Management vide its letters dated 22.09.2014 and 27.10.2014, placed on record.

28 The Government Resolution dated 25.10.2004 is on record which is exclusively with regard to absorption of surplus teachers in private primary schools. The Government has mandated that if private primary schools refuse to absorb surplus teachers when permanent vacancies are available, they would not be entitled for salary grants with regard to such posts on which they do not absorb surplus teachers. This Government Resolution, therefore, would mean that if private primary schools appoint fresh hands by declining to absorb surplus teachers, their salaries will be paid from the coffers of the Management Society and there shall be no salary grants through the State exchequer.

29 The unreported judgment dated 05.05.2012 in the matter of *Nilatai Rathod (supra)* would be of no assistance to the Petitioners since in the said case it has been noted by this Court that prior permission for filling up the posts was taken, permission for publishing advertisement was sought and as it was not accorded for a long time, this Court did not find fault with the recruitment of fresh hands. Section 5(1) and especially the proviso there below was not canvassed for the consideration of this

Court.

30 Similar is the case in *Mallinath Melgiri Kante* (supra), where permission of the Education Officer was sought for filling in posts and for publishing the advertisement. Since the Education Officer did not take any decision on the same, the Management published the advertisement. Even in this case, Section 5(1) and the proviso thereunder was not pressed into service.

31 In the matter of *Shailaja Walse* (supra), this Court has dealt with the Government Resolution prescribing appointment of untrained teachers after a given date and restricting entry to the Postal D.Ed. Course only for those who were appointed with the prior approval of the Education Officer. This Court concluded that approvals for appointment by the Education Officer are necessary for untrained teachers in the schools. Without any type of approval of the Education Department, they do not have any vested right to get admission to the Postal D.Ed. Course. I do not find that the ratio laid down in the said judgment would be applicable to the facts of the case in hand.

32 There appears to be, in recent times, a growing trend of appointing new teachers by ignoring eligible surplus teachers. I find it to

be an alarming situation. Surplus teachers are maintained in a list with the Education Officer of the Zilla Parishad in each district with the benevolent object of ensuring their absorption whenever permanent vacancy arises. The Managements as like Petitioner Nos.1 and 2 herein, ignore important provisions of the MEPS Act, 1977 by not complying with the mandate of absorbing surplus teachers and by appointing fresh hands. Despite the Government Resolution dated 25.10.2004 being applicable, approvals are sought by appointing fresh hands in violation of the proviso to Section 5(1). It cannot be ruled out that in many cases such approvals may have been granted by the Education Department knowingly or unknowingly. As a consequence of such acts of the Management, those surplus teachers, who are permanent and because of having been declared surplus, have virtually lost their employments, are overlooked as the Managements prefer to appoint fresh hands.

33 In the instant case, Petitioner Nos.3 and 4 have been appointed on honorarium basis and in such a manner as has been noted herein above. Seeking directions in this petition to the Education Officer to accord approval, in fact, is an attempt to legalize an illegal act committed by the Petitioners. This is nothing less than an abuse of the process of law.

34 Shri Panpatte submits, on instructions, that the State Government has now commenced a special drive for absorption of surplus teachers and which would conclude on 31.08.2016. He submits that if 172 surplus teachers in Latur Zilla Parishad are absorbed, Petitioner Nos.3 and 4 would then be held eligible for approval.

35 It is commendable that the State Government has initiated a drive for accommodating/ absorbing surplus teachers. If 172 teachers are surplus in Latur Zilla Parishad alone, the situation in all Zilla Parishads put together for the entire State, is surely alarming. In this backdrop and considering the fact that Petitioner Nos.3 and 4 have been appointed on honorarium basis, this Court is not required to comment on the submissions of Shri Panpatte.

36 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

37 Considering the fact situation as above and the growing tendency of the Educational Institutions of ignoring the law under Section 5(1) of the MEPS Act, 1977 and its proviso, I am of the view that time has come to issue certain directions to the Principal Secretary, Department of School Education and Sports, State of Maharashtra, Mantralaya, Mumbai-

32 that he shall ensure, by issuing necessary instructions, that (a) the proviso to Section 5(1) is strictly and scrupulously followed and (b) in the cases where the Managements of such private schools defy the directions of the Education Department or do not comply with the proviso to Section 5(1), shall be subjected to the effect of the Government Resolution dated 25.10.2004 under which salary grants to such private managements of educational institutions are stopped for their acts of defiance. If any complicity of the Education Officer or such authority as the case may be, in violation of Section 5(1) is noticed, such officer shall be held liable and shall be subjected to strict disciplinary action.

38 The Principal Secretary, Department of School Education and Sports, State of Maharashtra, Mantralaya, Mumbai-32 shall accordingly, issue appropriate circulars to all the concerned officers in the State of Maharashtra including the Directors and Deputy Directors of Education, Technical Education, Vocational Education and Training and Art as well as the Education Officers of all Zilla Parishads, Municipal Councils and Municipal Corporations, to scrupulously comply with the mandate of the proviso to Section 5(1) of the MEPS Act, 1977 and ensure that the Government Resolution dated 25.10.2004 is scrupulously followed so as to withdraw the salary grants to such appointments which have been made by private managements in defiance of the directions of the

Education Department under Section 5(1) and its proviso. Such circulars shall be issued within SIX WEEKS from today and compliance of the same shall be intimated to the Registrar (Judicial) of this Court within a period of THREE WEEKS thereafter.

39 The Registrar (Judicial) of this Court shall forward a copy of this order to the Principal Secretary, Department of School Education and Sports, State of Maharashtra, Mantralaya, Mumbai-32, within a period of THREE WEEKS from today.

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(RAVINDRA V. GHUGE, J.)