

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4470 OF 2015

- | | | |
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| 1. | Siddheshwar Shikshan Sanstha) | |
| | Dongarsoni, Tal.Tasgaon, Dist.Sangli,) | |
| | Through its Chairman/Secretary.) | |
| 2. | Dongarsoni High School, Dongarsoni) | |
| | A/P.Dongarsoni, Tal.Tasgaon,) | |
| | Dist. Sangli,) | |
| | Through its Head Master) | .. Petitioners |

Versus

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| 1. | The State Of Maharashtra) | |
| | Through the Secretary) | |
| | School Education&Sports Department) | |
| | Mantralaya, Mumbai - 400 032.) | |
| 2. | The Deputy Director of Education) | |
| | Kolhapur Region, Kolhapur.) | |
| 3. | The Education Officer (Secondary)) | |
| | Zilla Parishad, Sangli.) | |
| 4. | Shri Ganesh Bharat Pawar) | |
| | Age: Adult, Occupation : Not known) | |
| | R/At Maravade, Tal.Mangalvedha,) | |
| | Dist.Solapur.) | |
| 5. | Shri Vishal Ramrao Patil) | |
| | Age: Adult, Occupation : Not known) | |
| | R/At Wadgaon, Tal.Tasgaon,) | |
| | Dist.Sangli.) | |
| 6. | Shri Suryakant Rajaram Patil) | |
| | Age: Adult, Occupation : Not known) | |
| | R/At Hatnur, Tal. Tasgaon,) | |
| | Dist.Sangli.) | |

7. Shri Balkrishna Waman Zambre)
Age: Adult, Occupation : Not known)
R/At Dongarsoni, Tal.Tasgaon,)
Dist. Sangli.)
8. Shri Pravin Ramesh Kate)
Age: Adult, Occupation : Not known)
R/At Dongarsoni, Tal.Tasgaon,)
Dist. Sangli.)
9. Shri Arun Baban Nangare)
Age: Adult, Occupation : Service)
R/At Dongarsoni, Tal.Tasgaon,)
Dist. Sangli.)
10. Sou.Saraswati Ankush Damame)
Age: Adult, Occupation : Service)
R/At Dongarsoni, Tal.Tasgaon,)
Dist. Sangli.)
11. Shri Dnayandeo Ramchandra Zambre)
Age: Adult, Occupation : Agriculture)
R/At Dongarsoni, Tal.Tasgaon,)
Dist. Sangli.)
12. Shri Tanaji Narayan Patil)
Age: Adult, Occupation : Agriculture)
R/At Dongarsoni, Tal.Tasgaon,)
Dist. Sangli.) .. Respondents

Mr.Prashant Bhavake for the petitioners.

Ms.M.S. Bane, AGP for the respondent nos.1 to 3 -State.

Mr.Mihir Desai, Senior Advocate i/by Mr.Kirankumar Phakade for the respondent nos.4 to 8.

Mr.N.V. Bandiwadekar for the respondent nos.9 & 10.

Mr.Pramod Kathane for the respondent nos.11 & 12.

ALONG WITH
WRIT PETITION NO.2307 OF 2012
WITH
CIVIL APPLICATION NO.445 OF 2014
WITH
CIVIL APPLICATION NO.2908 OF 2013

1. Shri Arun Baban Nangare)
 Age: 32, Occu : Shikshan Sevak)
 Residing at Dongarsoni, Tal.Tasgaon,)
 Dist. Sangli,) .. Petitioner

Versus

1. The School Tribunal Kolhapur)
 Kolhapur)
2. President)
 Shri Shivaji Shankar Zambare)
 Shri Siddheshwar Shikshan Sanstha)
 Dongarsoni, Tal.Tasgaon, Dist. Sangli.)
3. Ex President)
 Shri Dnayandeo Ramchandra Zambre)
 Shri Siddheshwar Shikshan Sanstha)
 Dongarsoni, Tal.Tasgaon, Dist. Sangli.)
4. Shri K.B. Deshmukh)
 Present Secretary)
 Shri Siddheshwar Shikshan Sanstha)
 Dongarsoni, Tal.Tasgaon, Dist. Sangli.)
5. Shri Tanaji Narayan Patil)
 Ex Secretary)
 Shri Siddheshwar Shikshan Sanstha)
 Dongarsoni, Tal.Tasgaon, Dist. Sangli.)
6. The Headmaster/Ic. Head Master)
 Dongarsoni High School, Dongarsoni,))
 Tal.Tasgaon, Dist. Sangli.)

7. The Education Officer (Sec))
Zilla Parishad, Sangli.)
8. Shri Vishal Ramrao Patil)
Age : Adult, Occ: Not known,)
A/P. Hatnur, Tal. Tasgaon,)
Dist. Sangli.) .. Respondents

Mr.N.V. Bandiwadekar i/by Mr.Umesh Pawar for the petitioner.

Ms.M.S. Bane, AGP for the respondent nos.1 & 7 -State.

Mr.Prashant Bhavake for the respondent nos.2, 4 and 6.

Mr.Pramod Kathane for the respondent nos.3 & 5.

Mr.Mihir Desai, Senior Advocate i/by Mr.Kirankumar Phakade for the respondent no.8.

ALONG WITH
WRIT PETITION NO.2308 OF 2012
WITH
CIVIL APPLICATION NO.446 OF 2014
WITH
CIVIL APPLICATION NO.2909 OF 2013

1. Sou.Saraswati Ankush Damame)
Age: 32, Occ : Shikshan Sevak)
Residing at Dongarsoni, Tal.Tasgaon,)
Dist. Sangli.) .. Petitioner

Versus

1. The School Tribunal Kolhapur)
Kolhapur)
2. President)
Shri Shivaji Shankar Zambare)
Shri Siddheshwar Shikshan Sanstha)
Dongarsoni, Tal.Tasgaon, Dist. Sangli.)
3. Ex President)
Shri Dnayandeo Ramchandra Zambare)
Shri Siddheshwar Shikshan Sanstha)
Dongarsoni, Tal.Tasgaon, Dist. Sangli.)

4. Shri K.B. Deshmukh)
Present Secretary)
Shri Siddheshwar Shikshan Sanstha)
Dongarsoni, Tal.Tasgaon, Dist. Sangli.)
5. Shri Tanaji Narayan Patil)
Ex Secretary)
Shri Siddheshwar Shikshan Sanstha)
Dongarsoni, Tal.Tasgaon, Dist. Sangli.)
6. The Headmaster/Ic. Head Master)
Dongarsoni High School, Dongarsoni,))
Tal.Tasgaon, Dist. Sangli.)
7. The Education Officer (Sec))
Zilla Parishad, Sangli.) .. Respondents

Mr.N.V. Bandiwadekar i/by Mr.Umesh Pawar for the petitioner.
Ms.M.S. Bane, AGP for the respondent nos.1 & 7 -State.
Mr.Prashant Bhavake for the respondent nos.2, 4 and 6.
Mr.Pramod Kathane for the respondent nos.3 & 5.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 30th March 2016
PRONOUNCED ON : 2nd May 2016

Judgment :-

. Rule. Learned counsel appearing for the respondents waive service. The facts in the aforesaid three writ petitions being identical and being inter-connected, were heard together and are being disposed of by a common order.

2. By Writ Petition No.4470 of 2015, the petitioner no.1- Management which runs the petitioner no.2-School has impugned the

order dated 23rd February 2015 passed by the respondent no.3-the Education Officer (Secondary), Zilla Parishad, Sangli thereby vacating the stay granted to the individual approval to the so-called appointments of the respondent nos.4, 5, 6 and 8 and approval to the promotion of the respondent no.7 and continuing the order of their approvals and seeks a writ of mandamus to cancel and/or withdraw his orders dated 15th September 2012 and 15th October 2012 by which the respondent no.1 granted the individual approval to the appointments of the respondent nos.4, 5, 6 and 8 and approval to the promotion of the respondent no.7.

3. By Writ Petition No.2307 of 2012, the petitioner (respondent no.9 in Writ Petition No.4470 of 2015) has impugned the order dated 17th January 2012 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No.53 of 2011 dismissing the appeal filed by the petitioner impugning termination of his service by the respondent nos.1 and 2 (petitioners in Writ Petition No.4470 of 2015) by letter dated 23rd June 2011.

4. By Writ Petition No.2308 of 2012, the petitioner (respondent no.10 in Writ Petition No.4470 of 2015) has impugned the order dated 17th January 2012 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No.53 of 2011 dismissing the appeal filed by the petitioner impugning termination of her service by the respondent nos.1 and 2 (petitioners in Writ Petition No.4470 of 2015) by letter dated 23rd June 2011. For the sake of convenience, the parties in this judgment are described as they were described in the Writ Petition No.4470 of 2015. Some of the relevant facts for the purpose of deciding these three writ petitions are as under:-

5. The petitioner no.1 is an Educational Institution running the petitioner no.2-Secondary School which is recognized, fully aided secondary school having classes from 5th to 10th Std. The respondent no.2 is the Deputy Director of Education, Kolhapur Region, Kolhapur. The respondent no.3 is the Education Officer (Secondary), Kolhapur appointed under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “the MEPS Act”). The respondent nos.4 to 6 were claiming to be appointed as Shikshan Sevaks in the petitioner no.2-School. The respondent no.7 is claiming to be promoted in the post of Junior Clerk from the post of Laboratory Assistant. The respondent no.8 is claiming to be appointed as a Peon in the petitioner no.2-School. The respondent nos. 9 and 10 were appointed as Shikshan Sevaks in the petitioner no.2-School and are the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 respectively. The respondent no.11 is an Ex-President of the petitioner-Sanstha. The respondent no.12 is an Ex-Secretary of the petitioner-Sanstha.

6. It is the case of the petitioners that the respondent no.3 had granted permission on 12th January 2010 for publication of an advertisement in the daily newspaper for recruitment of teaching staff. On 16th January 2010, the petitioner no.1-Management published an advertisement in the daily newspaper “Lokmat” inviting applications for appointment of one post of Shikshan Sevak from Open Category. The petitioner no.1 appointed the respondent no.9 to the said post of Shikshan Sevak with effect from 15th June 2010 by issuing him an appointment letter dated 14th June 2010.

7. According to the petitioners, one more post of Assistant Teacher became vacant in view of the retirement of one Assistant Teacher i.e. Mr. J.D. Pawar. The petitioners once again obtained permission from the respondent no.3 for issuance of an advertisement for filling up the said post of Assistant Teacher. By an order dated 12th July 2010, the respondent no.3 granted permission for issuing an advertisement to the petitioners. The petitioners accordingly published an advertisement in the daily newspaper "Lokmat" dated 14th July 2010 inviting applications for recruitment of one post of Shikshan Sevak. The petitioner no.1 appointed the respondent no.10 to the said post of Shikshan Sevak with effect from 26th July 2010 by issuing her a letter of appointment dated 14th July 2010.

8. It is the case of the petitioners that the petitioner no.1-management in the Managing Committee Meeting held on 20th June 2010 appointed the present Secretary of the petitioner no.1-management in the post of Secretary and accordingly submitted a change report (492 of 2010) on 28th June 2010 under the provisions of the Maharashtra Public Trusts Act, 1950 (for short "the MPT Act"). The tenure of the Managing Committee thereafter expired. It is the case of the petitioners that the petitioner no.1-management vide the Annual General Meeting dated 21st September 2010 elected a Managing Committee for the tenure of the year 2010-13 and submitted a change report (719 of 2010) on 27th October 2010 under the provisions of the MPT Act. The petitioner no.1-management also submitted another change report (720 of 2010) regarding the election of officials of the Managing Committee.

9. It is the case of the petitioners that the respondent nos.11 and 12 also submitted a change report (566 of 2010) to the Charity Commissioner under the provisions of the MPT Act. According to the petitioners, the said change report submitted by the respondent nos.11 and 12 was false and bogus. According to the petitioners, the petitioner no.1-management took a charge on 21st September 2010 and started functioning of the management of the petitioner no.2-School.

10. It is the case of the petitioners that though the respondent nos.11 and 12 had no right to interfere in the administration of the management of the petitioner nos.1 and 2, in collusion with the Ex-Incharge Head Master Mr.Vitthal Tukaram Jadhav, they obstructed the respondent nos.9 and 10 from signing the muster roll and threatened them on 23rd June 2011. The respondent nos.9 and 10, thereafter, made a representation to the respondent no.3-Education Officer (Secondary) and requested for a direction to the Ex-Incharge Head Master Mr.V.T. Jadhav to permit them to sign muster roll. On 30th September 2010, the respondent no.3 temporarily rejected the individual approval to the appointments of the respondent nos.9 and 10 on the ground that there was a dispute in the management of the petitioner nos.1 and 2. On 18th October 2010, the respondent no.3 directed the Ex-Incharge Head Master to permit the respondent nos.9 and 10 to sign the muster roll.

11. Sometime in the year 2011, the respondent nos.9 and 10 filed two separate appeals bearing Nos.52 of 2011 and 53 of 2011 respectively before the Presiding Officer, School Tribunal, Kolhapur inter alia impugning the oral termination of their services. By an order dated 17th June 2012, the Presiding Officer of the School Tribunal dismissed

those two appeals bearing Nos.52 of 2011 and 53 of 2011 respectively. Being aggrieved by the said order dated 17th January 2012, the respondent nos.9 and 10 filed two separate Writ Petition bearing Nos.2307 of 2012 and 2308 of 2012 respectively for a writ of certiorari or any other writ or direction for quashing the said orders passed by the Presiding Officer of the School Tribunal.

12. It is the case of the petitioners that though the respondent no.12 did not have any authority to publish any advertisement or to make any appointment of any staff member in the petitioner no.2-School, the respondent no.12 published an advertisement in the daily newspaper "Lokmat" on 18th May 2011 for recruitment of three posts of Shikshan Sevaks and one post of Junior Clerk. It is the case of the petitioners that no permission was obtained by the respondent no.12 from the Education Officer before issuing any such advertisement. On 20th May 2011, the petitioner no.1-management immediately made a representation to the respondent no.3 and requested to direct the respondent nos.11 and 12 not to conduct any such recruitment process. The petitioners also issued a public notice in the daily newspaper "Lokmat" on 25th May 2011 and declared that the said advertisement issued by the respondent no.12 was false and issued without any authority. A copy of the said public notice was also displayed on the notice board of the petitioner no.2-School.

13. The respondent nos.11 and 12, however, conducted the recruitment process though they were not part of the petitioner no.1-management and passed Resolutions dated 14th June 2011, 21st August 2011, 12th June 2011, 24th June 2011, 25th September 2011 and 24th

June 2012 purporting to appoint the respondent nos.4 to 6 as Shikshan Sevaks and the respondent no.8 as Peon and promoted the respondent no.7 to the post of Junior Clerk from the post of Laboratory Assistant. The respondent nos.11 and 12 through the Ex-Incharge Head Master Mr.V.T. Jadhav, thereafter, submitted a proposal on 2nd June 2011 to the respondent no.3 Education Officer for seeking individual approval to the appointments of the respondent nos.4 to 8.

14. The petitioner no.1-management through one of the Managing Committee Members, thereafter, submitted an application to the Education Officer under the provisions of the Right to Information Act, 2005 and sought information as to whether the respondent nos.11 and 12 had obtained any prior permission from the Education Officer for issuing any advertisement or not. The Public Information Officer of the respondent no.3 by his letter dated 24th June 2011 informed the petitioners that the prior permission was not obtained by the respondent nos.11 and 12 for publishing advertisement and further informed that the proposals were submitted by the respondent nos.11 and 12 for the individual approval to the appointments of the respondent nos.4 to 8.

15. It is the case of the petitioners that though the change reports filed by the respondent nos.11 and 12 were pending before the Assistant Charity Commissioner, the Ex-Incharge Head Master Mr.V.T. Jadhav submitted false and bogus certificates to the respondent no.3 on 14th September 2011 stating that there was no litigation of the management pending. On 24th October 2011, the petitioner no.1-management issued a legal notice to the Education Officer and requested him not to grant any individual approval to the respondent nos.4 to 8 on various grounds.

16. On 15th September 2012 and 15th October 2012, the respondent no.3 granted individual approval to the appointments of the respondent nos. 4 to 6 as Shikshan Sevaks, to the respondent no.8 as Peon and approval to the promotion of the respondent no.7 as a Junior Clerk in the petitioner no.2-School. The petitioner no.1-management, thereafter, made a complaint on 5th January 2013 to the respondent no.3 and requested it to hold an enquiry in the matter and to take appropriate action. The respondent no.3, however, neither conducted any enquiry nor give any reply to the said complaint.

17. On 15th January 2013, the petitioner no.1-management made a representation to the respondent no.2-Deputy Director of Education and requested to cancel the individual approval granted to the respondent nos.4 to 8. The petitioner no.1-management also submitted a complaint to the Chief Executive Officer, Zilla Parishad, Sangli on 22nd February 2013. In view of the said representation made by the petitioner no.1-management, the Chief Executive Officer, Zilla Parishad, Sangli directed the Education Officer herein to give hearing to the parties and to take a decision within 15 days and to submit a report.

18. The petitioners, thereafter, appeared before the Education Officer and submitted their written statement and also made oral submissions and requested to cancel the individual approvals granted to the respondent nos.4 to 8. The respondent nos.11 and 12 also filed their written statements before the respondent no.3. On 26th March 2013, the respondent no.3 passed an order that it would not be proper to take decision regarding cancellation of the individual approvals of the respondent nos.4 to 8 since his predecessor officer had granted such

approvals in favour of the respondent nos.4 to 8. The respondent no.3 also held that it would be better to take the appropriate decision on the issue after the final decision of this Court in the Writ Petition Nos.2307 of 2012 and 2308 of 2012 filed by the respondent nos.9 and 10 respectively is rendered.

19. Sometime in the year 2013, the petitioners lodged a First Information Report (FIR) against the respondent nos. 11 and 12 bearing C.R.NO.114 of 2013. The respondent nos.11 and 12 also filed separate FIR against the present management of the petitioner no.1.

20. On 26th June 2013, the respondent no.3 passed an order staying the individual approval granted to the respondent nos.4 to 8. Being aggrieved by the said order dated 26th June 2013, the respondent nos.4 to 8 filed a Writ Petition (5758 of 2013) in this Court. The petitioners herein were not parties to the said writ petition initially. The petitioners, thereafter, applied for intervention in the said writ petition which application was allowed by this Court.

21. On 22nd November 2013, the learned Assistant Charity Commissioner allowed all the change reports filed by the petitioner no.1 and rejected the change report filed by the respondent nos.11 and 12. The respondent nos.11 and 12 have challenged the said order passed by the Assistant Charity Commissioner by filing a revision application which is pending. There is no stay of the order passed by the Assistant Charity Commissioner allowing the change reports filed by the petitioner no.1 and rejecting the change report filed by the respondent

nos.11 and 12. The names of the office bearers of the petitioner no.1 are entered in Annexure-1 of the petitioner no.1-management. The Assistant Charity Commissioner had accordingly issued an extract P.T.R. It is the case of the petitioners that since 2010, the office bearers of the petitioner no.1 are holding charge of the petitioner no.2-School and the Sanstha.

22. On 14th January 2015, this Court admitted the Writ Petition (5758 of 2013) filed by the respondent nos.4 to 8 and rejected the interim relief. This Court, however, in the said order made it clear that the Education Officer was free to hear the petitioners and concerned respondents on the issue of cancellation of approval to the appointments of the respondent nos.4 to 8 and pass an appropriate order during the pendency of the said writ petition.

23. Pursuant to the said liberty granted by this Court in the said order dated 14th January 2015, the Education Officer issued notices to all the concerned parties for hearing. The petitioners appeared before the respondent no.3 and submitted their objection and once again prayed for cancellation of individual approval granted to the respondent nos.4 to 8. By an order dated 23rd February 2015, the respondent no.3 vacated the stay granted to the individual approval to the appointments of the respondent nos.4 to 8 and continued the earlier individual approvals granted in their favour.

24. On 25th March 2015, the respondent nos.4 to 8 withdrew the said Writ Petition No. 5758 of 2013 in view of the fresh order passed by the respondent no.3 thereby vacating the stay granted to the individual

approval to the respondent nos.4 to 8. Being aggrieved by the said order dated 23rd February 2015 passed by the respondent no.3, the petitioner no.1-management filed a Writ Petition (4470 of 2015) for a writ, order and direction for quashing and setting aside the order dated 23rd February 2015. By an order dated 5th May 2015 passed by this Court, ad-interim order is granted in terms of prayer clause (c) of the Writ Petition No.4470 of 2015 thereby operation, effect, execution and implementation of the impugned order dated 23rd February 2015 passed by the respondent no.3-Education Officer (Secondary) is stayed.

25. Mr.Bhavake, learned counsel appearing for the petitioner no.1-management in Writ Petition No.4470 of 2015 invited my attention to various correspondence exchanged between the parties referred to aforesaid and the impugned order passed by the Education Officer which is subject matter of the Writ Petition No.4470 of 2015 and the orders are passed by the Presiding Officer, School Tribunal, Kolhapur dismissing the Appeals filed by the respondent nos.9 and 10 which orders are subject matter of the Writ Petition No.2307 of 2012 and Writ Petition No.2308 of 2012. It is submitted by the learned counsel that the Managing Committee of the petitioner no.1 had started their functioning from the date of their selection/election i.e. from the year 2010 itself.

26. It is submitted that when the petitioner no.1-management started the process of appointing the teaching staff in the year 2010, the respondent nos.11 and 12 were also the part of the Committee. The petitioners had obtained prior approval of the Education Officer before publishing an advertisement in the daily newspaper "Lokmat" for filling up the posts of Shikshan Sevaks from the Open Category as contemplated

under Section 5 of the MEPS Act. The petitioner no.1-management had issued advertisements on 16th January 2010 and 14th July 2010 for recruitments to the posts of Shikshan Sevaks from the Open Category respectively.

27. It is submitted that the petitioner no.1-management had after following the due process of law appointed the respondent no.9 in one of the posts of Shikshan Sevak with effect from 15th June 2010 and appointed the respondent no.10 in the post of Shikshan Sevak from the Open Category with effect from 14th July 2010. He submits that when the respondent nos.9 and 10 were appointed as Shikshan Sevaks, there was no dispute between the trustees of the petitioner no.1-management and the respondent nos.11 and 12. The respondent nos.11 and 12 filed a false change report bearing no.566 of 2010 after appointment of the respondent nos.9 and 10. He submits that the respondent nos.11 and 12 in collusion with the Ex-Incharge Head Master Mr.V.T.Jadhav had threatened the respondent nos.9 and 10 not to sign the muster roll though they had no authority to stop the respondent nos.9 and 10 from signing the muster roll.

28. It is submitted that the learned Assistant Charity Commissioner in his order dated 22nd November 2013 while allowing the change reports filed by the petitioner no.1-management and rejecting the change report filed by the respondent nos. 11 and 12 has held that the changes reported in the change reports filed by the petitioner no.1-management were made by legal and valid members/trustees whereas the change reported in the change report filed by the respondent nos.11 and 12 was effected by illegal members of the trust.

It is held that though the executive council mentioned in the Change Report No.566 of 2010 was looking after the management of the trust, they had no any legal authority to manage the affairs of the trust and after August 2010, they would be treated as defacto trustees for the acts done by them during 2008 to 2010. It is held that it was necessary to recognize the trustees and members as per Change Report Nos.492 of 2010, 719 of 2010 and 720 of 2010 which were filed by the petitioner no.1-management being legal and valid trustees and members for further better management of the trust. In the said order, it is held by the Assistant Charity Commissioner that the changes reported in the application no.566 of 2010 by the respondent nos.11 and 12 were illegal and invalid.

29. It is held that the respondent nos.11 and 12 failed to prove the legality and validity of the change reported by them whereas, the petitioner no.1-management had succeeded in proving the legality and validity of reported changes mentioned in the other three reports filed by them. The Assistant Charity Commissioner also came to the conclusion that it had come in the evidence that Mr.Tanaji Patil, Mr.Dnayandeo Zambre and Clerk Mr.Jayant Patil had withdrawn Rs.4 lacs from the trust fund and it was necessary to direct the Inspector of his office to inquire into the irregularity and contravention of the provisions of the MPT Act so as to take further action against the errant trustees.

30. In so far as the appointments of the respondent nos.4 to 8 made by the respondent nos.11 and 12 are concerned, it is submitted that it is now proved beyond reasonable doubt that the respondent

nos.11 and 12 were not validly appointed trustees/office bearers of the petitioner no.1-management when they published an advertisement in the daily newspaper “Lokmat” dated on 18th May 2011 for recruitment of three posts of Shikshan Sevaks and one post of Junior Clerk. He submits that since the Assistant Charity Commissioner had categorically held that the changes reported by the respondent nos.11 and 12 were illegal and invalid and had rejected the said change report, it is proved beyond reasonable doubt that the respondent nos.11 and 12 at the material time acted illegally and thus could not have made any appointment of the respondent nos.4 to 8 in the year 2011 or thereafter. The Assistant Charity Commissioner had held that the petitioner no.1-management, however, had proved that the changes reported by them in the change reports submitted by them were proved and they were validly appointed as trustees and office bearers. He submits that admittedly there is no stay granted by the Appellate Authority against the said order dated 22nd November 2013.

31. It is submitted that in any event, the respondent nos.11 and 12 did not comply with the mandatory requirements under Section 5(1) of the MEPS Act by obtaining prior permission of the Education Officer for issuance of any advertisement for recruitment of any teaching or non-teaching staff and did not ascertain from the Education officer, Zilla Parishad whether there was 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. He submits that the petitioner no.1-management had followed such procedure by obtaining prior permission from the Education Officer before issuing an advertisement

and only after following the procedure, the petitioner no.1 had appointed the respondent nos.9 and 10 to the posts of Shikshan Sevaks respectively.

32. Learned counsel for the petitioner no.1-management invited my attention to the advertisement issued by the respondent nos.11 and 12 and would submit that the respondent nos.11 and 12 had deliberately given the personal address of the respondent no.11 and not the address of the office of the petitioner nos.1 and 2. He submits that though the petitioners had issued a public notice in the newspaper raising an objection regarding issuance of the said advertisement by the respondent nos.11 and 12, the same being without any authority, the respondent nos.11 and 12 passed resolutions illegally and appointed the respondent nos.4 to 6 & 8 and promoted the respondent no.7. He submits that pursuant to the said advertisement illegally issued by the respondent nos.11 and 12, initially the respondent nos.11 and 12 appointed Mr.Shinde as a Shikshan Sevak who thereafter resigned.

33. It is submitted that the respondent nos.11 and 12 did not issue fresh advertisement for filling up the said post and appointed the respondent no.5 as a Shikshan Sevak in his place illegally. He submits that similarly, one Mrs.Shubhangi Prakash Shinde resigned and in her place without issuing any fresh advertisement, the respondent nos.11 and 12 appointed the respondent no.6. He submits that the respondent nos.11 and 12 could not have promoted the respondent no.7 who was a Laboratory Assistant to the post of Junior Clerk. Similarly, the respondent no.8 could not have been appointed as a Peon on the compassionate ground.

34. It is submitted by the learned counsel for the petitioner no.1-management that in collusion with the respondent nos.11 and 12, the Ex-Incharge Head Master Mr.V.T. Jadhav issued a false certificate of the Education Officer while seeking an individual appointment that there was no dispute in the management knowingly well that three change reports filed by the petitioner no.1-management and one change report filed by the respondent nos.11 and 12 challenging the appointment of each other were pending before the Assistant Charity Commissioner. He submits that though all these facts were brought to the notice of the Education Officer by the petitioners, the Education Officer granted individual approval to the appointments of the respondent nos.4 to 8 and vacated the stay granted by his predecessor and restored the original order passed by his predecessor. He submits that the respondent nos.4 to 8 had not been working from the date of their appointment by the respondent nos.11 and 12 till the date of their approval. However, their salary was released by the Education Officer illegally. He submits that in place of the respondent no.4, Mr.Kolekar is working in the petitioner no.2-School. In place of the respondent no.5, the respondent no.9 is working as a Shikshan Sevak. In place of the respondent no.6, the respondent no.10 is working as a Shikshan Sevak.

35. My attention is also invited to the order passed by this Court in the writ petition filed by the respondent nos.4 to 8 in which at the material time, the petitioners were not impleaded as parties-respondents and it is submitted that the respondent nos.4 to 8 in collusion with the respondent nos.11 and 12 obtained an order against the Education Officer for releasing the salary of the respondent nos.4 to 8 though they were illegally appointed. After obtaining such order from this Court, the

respondent nos.4 to 8 withdrew that writ petition. He submits that the Education Officer could not have granted individual approval to the appointments of the respondent nos.4 to 8 illegally made by the respondent nos.11 and 12.

36. Learned counsel for the petitioner no.1-management invited my attention to the order of approval granted by the Education Officer to the appointments of the respondent nos.4 to 8 and would submit that the Education Officer had rejected the approval of the appointments of the respondent nos.9 and 10 on the ground that they had not produced the latest P.T.R. certificate and there being a dispute in the management, however, individual approval to the appointments of the respondent nos.4 to 8 was granted though no such P.T.R. Extract was produced by the respondent nos.4 to 8 and though admittedly there was a dispute about the management of the trust pending before the Assistant Charity Commissioner. The Education Officer overlooked these two conditions which were considered by him while rejecting the approval to the appointments of the respondent nos.9 and 10. He submits that the order passed by the Education Officer is ex-facie illegal and shows different approach in rejecting the approval to the appointments of the respondent nos.9 and 10 and approving the appointment of the respondent nos.4 to 8.

37. It is submitted by the learned counsel that though the petitioners had brought various illegalities in the appointments of the respondent nos.4 to 8 before the Education Officer and also about the pending management dispute before the Assistant Charity Commissioner, the Education Officer without conducting any enquiry or investigation

whether the appointments of the respondent nos.4 to 8 made by the respondent nos.11 and 12 were legal and valid and in accordance with the provisions of law or not, passed a mechanical order approving the appointments of the respondent nos.4 to 8 and vacated the stay granted by his predecessor. He submits that the Education Officer was also aware of the public notice issued by the petitioner no.1-management against the advertisement issued by the respondent nos.11 and 12, but still he approved the appointments of the respondent nos.4 to 8. The respondent nos.11 and 12 admittedly had not produced the P.T.R. Extract of the year 2011.

38. Learned counsel for the petitioner no.1-management invited my attention to the Government resolution dated 6th February 2012 by which the Government had framed guidelines for granting approval in the aided Schools in respect of teaching and non-teaching staff including the duties of the Education Officer while considering the application for approval. He submits that even under the said Government Resolution, if prior permission of the Education Officer is not obtained before issuing an advertisement, the Education Officer cannot approve such appointment made without obtaining prior consent. He submits that under the said Resolution, the Education Officer is empowered to cancel the approval granted by him, however, after hearing the parties concerned. The Education Officer thus ought to have exercised his power and ought to have cancelled the approval of the respondent nos.4 to 8 granted by his predecessor.

39. Learned counsel for the petitioner no.1-management produced original muster roll for the relevant period and would submit

that during the period between June 2011 to May 2013, the respondent nos.4 to 8 were not found working. He submits that since the respondent nos.4 to 8 obtained the alleged arrears of their salary under an ad-interim order passed by this Court by suppressing the facts, the appropriate action should be taken against the Education Officer and an order and direction shall be issued against the Education Officer to take steps to recover the amount of salary released by the Education Officer in favour of the respondent nos.4 to 8. He submits that the Education Officer could not have considered the records produced by the respondent nos.11 and 12 as their appointments itself reported in the change report were rejected by the Assistant Charity Commissioner.

40. In support of his submission that the appointments of the respondent nos.4 to 8 were illegal, an appropriate order shall be passed for refund of the amount, learned counsel for the petitioner no.1-management placed reliance on the judgment of this Court in the case of ***Nilkanth s/o Sambhuppa Ajbe Vs. State of Maharashtra and Ors.***, reported in ***1999 (2) Bom C.R. 30*** and in particular paragraphs 4 and 6 thereof. Learned counsel also placed reliance on an unreported judgment of this Court delivered on 19th January 2016 in the case of ***Akole Taluka Education Society Vs. The State of Maharashtra & Ors.*** in Writ Petition No.3481 of 2015 and other companion writ petitions and more particularly paragraph 42 thereof.

41. It is submitted by the learned counsel for the petitioner no.1-management that there were no permanent or clear vacancies on which the respondent nos.4 to 8 could be appointed by the respondent nos.11 and 12. In so far as the two posts of Assistant Teachers were concerned,

it is submitted that on those two posts, two eligible persons were already appointed as Shikshan Sevaks and their applications for approval were already sent before the Education Officer. The dispute raised by the respondent nos.9 and 10 challenging termination of their services was pending.

42. Mr.Bandiwadekar, learned counsel for the respondent nos.9 and 10 (petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 respectively) tendered compilation of the documents. It is submitted that the appeals filed by his clients have been rejected basically on the ground that there was a pending management dispute. He submits that the changes reported by the petitioner no.1-management have been admittedly accepted by the Assistant Charity Commissioner and changes reported by the respondent nos.11 and 12 who had made appointments of the respondent nos.4 to 8 have been rejected by the Assistant Charity Commissioner. He submits that admittedly there was no stay of the order passed by the Assistant Charity Commissioner.

43. Learned counsel invited my attention to the permission dated 12th September 2010 granted by the Education Officer in favour of the petitioner no.1-management to publish an advertisement. He submits that in response to the advertisement issued by the petitioners, the respondent nos.9 and 10 had applied for the posts of Shikshan Sevaks. He submits that when the management had issued the said advertisement, the respondent nos.11 and 12 did not raise any objection challenging the powers of the petitioner no.1-management nor any action was taken by them against the petitioner no.1-management. He submits that the respondent nos.11 and 12 were actually a part of the said

management when the advertisement was issued by the petitioner no.1-management.

44. My attention is invited to the resolution passed by the School Committee on 22nd May 2010 approving the appointments of the respondent nos.9 and 10 to the posts of Shikshan Sevaks and also to the resolution passed by the petitioner no.1-management on 23rd September 2010 approving the appointments of the respondent nos.9 and 10. He submits that the respondent nos.9 and 10 were appointed by separate appointment letters. He also invited my attention to the appointment letters appointing the respondent nos.9 and 10 as Shikshan Sevaks for a period of three years. The petitioner no.2-School had sent a proposal to the Education Officer on 24th September 2010 for seeking approval of appointment of the respondent nos.9 and 10. He submits that the appointments of the respondent nos.9 and 10 made by the petitioner no.1 were within the sanctioned strength. Several documents which were required to be filed along with proposal for approval were sent by the petitioner no.1 to the Education Officer.

45. Learned counsel for the respondent nos.9 and 10 invited my attention to the order dated 30th September 2010 passed by the Education Officer on the ground that the latest P.T.R. Extract was not annexed and there was alleged pending management dispute. He submits that when the respondent nos.9 and 10 were appointed by the petitioner no.1-management, there was no dispute in the management. He submits that though the proposal of the petitioner no.1-management for approval of the appointments of the respondent nos.9 and 10 was rejected by the

Education Officer, the petitioner no.1-management continued their services, however, without payment of salary.

46. It is submitted by the learned counsel that when the Ex-Incharge Head Master Mr.V.T. Jadhav in collusion with the respondent nos.11 and 12 threatened the respondent nos.9 and 10 not to sign the muster roll, three teachers including the respondent nos.9 and 10 had made a complaint on 24th June 2010 to the Education Officer. There was however neither any reply to the said complaint nor any action taken by the Education Officer thereon. It is submitted by the respondent nos.9 and 10 that though the approval of appointment of the respondent nos. 9 and 10 was rejected by the Education Officer on the ground that there was no latest P.T.R. extract filed by the petitioner no.1-management and there was a dispute in the management, the Education Officer granted approval to the appointments of the respondent nos.4 to 8 overlooking the same conditions.

47. It is submitted by the learned counsel for the petitioner nos.9 and 10 that though the resolution dated 6th February 2012 issued by the Government was binding on the Education Officer while granting approval to any appointment of teaching and non-teaching staff in an aided school, the Education Officer totally overlooked and violated the conditions of the said Government resolution which was binding on him.

48. Reliance is placed on clause 4 of the Government resolution which provided that if prior permission of the Education Officer was not obtained for publishing an advertisement, the Education Officer could not have granted any approval. He submits that the said Government

resolution mandates compliance of various conditions according to the check-list before granting approval which the respondent nos.11 and 12 had failed to submit. The Education Officer however still granted approval to the appointments of the respondent nos.4 to 8 in gross violation of the said Government resolution.

49. Mr.Bandiwadekar, learned counsel for the respondent nos.9 and 10 invited my attention to paragraphs 43 to 47 of the order passed by the Assistant Charity Commissioner allowing the change reports filed by the petitioner no.1-management and rejecting the change report filed by the respondent nos.11 and 12 and would submit that the learned Assistant Charity Commissioner has ordered an enquiry against the respondent nos.11 and 12. The said order passed by the Assistant Charity Commissioner accepting the change reports submitted by the petitioner no.1-management and rejecting the change report submitted by the respondent nos.11 and 12 was not stayed by the Joint Charity Commissioner.

50. Learned counsel for the respondent nos.9 and 10 placed reliance on the judgment of this Court in the case of ***Chembur Trombay Education Society & Ors. Vs.D.K. Marathe & Ors.***, reported in ***2002(3) Bom C.R. 161*** and would submit that any amendment or change in the management brought about in accordance with law would come into effect from the date of resolution of the trust to bring about such a change and merely because the change report is pending consideration before the Charity Commissioner, would be of no avail. He submits that the changes in the management had come into effect from the date of resolution of the trust and not from the date of approval of the Charity

Commissioner. He submits that when the respondent nos.9 and 10 were appointed by the petitioner no.1-management, they were validly appointed trustees. The order passed by the Assistant Charity Commissioner will have retrospective effect. It is submitted that the findings of the Education Officer as well as the School Tribunal that the appointments of the respondent nos.4 to 8 could not be approved because of pending dispute in the management is ex-facie contrary to the law laid down by this Court in the case of *Chembur Trombay Education Society & Ors. (supra)*. He submits that since the petitioner no.1-management has been working all throughout since the date of their appointment, this Court shall not only set aside the orders passed by the School Tribunal and the Education Officer but shall grant reinstatement with back wages and shall direct the government to release the salary to the respondent nos.9 and 10 with continuity of service.

51. Mr.Bandiwadekar, learned counsel for the respondent nos.9 and 10 placed reliance on an unreported judgment of the Full Bench of this Court delivered on 13th February 2013 in the case of ***Dr.Ishrat Ullah Khan s/o Muzaffarullah Khan Vs. The State of Maharashtra & Ors.*** in Writ Petition No.4474 of 2012 and more particularly paragraphs 2 and 10 thereof and would submit that while granting the approval of any appointment, the Education Officer is not required to go into the dispute inter se between the management but has to consider whether a person has been appointed in accordance with law or not. He submits that the dispute inter se between the management has to be looked into by the Joint Charity Commissioner or Assistant Charity Commissioner under the Maharashtra Public Trust Act and not the Education Officer. The orders passed by the School Tribunal as well as the Education Officer

are ex-facie contrary to the law laid down by this Court in the case of *Dr.Ishrat Ullah Khan s/o Muzaffarullah Khan (supra)* delivered by the Full Bench.

52. Learned counsel for the respondent nos.9 and 10 placed reliance on the judgment of this Court in the case of ***St.Ulai High School and Anr. Vs. Devendrappasad Jagannath Singh***, reported in ***2007(1) Mh.L.J. 597*** and in particular paragraph 10.7 thereof and would submit that there is no mandate in the said MEPS Act and the Rules framed thereunder for approval of the Education Department as a condition precedent to a valid order of appointment. He submits that the approval of the Education Department is required only to the disbursement of financial aid and even if the approval is denied by the Education Department to the appointment, it cannot invalidate the order of appointment. He submits that if the management fails to comply with the conditions prescribed by the Government for the disbursal of aid which has been sanctioned, the Government would be entitled to take such measures as are open in law against the management. He submits that the management thus could not have terminated the services of the respondent nos.9 and 10 merely because the Education Officer had refused to approve the appointments of the respondent nos.9 and 10 on flimsy ground or otherwise. He submits that the termination of services of the respondent nos.9 and 10 based on refusal of the approval by the Education Officer is thus ex-facie illegal and contrary to the law laid down by this Court in the case of *St.Ulai High School and Anr. (supra)*.

53. The next submission of the learned counsel for the respondent nos.9 and 10 is that though his clients were appointed on probation for a period of three years, while terminating the services of his clients, the petitioner no.1-management has neither given one month's notice nor had paid salary in lieu of one month's notice. In support of this submission, learned counsel placed reliance on Sections 5(2) and 5(3) of the MEPS Act. He submits that the findings of the School Tribunal that the appointment of the respondent nos.9 and 10 being nullity and thus whether notice of one month or salary in lieu of one month's notice is given or not is irrelevant, is perverse and contrary to Section 5(2) read with Section 5 (3) of the MEPS Act. He submits that the compliance of Sections 5(2) and 5(3) is mandatory and not directory. In support of this submission, learned counsel placed reliance on the judgment of this Court in the case of **Rehana Begum d/o. SK Safdar Vs.Khwaja Baba Urdu Education Society, Amravati & Ors.**, reported in **2009 (3) Mh.L.J. 665** and in particular paragraphs 5 and 9 thereof and the judgment of this Court in the case of **Progressive Education Society Hinghanghat & Ors. Vs. Nitin Krishnarao Nimbalkar & Ors.**, reported in **2006 (4) Mh.L.J. 747** and in particular paragraph 5 thereof.

54. Learned AGP appearing for the respondent nos.1 to 3 placed reliance on the affidavit-in-reply filed by the Education Officer to justify the reasons recorded in the order passed by the Education Officer and also placed reliance on the reasons recorded by the School Tribunal in the Writ Petition Nos.2307 of 2012 and 2308 of 2012. Upon raising a query, the learned AGP admitted that prior permission of the Education Officer before issuing any advertisement was mandatory however the respondent nos.11 and 12 had not obtained such permission. She submits

that if this Court comes to a conclusion that the salary was wrongly paid to the respondent nos.4 to 8 and if any direction is issued to the Education Officer for initiating any proceedings for recovery of such amount against the respondent nos.4 to 8, the Education Officer will take such steps as may be directed.

55. Mr.Kathane, learned counsel appearing for the respondent nos.11 and 12 in Writ Petition No.4470 of 2015 and respondent nos.3 and 5 in Writ Petition Nos.2307 of 2012 and 2308 of 2012 invited my attention to the order passed by the Assistant Charity Commissioner allowing the change reports filed by the petitioners management and rejecting the change reports of his clients. He submits that against the said order passed by the Assistant Charity Commissioner, his clients have already filed an appeal before the Joint Charity Commissioner and the same is pending.

56. Insofar as the submission of the petitioners that the respondent nos.11 and 12 had not obtained prior permission of the Education Officer before issuing any advertisement is concerned, it is submitted that prior permission of the Education Officer before issuing any advertisement is mandatory, only if any recruitment to the reserved post is made. He submits that since in this case the appointments were made in the open category, section 5(i) of MEPS Act did not apply. He submits that the Managing Committee has to only communicate the decision taken by the Management of the School Committee to the Education Department which procedure was complied with by his clients. He submits that none of the appointments made by the respondent nos.11 and 12 were in violation of the provisions of MEPS Act and MEPS Rules.

57. Learned counsel appearing for the respondent nos.11 and 12 invited my attention to one of the appointment letter dated 23rd September, 2010 signed by the petitioners management and would submit that when the said appointment letter was issued by the petitioners management, the same was signed by the persons claiming to be trustees and/or committee members in respect of whose appointments, the change reports were not even filed by the petitioners management with the Assistant Charity Commissioner. He submits that Mr.K.B. Deshukh could not have signed the appointment letter as a Secretary of the petitioner no.1. It is submitted that the respondent nos.11 and 12 have raised an objection specifically by a letter dated 15th July, 2010 when the advertisement was issued by the petitioners management. He submits that a separate letter was also addressed to the Education Officer by his clients raising objection about the advertisement issued by the petitioners. The respondent nos.11 and 12 also raised an objection vide letter dated 17th September, 2010 to the grant of approval of the appointments made by the petitioners in favour of respondent nos.9 and 10.

58. It is submitted that insofar as the appointment letter issued to the respondent no.9 (the petitioner in Writ Petition No.2307 of 2012) is concerned, the said appointment letter is neither signed by the Secretary of the Managing Committee nor by the Secretary of the School Committee but is signed by the Vice Chairman. It is submitted that the respondent nos.11 and 12 were justified in raising an objection before the Head Master for allowing the respondent nos.9 and 10 to sign the muster roll. He submits that the change reports of the persons, who had appointed the respondent nos.9 and 10 were filed only after the

appointments of the respondent nos.9 and 10 were made by them and thus the appointments of the respondent nos.9 and 10 were illegal. He submits that the respondent nos.11 and 12 also had filed a separate FIR against the trustees and the Managing Committee Members of the petitioner no.1 and the statements of the respondent nos.11 and 12 were recorded by the concerned Police Officer pursuant to such FIR lodged by the respondent nos.11 and 12.

59. It is submitted by the learned counsel for the respondent nos.11 and 12 that certain registers of the petitioner no.2 school were illegally taken away by the petitioners management which registers used to be signed by the employees appointed by the respondent nos.11 and 12. He submits that since the Education Officer had stopped grant in aid to the petitioner no.2 school in respect of the appointments made by the respondent nos.11 and 12, the respondent nos.4 to 8 had filed a Writ Petition in this Court (5758 of 2013). He submits that pursuant to an *ad-interim* order passed by this Court in the said writ petition, the salary to the respondent nos.4 to 8 were disbursed after getting grant in aid from the Education Department. He submits that the Writ Petition No.5758 of 2013 was withdrawn by the respondent nos.4 to 8 in view of the subsequent order passed by the Education Officer.

60. Learned counsel for the respondent nos.11 and 12 invited my attention to one of the report of the Education Officer and submits that the said report would also indicate that the respondent nos.4 to 8 were present in the school but were not allowed to work or to sign the muster roll by the petitioners management. He submits that since the change

report filed by the respondent nos.11 and 12 was pending before the Assistant Charity Commissioner, the defacto trustees were entitled to run the school.

61. In support of his submission that prior permission of the Education Officer was mandatory only if an advertisement was required to be issued for the recruitment in the post reserved for the reserved category, he placed reliance on Rule 9(8) of the MEPS Rules, 1981. He submits that the requirement of permission of the Education Officer under section 5(1) of the MEPS Act, 1977 is not mandatory but is directory. He submits that there was no grievance made by the Education Officer even after five years of the appointments made by the respondent nos.11 and 12 that though they were surplus employees, they were to be absorbed by the petitioner no.2 school, were not absorbed and on that ground the recruitment made by the respondent nos.11 and 12 were not valid. He submits that in any event the respondent nos.11 and 12 had applied for permission but the same was not granted for quite some time. He submits that the respondent nos.11 and 12 thus had followed the entire procedure prescribed under the provisions of the MEPS Act, 1977 and MEPS Rules, 1981.

62. Mr.Mihir Desai, learned senior counsel appearing for the respondent nos.4 and 8 in Writ Petition No.4470 of 2015 and for the respondent no.8 in Writ Petition Nos.2307 of 2012 and 2308 of 2012 respectively submits that the respondent no.9 (the petitioner in Writ Petition No.2307 of 2012) was appointed as English Teacher which appointment was to corresponding to the appointment of the respondent

no.5 in Writ Petition No.2307 of 2012. The appointment of the respondent no.10 was made as a Marathi Teacher which appointment was to corresponding to the appointment of the respondent no.6 in Writ Petition No.2308 of 2012, who was also appointed as a Marathi Teacher. He submits that insofar as respondent nos.4, 7 and 8 are concerned, there was no *inter-se* competition between them and the respondent nos.9 and 10. The respondent no.4 was appointed as a Mathematics Teacher, whereas respondent nos.7 and 8 as Junior Clerk and Peon in the petitioner no.2 school respectively. He submits that the father of the respondent no.8 was working as a Peon in the same school and upon his demise, the respondent no.8 was appointed on compassionate ground.

63. It is submitted by the learned senior counsel that during the period between 2008 and 2010, both the groups claiming to be part of the management were working together. The dispute *inter-se* in the rival group started in 2010. When the respondent nos.4 to 8 were appointed, the respondent nos.11 and 12 were controlling the management and thereafter till 30th November, 2013.

64. It is submitted by the learned senior counsel that it was not the case of the respondent nos.9 and 10 either in the writ petition or in the appeal filed before the School Tribunal nor in the civil application filed by them that they were working all through out in the petitioner no.2 school.

65. Learned senior counsel invited my attention to the advertisement issued by the petitioners management on 16th January, 2010

which was the subject matter of Writ Petition No.2307 of 2012 and would submit that though the advertisement was issued on 16th January, 2010, interviews were called by the petitioners on 21st January, 2010 i.e. before expiry of eight days required under condition no.6 of the permission granted by the Education Officer on 12th September, 2010. He submits that minimum eight days notice for interview was required with a view to get eligible and suitable candidates. He submits that in this case, the petitioners management had only given five days notice for interview which was contrary to condition no.6 of the permission granted by the Education Officer on 12th September, 2010. He submits that the appointments of the respondent nos.9 and 10 were not made by the School Committee.

66. Learned senior counsel for the respondent nos.4 to 8 submits that the petitioner in Writ Petition Nos.2307 of 2012 and 2308 of 2012 had not challenged the order passed by the Education Officer refusing to grant approval to their appointments but had challenged only the oral termination of their services before the School Tribunal. It is submitted that even if the School Tribunal would have come to the conclusion that the termination of the respondent nos.9 and 10 was illegal, the School Tribunal was not bound to exercise its power to grant reinstatement to those teachers. He submits that since his clients have been working in the petitioner no.2 school for last several years, their appointments cannot be set aside.

67. Insofar as the submission of the petitioners that the respondent nos.11 and 12 had not obtained prior permission of the

Education Officer before issuing any advertisement is concerned, it is submitted by the learned senior counsel that the sanctioned strength was already decided by the Government in the petitioner no.2 school. He submits that it was not the case of the Education Officer before the School Tribunal that there were surplus employees available but were not absorbed by the respondent nos.11 and 12 and appointed respondent nos.4 to 8 in violation of the mandatory procedure. He submits that even if prior approval of the Education Officer was not obtained by the respondent nos.11 and 23 that cannot be a ground of termination of the services of respondent nos.4 to 8.

68. It is submitted that the condition of obtaining prior permission from the Education Officer was for the purpose of getting grant in aid from the Education Department to the school and cannot affect the validity of the valid appointments made by the management. Learned senior counsel placed reliance on the judgment of this Court in case of **Gopal & Ors. vs. State of Maharashtra & Ors, 2014(2) BCR 807** and in particular paragraphs 5, 16 and 17 in support of his aforesaid submission.

69. It is submitted by the learned senior counsel for the respondent nos.4 to 8 that the respondent nos.4 to 8 were appointed by the respondent nos.11 and 12 representing the petitioner no.1 on 14th June, 2011, 20th August, 2011, 24th July, 2011, 1st July, 2012 and 26th September, 2011 respectively. The Education Officer has granted approval to the appointments of the respondent nos.4 to 6 on 15th September, 2012, to the appointment of respondent no.8 on 15th

September, 2012 and to the appointment of respondent no.7 on 15th October, 2012. The petitioners management had made a complaint to the Education Officer on 24th October, 2011 not to give approval to the appointments of the respondent nos.4 to 8. He submits that though the complaint was made on 26th February, 2013 to the Education Officer by the petitioners, there was no complaint to the effect that the respondent nos.4 to 8 were not working in the petitioner no.2 school. He submits that the Education Officer rightly passed an order dated 8th March, 2013 refusing to re-consider the earlier order passed by his pre-decessor. It is submitted that the new management of the petitioners had changed the muster roll deliberately.

70. Learned senior counsel placed reliance on the visit report of the officer in the Education Department dated 8th August, 2014 in support of his submission that though the respondent nos.4 to 8 were present in the school but were not allowed to work or to sign the muster roll. He submits that when the respondent nos.4 to 8 were appointed, the respondent nos.11 and 12 were in-charge of the management and his clients cannot suffer merely because the change report submitted by the respondent nos.11 and 12 was not accepted by the Assistant Charity Commissioner. He submits that the order by the Assistant Charity Commissioner rejecting the change report submitted by the respondent nos.11 and 12 has been passed much after the appointments of the respondent nos.4 to 8 and has no consequence. He submits that till 30th November, 2013, the respondent nos.4 to 8 were allowed to sign the muster and to discharge the duties and thereafter were stopped by the petitioners management.

71. Mr.Bandiwadekar, learned counsel appearing for the respondent nos.9 and 10 in Writ Petition No.4470 of 2015 and for the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 submits that when the advertisement was issued by the petitioners management in response to which his clients were appointed and when the resolution was passed by the petitioners management proposing to appoint his clients, there was no dispute in the management of the petitioner no.1. The selection process was started by consent of all the trustees. My attention is also invited to the resolution passed by the School Committee and the Managing Committee and also to the letter of appointments issued by the petitioners management in favour of his clients. He submits that when the resolution dated 14th January, 2010 was passed by the petitioners, no objection of any nature whatsoever had been raised by the respondent nos.11 and 12. He submits that as on 14th June, 2010, there was no dispute between the petitioners management and the respondent nos.11 and 12. He submits that the submission of respondent nos.11 and 12 that the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 were never appointed in the petitioner no.2 school before the School Tribunal was factually incorrect and without any basis.

72. Insofar as the submission of the learned counsel for the respondent nos.4 to 8 and the respondent nos.11 and 12 that prior permission of the Education officer was not required for issuing any advertisement for the recruitment of the candidates from the open category is concerned, it is submitted that proviso to section 5 of the MEPS Act, 1977 would be relevant. He submits that it is the case of the respondent nos.11 and 12 themselves that they had applied for permission

to the Education Officer, the permission was not granted for quite some time and thus they proceeded with issuance of an advertisement. He submits that prior permission of the Education Officer before issuing such advertisement is mandatory and not directory. Learned counsel for the petitioners in Writ Petition No.2307 of 2012 and 2308 of 2012 distinguished the judgment of this Court in case of **Gopal & Ors. vs. State of Maharashtra** (supra). He placed reliance upon paragraph 16 of the said judgment and would submit that the said judgment is contrary to several other judgments of this Court and is thus *per-incuriam*. Learned counsel placed reliance on the judgment of the Full Bench of this Court in case of **Tanaji Madhukar Barbade vs. State of Maharashtra & Ors., 2010(6) Mh.L.J. 901** and in particular paragraphs 16 to 19 and would submit that prior permission of the Education Officer before issuing an advertisement for recruitment in case of open category is mandatory and not directory.

73. Mr.Bandiwadekar also placed reliance on the judgment delivered by the Division Bench of this Court in case of **Priyadarshini Education Trust & Ors. vs. Ratis (Rafia) Bano Abdul Rasheed & Ors., 2007(6) Bom.C.R. 79** and in particular paragraph 11 in support of his submission that the Division Bench of this Court has rejected the contention of the management that there was no necessity to issue an advertisement for the purpose of filling up the vacancies of open category.

74. Insofar as the appointment of respondent no.7 who was promoted as a Clerk from the post of Laboratory Assistant is concerned, it

is submitted by the learned counsel for the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012, that no such preference could be given to the Laboratory Assistant for the purpose of granting promotion as a Clerk. He submits that even the said appointment made by the respondent nos.11 and 12 is thus illegal.

75. Insofar as the submission of learned senior counsel for the respondent nos.4 to 8 that the advertisement issued by the petitioners management without giving eight days clear notice for interview is contrary to the permission granted by the Education Officer is concerned, it is submitted that this objection of the respondent nos.4 to 8 clearly indicates that there is no dispute that prior permission of the Education Officer for issuance of an advertisement for appointing the candidates from open category was mandatory. He submits that the Education Officer has not refused to approve the appointments of the petitioners in Writ Petition No.2307 of 2012 and 2308 of 2012 on the ground that the advertisement issued by the management was in violation of condition no.8 of the permission granted by the Education Officer.

76. It is submitted that there is no such eight days notice prescribed under any of the provisions of the MEPS Act, 1977 and MEPS Rules, 1981. He submits that such condition imposed by the Education Officer in any event is directory and not mandatory. He submits that the petitioners management has in any event made substantial compliance of the terms and conditions imposed by the Education Officer. It is submitted that no candidate who applied in response to such advertisement made any grievance that he had lost an opportunity to

apply for the said post in response to the said advertisement because of shorter period mentioned in the said advertisement. No such arguments were advanced by any of the parties before the School Tribunal.

77. It is submitted by the learned counsel that if according to the respondent nos.4 to 8, they were not allowed to work or sign the muster roll by the petitioner management for some period, it amounted to oral termination which admittedly has not been impugned by the respondent nos.4 to 8 by filing appeal before the School Tribunal under section 9 of the MEPS Act, 1977.

78. Insofar as the submission of the learned senior counsel for the respondent nos.4 to 8 that even if the School Tribunal came to the conclusion that the termination of the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 was illegal, the reinstatement of such employees would not be as a matter of course is concerned, it is submitted by Mr.Bandiwadekar, learned counsel for the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 that it is at the discretion of the School Tribunal to pass appropriate order for directing reinstatement and for other reliefs depending upon the facts of each case. He submits that his clients have made out a case for reinstatement with back wages with continuity of service.

79. Mr.Bandiwadekar, learned counsel for the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 invited my attention to section 4(6) of the MEPS Act, 1977 and would submit that the management could not have terminated the services of the petitioners

except in accordance with the provisions of the MEPS Act, 1977 and MEPS Rules, 1981 made in that behalf. Learned counsel also placed reliance on Rules 36 and 37 of the MEPS Rules, 1981 and it is submitted that the services of the employees could be terminated only in accordance with those provisions after conducting an enquiry as contemplated therein. The petitioners management has not followed any such provisions of law while terminating the services of his clients.

80. Mr.Bandiwadekar learned counsel also placed reliance on the judgment of this Court in case of ***Jaimala Ramteke vs. School Trustees, 2009(5) Mah.L.J. 333*** and in particular paragraphs 22, 24, 25 and 27 in support of his submission that merely because the Education Officer had granted approval to the appointments of the respondent nos.4 to 8, their illegal appointments cannot be validated.

81. Mr.Bhavake, learned counsel for the petitioners management in rejoinder submits that the respondent no.7 could not have been promoted by the respondent nos.11 and 12 to the post of Clerk from Laboratory Assistant and the said promotion could not have been approved by the Education Officer. He submits that the petitioners management had made a representation and had requested the Education Officer not to give approval to the appointments of respondent nos.4 to 8, the Education Officer however, ignored such request and passed two contradictory orders. He submits that there was only one muster roll prepared by the petitioners management of the employees whether they were approved or not. He submits that the petitioners management has continued the services of respondent nos.9 and 10 (the petitioners in Writ

Petition Nos.2307 of 2012 and 2308 of 2012) till date however, no salary could be paid to them in view of the grant not disbursed by the Education Department in respect of their appointments.

82. Learned counsel for the petitioner management placed reliance on the judgment of this Court in case of ***Akole Taluka Education Society vs. State of Maharashtra & Others*** in Writ Petition No.3481 of 2015 and other companion matters delivered on 19th January, 2016 and in particular paragraph 42 and would submit that since the appointments of the respondent nos.4 to 8 by the respondent Nos.11 and 12 were illegal, they cannot be allowed to retain the financial benefits obtained in pursuance to the *ad-interim* order passed by this Court and thus this Court shall direct the respondent nos.4 to 8 to refund to the State Government all such financial benefits which they have received by way of salary etc. obtained under the *ad-interim* order passed by this Court.

83. Mr.Mihir Desai, learned counsel for the respondent nos.4 to 8 made an attempt to distinguish the judgment of this Court in case of ***Tanaji Madhukar Barbade*** (supra) on the ground that any observations made by the Full Bench in the said judgment which is relied upon by the petitioners other than on the specific issues which were referred to the Full Bench as set out in paragraph 1 of the said judgment would not be a binding precedent but at most would be an *obiter dicta*. He submits that section 5 of the MEPS Act, 1977 does not refer to any prior permission. He submits that the respondent Nos.11 and 12 had already sent an intimation to the Education Officer on 5th February, 2011 along with proforma advertisement and issued an advertisement subsequently on 18th

May, 2011. The Education Officer had enough time to raise any objection upon such advertisement. He submits that there was thus compliance of requirement, if any, under section 5 by the respondent Nos.11 and 12 in issuing the advertisement pursuant to which the respondent nos.4 to 8 were appointed.

84. Insofar as the submission of Mr.Bandiwadekar and Mr.Bhavake that the respondent nos.4 to 8 should be directed to refund the amount of salary and other benefits recovered pursuant to an *ad-interim* order passed by this Court in the writ petition filed by them is concerned, it is submitted that no such directions can be issued by this Court for refund of amounts of salary recovered by his clients on the ground that there is no such prayer in any of the writ petitions either filed the management or by the respondent nos.9 and 10 i.e. Writ Petition Nos.4470 of 2015,2307 of 2012 and 2309 of 2012 respectively.

85. Mr.Mihir Desai, learned senior counsel appearing for the respondent nos.4 to 8 submits that if this Court comes to the conclusion that the order passed by the Assistant Charity Commissioner rejecting the change report submitted by the respondent nos.11 and 12 and accepting the change report submitted by the present management will have to be considered and/or will have any bearing on the appointments of the petitioners in Writ Petition Nos.2307 of 2012 and 2308 of 2012 and on the appointments of the respondent nos.3 to 4, this Court can remand the matter to the School Tribunal and/or to the Education Officer for reconsideration of the entire evidence, including the orders passed by the Assistant Charity Commissioner by keeping all the contentions of the

parties open. Learned counsel appearing for the petitioners in Writ Petitioner No.2307 of 2012 and 2308 of 2012 did not agree to this suggestion made by Mr.Mihir Desai, learned senior counsel appearing for the respondent nos.4 to 8.

86. There is no dispute that the appointments of the respondent nos.9 and 10 were made by the petitioner management. When the appointments of the respondent nos.9 and 10 were made, the respondent nos.11 and 2 were also part of the management of the petitioner no.1. When the petitioners issued an advertisement on 16th January, 2010 and 14th July, 2010 for the recruitments to the posts of Shikshan Sevaks from open category, the resolution passed by the petitioner no.1 management, respondent nos.11 and 12 who were part of management of the petitioner no.1 did not raise any objection.

87. A perusal of the record further indicates that the petitioner no.1 management had obtained prior approval of the Education Officer before issuing an advertisement in the daily news paper “Lokmat”, for filling up the posts of Shikshan Sevaks from open category in terms of section 5 of the MEPS Act. Pursuant to the said advertisements issued by the petitioners, several persons including the respondent nos.9 and 10 had applied for the said posts of Shikshan Sevaks. There were clear permanent vacancies in respect of the said two posts of Shikshan Sevaks when the advertisements were issued by the petitioners for recruitment of the suitable candidates in open category. There was no pending management dispute when the respondent nos.9 and 10 were appointed by the petitioners.

88. A perusal of the record further indicates that the School Committee of the petitioner no.1 had passed a resolution on 22nd May, 2010 approving the appointments of the respondent nos.9 and 10 to the posts of Shikshan Sevaks. The petitioner no.1 management also passed a separate resolution on 23rd September, 2010 approving the appointments of the respondent nos.9 and 10 to the said posts of the Shikshan Sevaks. The appointment letters were thereafter issued in favour of the respondent nos.9 and 10 for a period of three years. It is not in dispute that when the appointments of the respondent nos.9 and 10 were made by the petitioner no.1, the said appointments were within the sanctioned strength.

89. A perusal of the record further indicates that the petitioner management had thereafter applied for approval for those appointments made by the petitioner management to the Education Officer and had filed several documents which were required to be filed for obtaining such approval.

90. A perusal of the record indicates that the Education Officer had imposed various conditions before issuance of the advertisements by the petitioner management for recruitment on the said posts of Shikshan Sevaks in open category. A perusal of the order dated 30th September, 2010 passed by the Education Officer on the said proposal of the petitioner management for approval of the appointments of the respondent nos.9 and 10 indicates that the Education Officer has rejected the said proposal on the ground that the latest PTR extract was not annexed and there was alleged pending management dispute. Since the

respondent nos.11 and 12 were already part of the same management, which had appointed the respondent nos.9 and 10, there was no dispute in the management at all.

91. A perusal of the record further indicates that the respondent nos.11 and 12 in collusion with the In-charge Headmaster Mr.V.T. Jadhav had threatened the respondent nos.9 and 10 not to sign the muster roll. The respondent nos.9 and 10 had thus made a complaint on 24th June, 2010 to the Education Officer. The Education Officer however, neither took any action on the said complaint made by the respondent nos.9 and 10 nor gave any response to the said complaint. It is thus clear beyond reasonable doubt that insofar as the appointments of the respondent nos.9 and 10 are concerned, the petitioner management had already obtained prior approval of the Education Officer as contemplated under section 5(1) of the MEPS Act before issuance of advertisement and after following due procedure had appointed the respondent nos.9 and 10 on the clear permanent vacancies on the posts of Shikshan Sevaks in open category.

92. The petitioner management thereafter had filed change reports under section 22 of the Maharashtra Public Trusts Act with the Assistant Charity Commissioner reporting changes made in the management of the petitioner no.1 i.e. change report nos.492 of 2010, 719 of 2010 and 720 of 2010. Insofar as the respondent nos.11 and 12 are concerned, they also filed a separate change report bearing No.566 of 2010 notifying the alleged changes in the petitioner no.1 thereby making purported appointments of the respondent nos.11 and 12.

93. It is not in dispute that by an order dated 22nd November, 2013, passed by the Assistant Charity Commissioner, it has been held that the changes reported in application no.566 of 2010 filed by the respondent nos.11 and 12 were illegal and invalid. It is held that those respondent had failed to prove the legality and validity of the change report filed by them, whereas the petitioner management had succeeded in proving the legality and validity of the changes mentioned in change report nos.492 of 2010, 710 of 2010 and 720 of 2010. It is held that those three change reports filed by the petitioner no.1 management being legal and valid, the petitioner management had been validly appointed.

94. It is not in dispute that though the respondent nos.11 and 12 have impugned the said order passed by the Assistant Charity Commissioner dated 22nd November, 2013, the said order has not been stayed by the Appellate Authority till date. In the said order passed by the Assistant Charity Commissioner he has come to the conclusion that it had come in the evidence that Mr.Tanaji Patil, Dnayandeo Zambare and Clerk Jayant Patil had withdrawn Rs.4.00 lacs from the trust fund and accordingly he directed an enquiry into the irregularity and contravention under the provisions of the Maharashtra Public Trusts Act so as to have further action against the errant trustees. It is thus clear beyond reasonable doubt that respondent nos.11 and 12 who had appointed the respondent nos.4 to 8 on various posts, themselves were not validly appointed trustee and thus could not have made any such appointments on behalf of the petitioner no.1 trust.

95. Insofar as the order passed by the Education Officer refusing to grant approval to the appointments of the respondent nos.9

and 10 on the ground of alleged pending dispute in the management is concerned, it is held by the Division Bench of this Court in case of **Dr.Ishrat Ullah Khan** (supra) that the Education Officer while considering the issue of approval is not required to go into the dispute *inter-se* between the management and he has only to see whether a person functioning has been appointed in accordance with law or not. It is held that the Education Officer cannot go into the dispute whether the appointment was made by the competent authority or legally recognized body, which issue can be looked into by the Joint Charity Commissioner or Assistant Charity Commissioner under the Bombay Public Trusts Act. The Division Bench of this Court in the said judgment also considered the similar facts where the Education Officer had refused to grant approval to the appointment of a Headmaster on the ground that there was dispute *inter-se* in the management.

96. In my view, the order passed by the Education Officer refusing to grant approval to the appointments of the respondent nos.9 and 10 on the ground that there was management dispute is totally contrary to the law laid down by this Court in case of Dr. **Dr.Ishrat Ullah Khan** (supra). In my view, the Education Officer was not required to consider whether the appointments of the respondent nos.9 and 10 or any other employee of the petitioner no.1 was duly appointed by the competent authority or not or by the proper management or not and is not required to look into *inter-se* dispute, if any, between the management while granting approval to the appointment of any employee. If there is any *inter-se* dispute between the management, the authority under the provisions of the Maharashtra Public Trusts Act can look into those

allegations while considering the change reports filed under section 22 of the said Act or under various other provisions of the said Act.

97. Be that as it may, the Education Officer however, applied different yard-stick while granting approval to the respondent nos.4 to 8 and totally over looked the fact that on the date of granting such approval, the change reports filed by the rival groups were pending before the Assistant Charity Commissioner in respect of the management of the petitioner no.1. In my view, the Education Officer could not have applied different yard-stick while considering two sets of approval, one against the respondent nos.9 and 10 and another in favour of the respondent nos.4 to 8.

98. This Court in case of ***Chembur Trombay Education Society & Ors.*** (supra) has held that fortiori, a resolution of the general body of the society is sufficient to ignite the change of amendment in the constitution as well as of electing new general body for administering the affairs of the society. The fact that the change report was pending consideration before the Charity Commissioner, would be of no avail. It is held that for the management or the change brought already in accordance with law would come into effect from the date of the resolution of the society to bring about such a change. This Court after interpreting section 22 of the Maharashtra Public Trusts Act has held that under the said provisions where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, report such change to the Deputy or Assistant Charity Commissioner, as the case may be. It is

held that when the act does not require that registration of any change is a condition precedent to come into effect, the amendment to the constitution as well as subsequent elections of the President and the members of the Governing Council therefore, came into effect from the date of the respective resolutions of the general body. It is held that the enquiry postulated under section 22 is only to ascertain the factum as to whether the change has occurred or not . If the competent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and *status quo ante* will have to be restored.

99. In my view, any amendment or changes in the management brought about in accordance with law would come into effect from the date of resolution of the trust and not from the date of the order passed by the Assistant Charity Commissioner accepting the changes reported in the change report filed by the trust. It is not in dispute that when the respondent nos.9 and 10 were appointed by the petitioner no.1-management, the resolution was already passed by the petitioner no.1-management appointing trustees and office bearers of the petitioner no.1 much prior thereto.

100. In my view, the order passed by the Assistant Charity Commissioner thus accepting the change reports filed by the petitioner no.1-management will have retrospective effect from the date of passing of the resolution by the petitioner no.1-management. Merely because the change reports were not filed on the date of appointments of the respondent nos.9 and 10 which were made by the petitioner no.1-

management, the same would not invalidate the appointments legally made by passing an appropriate resolution by the management. In my view, approval granted by the Assistant Charity Commissioner to the change reports filed by the petitioner no.1-management would relate back to the date of resolution passed by the petitioner no.1-management appointing trustees and office bearers by the petitioner no.1-management.

101. Be that as it may, the fact remains that the changes reported by the petitioner no.1-management in respect of the appointments of trustees and office bearers made by the petitioner no.1 who had appointed the respondent nos.9 and 10 have been accepted by the Assistant Charity Commissioner by an order dated 22nd February 2013 which order has admittedly not been stayed by the higher authority till date. By the said order, the Assistant Charity Commissioner has admittedly rejected the change report submitted by the respondent nos.11 and 12 and holding their appointments illegal. In my view, since the appointments of the respondent nos.11 and 12 have been held illegal by the Assistant Charity Commissioner which order has not been stayed by any higher authority, appointments of the respondent nos.4 to 8 made by such illegally appointed alleged office bearers of the petitioner no.1 i.e. the respondent nos.9 and 10, are also illegal on that ground also.

102. The next question that arises for consideration of this Court is whether a prior permission of the Education officer before issuance of any advertisement for making recruitment to the posts in open category was mandatory or directory and if it is mandatory, whether the petitioner no.1-management while appointing the respondent nos.9 and

10 and the respondent nos.11 and 12 while appointing the respondent nos.4 to 8 have followed such mandatory procedure or not.

103. A perusal of the record indicates that the petitioner no.1-management had obtained prior permission of the Education Officer before issuance of advertisement for the posts of Shikshan Sevaks in open category. There is no dispute that the petitioner no.1 had issued such advertisement before recruiting the respondent nos.9 and 10 to the posts of Shikshan Sevaks. The prior permission granted by the Education Officer was placed on record by the parties.

104. In so far as the appointments of the respondent nos.4 to 8 by the respondent nos.11 and 12 are concerned, no such prior permission was obtained by the respondent nos.11 and 12 from the Education Officer before issuing any such advertisement for the posts on which the respondent nos.4 to 8 were appointed by the respondent nos.11 and 12. During the course of the arguments in the present proceedings, though initially it was contended by the learned counsel for the respondent nos.11 and 12 and learned senior counsel for the respondent nos.4 to 8 that no such prior permission from the Education Officer before issuing an advertisement was mandatory but was a directory, learned counsel for the respondent nos.11 and 12 and for the respondent nos.4 to 8 subsequently admitted that the respondent nos.11 and 12 had in fact applied for such permission from the Education Officer, but was not granted for a quite some time. It is thus clear that even according to the respondent nos.11 and 12 and the respondent nos.4 to 8, such prior permission of the Education Officer before issuance of an

advertisement for making any recruitment to the said posts of Shikshan Sevaks in open category was required.

105. In my view, merely because the Education Officer did not grant any approval for some time, the respondent nos.11 and 12 could not have issued any such advertisement without obtaining any such prior permission from the Education Officer.

106. Clause 4 of the Government Resolution dated 6th February 2012 which was placed on record and which is admittedly applicable to the parties including the Education Officer prescribed that if prior permission from the Education Officer was not obtained before publishing an advertisement, the Education Officer cannot grant any approval to the appointments made by the management. Learned AGP appearing for the Education Officer admitted before this Court that no such prior permission was obtained by the respondent nos.11 and 12 before issuing any advertisement for the posts on which the respondent nos.4 to 8 were appointed by them. In my view, the approval thus granted by the Education Officer to the appointments of the respondent nos.4 to 8 without the respondent nos.11 and 12 following the mandatory procedure of obtaining prior permission from the Education Officer is illegal and contrary to the Government Resolution dated 6th February 2012 which had already come into effect when the approval was granted by the Education Officer. The said resolution was in conformity with the mandatory requirement of obtaining such prior permission under Section 5(1) of the MEPS Act.

107. Full Bench of this Court in the case of *Tanaji Madhukar Barbade (supra)* after considering the Section 5 of the MEPS Act has held that the proviso to the said section shows that except those posts which were permitted to be filled in by promotion, obviously by the Act or the Rules before filling in the posts, intimation has to be given about the vacancy by every school to the Education Department, so that the names of candidates from the surplus cell can be intimated to the school for absorption. It is held that the said proviso was to be read along with the provisions of Rule 26 which relates to retrenchment on account of abolition of post. It is held that the employees from various private schools whose services were retrenched for various reasons get their names entered into surplus cell maintained by the Education Department and as and when vacancies occur in any school, those persons whose names are included in the surplus cell get an opportunity of being absorbed against those vacancies. It is held that the management is permitted to fill in the vacancy by promotion, though there is no specific provision made in the Act or the Rules for filling in those vacancies by promotion, then it will frustrate a well thought out scheme which is included in the Act or the Rules for absorption of surplus staff from.

108. Full Bench of this Court in the above referred judgment has held that Rule 9(3) of the MEPS Rules shows that this Rule gives a right to every eligible candidate to apply for any vacancy either for teaching or non-teaching post in a private school. In order to make this right meaningful and effective, a corresponding duty will have to be read in the Management to give wide publicity to the fact that there is a

vacancy in that school, so that every candidate who is eligible to apply can come to know of the existence of the vacancy and apply for the post. This Court also considered Article 14 of the Constitution of India in the said judgment and has held that many private schools also receive grant-in-aid from the State Government and therefore salaries of the teaching and non-teaching staff in the Schools are paid from the public funds, there would be an obligation on the Management to advertise the vacancy. Full Bench of this Court in the said judgment after interpreting Rule 9(8) of the MEPS Rules, held that so far as reserved vacancies are concerned, thus, the Management is not only obliged to issue advertisement at least in one newspaper, but has also to notify vacancies to various agencies and if the management is permitted to fill in the post without advertisement, though there is a clear provision made in the Act or the Rules, it would be contrary to the scheme of the Act and the Rules.

109. Division Bench of this Court in the case of *Priyadarshini Education Trust (supra)* has specifically rejected the contention of one of the parties to the said matter that under Rule 9 (3) of the MEPS Rules, there is no provision making it mandatory to issue an advertisement for the purpose of filling up vacancies of open category. This Court held that if the argument was accepted that compliance of Rule 9(3) was not necessary in case of open category candidates, it would be tantamount to accepting that rule 9 is drafted in such a manner as to promote nepotism, so far as appointments of open category candidates to teaching and non-teaching posts in private schools are concerned. It is held that if such argument is accepted, Rule 9 will have to be to be read in a fashion, where reserved category candidates are required to enter the service by competing amongst themselves, but an

open category candidate may be in a position to seek an appointment without competing.

110. In my view, the submission of the learned counsel for the respondent nos.11 and 12 and of the learned senior counsel for the respondent nos.4 and 8 that prior permission of the Education Officer before issuance of an advertisement for recruitment for the posts in open category is not mandatory and is directory and/or such permission was not at all required in so far as appointment in open category is concerned is totally untenable and contrary to the law laid down by the Full Bench of this Court in the case of *Tanaji Madhukar Barbade (supra)* and by the Division Bench of this Court in the case of *Priyadarshini Education Trust (supra)*.

111. In my view, prior permission of the Education Officer before issuing an advertisement for making recruitment to any post either for open category or reserved category is mandatory and not directory. Such prior permission of the Education Officer before issuance of an advertisement is also required to be strictly followed in view of the Government Resolution dated 6th February 2012 which is in conformity with the provisions of Section 5(1) of MEPS Act. In my view obtaining prior permission of Education Officer before issuance of an advertisement made under Section 5(1) of the MEPS Act is not an empty formality. Admittedly, the respondent nos.11 and 12 had not acquired any prior permission from the Education Officer before issuing any advertisement in respect of various posts on which the respondent nos.4 to 8 were appointed. In my view, the said appointments being in violation of Section 5(1) of the MEPS Act are thus illegal. The Education

Officer could not have granted any approval to the appointments of the respondent nos.4 to 8 made by the respondent nos.11 and 12 by overlooking the breach of the mandatory condition of obtaining prior permission from the Education Officer before issuance of any advertisement.

112. In so far as the submission of the learned senior counsel for the respondent nos.4 to 8 and of the learned counsel for the respondent nos.11 and 12 that even if no prior permission of the Education Officer under Section 5(1) of the MEPS Act was obtained since there was no grievance made by the Education Officer even after five years of the appointments of the respondent nos.4 to 8 made by the respondent nos.11 and 12 that though they were surplus employees, and were to be absorbed by the petitioner no.2 school were not absorbed is concerned, in my view, this submission of the learned counsel is contrary to Section 5(1) of the MEPS Act and the law laid down by the Full Bench of this Court in the case of *Tanaji Madhukar Barbade (supra)* and by the Division Bench of this Court in the case of *Priyadarshini Education Trust (supra)*.

113. In my view, merely because the Education Officer did not raise any objection while granting approval to the appointments of the respondent nos.4 to 8 on the ground that mandatory requirement of Section 5(1) of the MEPS Act was not followed and has overlooked the non-compliance of such mandatory provision, such approval granted by the Education Officer would not validate the illegal appointments made by the respondent nos.11 and 12. This Court in the case of *Jaimala Bhaurao Ramteke (supra)* has held that merely because an employee

was continued in the employment by virtue of the interim order of the School Tribunal, she would not be entitled for compensation if her appointment is found illegal. It is held that the illegal appointment can not obtain the stature of legal appointment simply because it is challenged by the petitioner and not contested by the Education Officer. It is held that illegality has to be illegality for ever and it can, in no circumstances, be allowed to be converted into a legality even if some parties do not object, particularly, in the cases of appointments where prescribed procedure has to be followed because of some object and rationale behind it.

114. In my view, though the respondent no.3-Education Officer had granted approval to the appointments of the respondent nos.4 to 8, the appointments of the respondent nos.4 to 8 being illegal, such approval granted by the Education Officer will not validate such illegal appointment into a legal appointment for any purposes. The judgment of this Court in the case of *Jaimala Bhauroo Ramteke (supra)* squarely applies to the facts of this Case. I am respectfully bound by the said judgment.

115. In so far as the judgment of this Court in the case of *Gopal & Others Vs. State of Maharashtra & Ors. (supra)* relied upon by Mr.Desai, learned senior counsel for the respondent nos.4 to 8 in support of his submission that the prior permission from the Education Officer was not mandatory before issuance of an advertisement is concerned, a perusal of the said judgment indicates that in the said judgment delivered by a Single Judge of this Court Section 5(1) of the MEPS Act is wrongly quoted. Be that as it may, the said judgment contrary to the judgment of the Full Bench of this Court in the case of *Tanaji Madhukar Barbade*

(*supra*) and also is contrary to the judgment of the Division Bench of this Court in the case of *Priyadarshini Education Trust (supra)*.

116. Though both the judgments referred to aforesaid of the Full Bench and Division Bench respectively were pronounced prior to the date of delivery of the judgment by the learned Single Judge of this Court, a perusal of the said judgment indicates that none of the aforesaid judgments i.e. the judgments of the Full Bench and Division Bench respectively were not brought to the notice of the learned Single Judge and thus he took a contrary view in the matter. In my view, the judgments of the Full Bench and the Division Bench of this Court would squarely apply to the facts of this case. I am respectfully bound by these two judgments. In my view, reliance placed by the learned senior counsel on the judgment of the learned Single Judge of this Court in the case of *Gopal & Others Vs. State of Maharashtra & Ors. (supra)* would not assist the case of the respondent nos.4 to 8 being contrary to the judgments of the Full Bench and the Division Bench of this Court.

117. A perusal of the record indicates that when the respondent nos.11 and 12 had issued an advertisement before recruiting the respondent nos.4 to 8, the respondent nos.11 and 12 had not given the address of the office of the petitioner nos.1 or 2 but had given personal address of the respondent no.11. Though the petitioner no.1-management had raised an objection that issuance of advertisement by the respondent nos.11 and 12 for recruitment to the said post was illegal and had also brought this fact to the notice of the Education Officer, the respondent nos.11 and 12 continued their process of illegal appointments of the respondent nos.4 to 8 inspite of such objection and Education Officer

granted such approval to their appointments illegally made by totally ignoring and overlooking the objection raised by the petitioner no.1-management.

118. In so far as the order passed by the Education Officer rejecting the approval to the appointments of the respondent nos.9 and 10 on the ground that the management had not filed latest P.T.R. extract is concerned, the fact remains that the respondent nos.11 and 12 also had not filed any P.T.R. extract. The petitioner no.1-management had already passed an appropriate resolution on 23rd September 2010 and School Committee of the petitioner no.1-management on 22nd May 2010 for appointing the respondent nos.9 and 10 to the said posts of the Shikshan Sevaks. Even if the P.T. R. extract was not filed by the respondent nos.9 and 10, the Education Officer, in my view, could not have rejected the approval to the appointments of the respondent nos.9 and 10 made by the petitioner no.1-management. The Education Officer was not concerned with the alleged internal dispute between the management while considering the proposal for approval of the teaching and non-teaching staff.

119. Be that as it may, the fact remains that even the respondent nos.11 and 12 had not filed any P.T.R. extract with the Education Officer while seeking approval to the appointments of the respondent nos.4 to 8 made by the respondent nos.11 and 12. Learned Education Officer, however, totally overlooked the said fact and though rejected the proposal of the petitioner no.1-management for approval of the respondent nos.9 and 10 on that ground, he approved the proposal of the respondent nos.4 to 8 made by the respondent nos.11 and 12 without

filing such P.T.R. In my view, the respondent nos.11 and 12 through the Ex-Incharge Head Master Mr.Vitthal Tukaram Jadhav had filed a false declaration before the Education Officer that there was no dispute inter se in the management. The impugned order passed by the Education Officer granting approval to the appointment of the respondent nos.4 to 8 is illegal on this ground also and deserves to be quashed and set aside.

120. A perusal of the record indicates that it is an undisputed fact that the respondent nos.11 and 12, even pursuant to the advertisement issued had initially appointed Mr.Shinde as Shikshan Sevak to one of such posts. The said Mr.Shinde thereafter resigned. The respondent nos.11 and 12 did not issue any fresh advertisement for filling up the said post which was mandatory and illegally appointed the respondent no.5 as a Shikshan Sevak in his place directly. The respondent nos.11 and 12 also appointed the respondent no.6 to another post of Shikshan Sevak without issuing fresh advertisement in the place of Mrs.Shubhangi Prakash Shinde who was appointed pursuant to the advertisement and had resigned. A perusal of the record further indicates that the respondent no.7 was promoted to the post of Junior Clerk who was the then Laboratory Assistant. No such promotion could be made to the post of Junior Clerk from the post of Laboratory Assistant. The Education Officer has very casually granted approval without applying provisions of law and without application of mind. Similarly, the respondent no.8 could not have been appointed as a Peon on the compassionate ground without following the proper procedure.

121. A perusal of the record indicates that when the respondent nos.5 and 6 were appointed as Shikshan Sevaks from open category, there was no clear and vacant post available. The respondent nos.9 and 10 were already appointed as Shikshan Sevaks. The respondent nos.11 and 12 through the Ex-Incharge Head Master had threatened the respondent nos.9 and 10 not to sign the muster roll. The disputes between the management and the respondent nos.9 and 10 were pending. The appointments of the respondent nos.5 and 6 were made by the respondent nos.11 and 12 without there being clear and vacant posts and they were illegal on this ground also.

122. The petitioner no.1-management had produced the muster roll before the School Tribunal in support of their submission that the respondent nos.4 to 8 though were illegally appointed by the respondent nos.11 and 12, they were not working from the date of their appointments till the date of their approvals and had illegally drawn salary without doing any work by obtaining any ad-interim order from this Court in the writ petition filed by them without impleading the petitioners. After obtaining the said ad-interim order and disbursal of the salary by the Education in their favour, the said writ petition was withdrawn by the respondent nos.4 to 8.

123. In so far as the reliance placed on the inspection report by the learned senior counsel for the respondent nos.4 to 8 in support of his submission that though the respondent nos.4 to 8 were reporting their duties, they were not allowed to work and sign the muster roll is concerned, no such report relied upon by the respondent nos.4 to 8

would support their case. If according to the respondent nos.4 to 8, they were not allowed to work or sign the muster roll, in my view, the respondent nos.4 to 8 ought to have challenged such alleged action on the part of the petitioner no.1-management by impugning the alleged oral termination of their services by filing an appeal under Section 9 of the MEPS Act which admittedly was not filed by them.

124. I am thus not inclined to accept the submission of the learned senior counsel for the respondent nos.4 to 8 that though the respondent nos.4 to 8 were present all throughout on duty, the petitioner no.1-management had not permitted them to carry out their work or to sign the muster roll. Be that as it may, since the appointments of the respondent nos.4 to 8 were illegal, they were not entitled to be paid any salary by the management or by the Education Officer.

125. In so far as the respondent nos.9 and 10 are concerned, it is the case of the respondent nos.9 and 10 and also of the petitioner no.1-management that though approvals in respect of the appointments were rejected by the Education Officer, they continued to be employed in the petitioner no.2-school and have been there working all throughout, however, without payment of salary is concerned, I am inclined to accept the said statement made by the learned counsel for the management as well as the respondent nos.9 and 10. Since the appointments of the respondent nos.9 and 10 were legally and validly made after compliance of all the provisions of the MEPS Act and the Rules, the respondent nos.9 and 10 are entitled to be reinstated with back wages and all consequential benefits. Since the respondent no.3 has

illegally rejected the approval to the appointments of the respondent nos.9 and 10, the order passed by the Education Officer is illegal. The appeals filed by the respondent nos.9 and 10 thus ought to have been allowed by the School Tribunal. The impugned orders passed by the School Tribunal rejecting the appeals filed by the respondent nos.9 and 10 are contrary to the MEPS Act and the Rules and also to the law laid down by this Court referred to the aforesaid and deserves to be set aside.

126. Division Bench of this Court in the cases of *Nilkanth Ajbe (Supra)* and *Akole Taluka Education Society (supra)* has considered an issue of recovery of salary wrongly recovered by the employees. This Court has ordered the employees to refund to the State Government all the financial benefits which they may have received by way of salary as their appointments having been found illegal. A perusal of the record indicates that though the appointments of the respondent nos.4 to 8 were illegally made, they obtained salary from the Education Department under an ad-interim order passed by this Court and had subsequently withdrawn the said writ petition. The Education Department has not issued any grant-in-aid in so far as the respondent nos.9 and 10 are concerned and as a result thereof, the salaries and other benefits of the respondent nos.9 and 10 are not released in their favour by the petitioner no.1-management. Learned AGP has made a statement before this Court that if any order is passed by this Court directing the Education Department to take steps for recovering the amount of salary disbursed to the respondent nos.4 to 8, the said order would be complied with by the Education Department. In my view, the respondent nos.4 to 8, who have been paid the salary and their appointments being held

illegal, are liable to return the salary received by them under those illegal appointments made by the respondent nos.11 and 12 to the Education Department.

127. In so far as the submission of the learned senior counsel for the respondent nos.4 to 8 that since there is no prayer made in any of the writ petitions, and in the appeals before the School Tribunal, no such order for refund of the amount of salary against the respondent nos.4 to 8 can be granted by this Court is concerned, since the issue involved before this Court in these writ petitions are (i) whether the appointments of the respondent nos.4 to 8 was illegally made and/or (ii) whether approval to the appointments of the respondent nos.9 and 10 was wrongly rejected by the Education Officer and/or (iii) whether their appeals of the respondent nos.9 and 10 were erroneously rejected by the School Tribunal and (iv) whether the respondent nos.9 and 10 are entitled to be re-instated with back wages with continuity of service, in my view, this Court has ample power to consider the submission made by affected parties i.e. the respondent nos.9 and 10 who were deprived of their salary though were legally appointed on the clear and vacant posts of the Shikshan Sevaks and have worked on such posts. In my view, there is thus no merit in this submission of the learned senior counsel for the respondent nos.4 to 8. The judgments of the Division Bench of this Court in the cases of *Nilkanth Ajbe (Supra)* and *Akole Taluka Education Society (supra)* squarely apply to the facts of this case. I am respectfully bound by the said two judgments.

128. A perusal of the order of termination issued by the management in so far as the respondent nos.9 and 10 are concerned, it

indicates that services of the respondent nos.9 and 10 are terminated only on the ground that the Education Officer had rejected their approvals. Full Bench of this Court in the case of *St.Ulai High School and Anr. (supra)* has held that the management of an institution seeking grant-in-aid is responsible to ensure compliance with the requirement imposed by the State for the disbursal of aid. The rejection of a proposal by the management for disbursal of grant-in-aid constitutes a lis between the management and the Government. In the event that the management fails to comply with the conditions prescribed by Government for the disbursal of aid which has been sanctioned, Government would be entitled to take such measures as are open in law. It is held that neither the Act, nor the Rules mandate the approval of the Education Department as a condition precedent to a valid order of appointment. The question of approval relates to the disbursal of financial aid. The denial of approval cannot, therefore, invalidate an order of appointment. In my view, the said judgment of the Full Bench is squarely apply to the facts of this case.

129. Merely because the Education Officer has refused to grant approval to the respondent nos.9 and 10 made by the petitioner no.1-management, the said refusal of approval would not be a ground of termination of services of the respondent nos.9 and 10. There is no provision either under the MEPS Act or the Rule framed under the said Act to terminate the service of the employee on the ground that approval to his appointment was not granted by the Education Officer. In my view, the termination of the services of the respondent nos.9 and 10 by the petitioner no.1-management on the ground that the approval was not granted by the Education Officer is thus illegal and contrary to the

provisions of the MEPS Act and the law laid down by this Court in the case of *St.Ulai High School and Anr. (supra)* which squarely applies to the facts of this case.

130. The refusal of approval by the Education Officer is also contrary to the law laid down by this Court in the case of *St.Ulai High School and Anr. (supra)*. The termination of services of the respondent nos.9 and 10 based on such illegal order passed by the Education Officer is also thus illegal and deserves to be set aside. The impugned orders passed by the Presiding Officer, School Tribunal dismissing the appeals filed by the respondent nos.9 and 10 are also contrary to the principles of law laid down by this Court in the case of *St.Ulai High School and Anr. (supra)*, contrary to the provisions of the MEPS Act and the Rules and thus deserve to be set aside of that ground.

131. A perusal of the record further indicates that though the respondent nos.9 and 10 were appointed on probation for a period of three years as Shikshan Sevaks, the petitioner no.1-management while terminating their services had neither given one month's notice nor had paid any salary in lieu of one month's notice. In my view, payment of one month's salary or one month's notice before terminating the services of an employee on probation under the provisions of Sections 5(2) and 5(3) of the MEPS Act is mandatory and not directory. This Court in the case of *Rehana Begum d/o. SK Safdar (supra)* after construing Section 5(3) of the MEPS Act read with Rule 28 (1) of the MEPS Rules has held that issuance of one month's notice or payment of salary in lieu of notice was mandatory under Section 5(3) of the MEPS

Act and if such mandatory procedure is not followed, the order of termination passed by the management is invalid and has to be set aside.

132. Division Bench of this Court in the case of *Progressive Education Society Hinghanghat & Ors. (supra)* after construing Section 5(3) of the MEPS Act has held that compliance of Section 5(3) of the MEPS Act is mandatory and if the same is not complied with, termination becomes illegal. This Court held that offer of salary subsequent to the issuance of order of termination also cannot amount to compliance of mandatory requirements of Section 5(3) of the MEPS Act. In my view, since the respondent nos.9 and 10 were appointed on probation, their services could not have been terminated without issuing one month's notice under Section 5(2) read with Section 5(3) of the MEPS Act. Non-compliance of mandatory requirement while terminating the services of the respondent nos.9 and 10 under the provisions of Sections 5(2) and 5(3) has thus vitiated, the order of termination of services of the respondent nos.9 and 10 issued by the respondent nos.11 and 12. In my view, the judgments of this Court in the cases of *Rehana Begum d/o. SK Safdar (supra)* and *Progressive Education Society Hinghanghat & Ors. (supra)* squarely apply to the facts of this case. I am respectfully bound by the said two judgments.

133. Insofar as submission of the learned counsel for respondent nos. 11 and 12 that the appointment letter dated 23rd September, 2010 in favour of respondent nos. 9 and 10 was signed by Mr.K.B.Deshmukh who could not have signed such appointment letter as a secretary of the petitioner no.1 is concerned, in my view there is no substance in this

submission of the learned counsel for the respondent nos. 11 and 12. No such objection was ever raised by the respondent nos. 11 and 12 at any point of time earlier. It is not in dispute that the said appointment letter was issued after passing of resolution passed by the management of the petitioner no.1 and also by the school committee for appointing the respondent nos. 9 and 10.

134. Insofar as submission of the learned counsel for the respondent nos. 11 and 12 that certain register of the petitioner no.2 school was illegally taken away by the petitioner management is concerned, there is no merit in this submission of the learned counsel. The petitioner no.1 management had produced the register before the school tribunal. No action was taken by the respondent nos.11 and 12 in respect of such allegations.

135. Insofar as submission of the learned counsel for the respondent nos. 4 to 8 that it was not the case of the respondent nos. 9 and 10 either in the writ petition or in the appeal filed before the school tribunal or in the civil application that they were all throughout working in petitioner no.2 school and thus were entitled to be paid the back wages is concerned, the record produced by the respondent nos. 9 and 10 and the petitioner management would indicate that the respondent nos. 9 and 10 have been working all throughout in the petitioner no.2 school. The petitioner no.1 management has not disputed this position. In my view there is thus no substance in the submission of the learned counsel for respondent nos. 4 to 8.

136. Insofar as submission of the learned senior counsel for the respondent nos. 4 to 8 that in the advertisement issued by the petitioner management, eight days notice for interview was not given which was alleged to be contrary to the condition imposed by the education officer before issuance of an advertisement is concerned, in my view there is no such provision for giving eight days notice either in the MEPS Act or in the MEPS Rules. It was not the case of the education officer or any of the candidates who had responded to such advertisement that they were not able to apply or could not appear for interview for the said post because of the petitioner management not having given 8 days notice for the purpose of interview. In my view there was thus substantial compliance of the condition imposed by the education officer and on that ground the appointment made by the petitioner management cannot be faulted at this stage.

137. Insofar as submission of the learned senior counsel for the respondent nos. 4 to 8 that even if the termination of the respondent nos. 9 and 10 (petitioner in Writ Petition Nos.2307 of 2012 and 2308 of 2012) is set aside, re-instatement of respondent nos. 9 and 10 is not as a matter of course is concerned, in my view this court having found that the order passed by the education officer refusing to grant approval to the appointment of respondent nos. 9 and 10 and the school tribunal having rejected their appeal erroneously and contrary to the law laid down by the Supreme Court and this court and the provisions of the MEPS Act and the rules, the respondent nos. 9 and 10 have made out a case for reinstatement with backwages and with continuity of service all throughout. I am thus not inclined to accept this submission of the

learned senior counsel for the respondent nos. 4 to 8. Under section 11 of the MEPS Act, school tribunal has power to grant various reliefs including re-instatement with back-wages.

138. In my view Mr.Bandiwadekar, learned counsel for the respondent nos. 9 and 10 is right in his submission that the petitioner management could not have terminated the service of the petitioner except in accordance with the provisions of MEPS Act, 1977 read with rules and more particularly rules 36 and 37 without conducting an enquiry as contemplated therein and on this ground also the termination of the service of respondent nos. 9 and 10 deserves to be set aside.

139. Insofar as submission of the learned senior counsel for the respondent nos. 4 to 8 that judgment of Full Bench in case of ***Tanaji Madhukar Barbade*** (supra) cannot be relied upon on the ground that the observations made by the Full Bench in the said judgment that the prior permission of the education officer under section 5 was necessary before issuance of any advertisement is not a ratio but at most had to be construed as a obiter dicta is concerned in my view there is no substance in this submission of the learned senior counsel. The said view taken by the Full Bench of this court was based on the issue involved in the said matter and thus has to be construed as ratio *decidendi* and not as an obiter dicta. The view taken by the Full Bench in the said judgment squarely applies to the facts of this case. I am respectfully bound by the said judgment.

140. Insofar as suggestion of the leaned senior counsel for the respondent nos. 4 to 8 that the matter shall be remanded back to the

school tribunal or to the education officer for hearing denovo is concerned, the petitioners in all the three petitions have strongly objected to this suggestion of the learned senior counsel on the ground that the matter would be further delayed and the entire matter having been argued by all the parties at length before this court, the matter shall not be remanded back to the school tribunal or the education officer as the case may. There is no dispute that this court has heard all the parties at a great length on all the issues involved and thus I am not inclined to accept the suggestion of the learned senior counsel for the respondent nos. 4 to 8 to remand this matter at this stage to the school tribunal or the education officer as the case may be which would further delay the matter.

141. In my view the order passed by the school tribunal in the appeals filed by the respondent nos. 9 and 10 is totally erroneous and contrary to the principles laid down by the Supreme Court and this court and also in violation of the provisions of MEPS Act and MEPS Rules and thus deserves to be set aside. The order passed by the education officer rejecting the approval to the appointment of respondent nos. 9 and 10 and granting approval in favour of the respondent nos.4 to 8 being illegal and contrary to the law deserves to be set aside.

142. I therefore pass the following order :-

- (a) Rule is made absolute in Writ Petition No.4470 of 2015 in terms of prayer clause (b). The impugned order dated 23rd February, 2015 passed by the Education Officer (Secondary) is set aside. The Education Officer (Secondary) is directed to cancel/withdraw his

orders dated 15th September, 2012 and 15th October, 2012 granting individual approval to the appointment of respondent nos. 4 to 8;

- (b) Respondent nos.4 to 8 are directed to refund to the State Government all the financial benefits like salary etc. obtained by them based upon the ad-interim order passed by this court dated 7th August, 2013 in Writ Petition No.5758 of 2013 and on the basis of the orders dated 15th September, 2012 and 15th October, 2012 passed by the Education Officer granting individual approval to the appointment of respondent nos. 4 to 8 within eight weeks from today;
- (c) Rule is made absolute in terms of prayer clause (a) in Writ Petition No.2307 of 2012. The impugned order dated 17th January, 2012 passed by the School Tribunal, Kolhapur in Appeal No.53 of 2011 is set aside. Appeal No.53 of 2011 filed by the petitioner before the School Tribunal, Kolhapur is allowed in terms of prayer clauses (2) and (3). The respondent nos. 2 to 6 are directed to reinstate the petitioner with full back-wages and with continuity of service within four weeks from today;
- (d) Rule is made absolute in Writ Petition No.2308 of 2012 in terms of prayer clause (a). The impugned order passed by the School Tribunal, Kolhapur in Appeal No. 52 of 2011 on 17th January, 2012 is set aside. Appeal No.52 of 2011 is made absolute in terms of prayer clauses (2) and (3). Respondent nos. 2 to 6 are directed to reinstate the petitioner with full back-wages and continuity of service within four weeks from today;

- (e) In view of the disposal of the writ petitions, all pending civil applications in the aforesaid writ petitions do not survive and are accordingly disposed of. No order as to costs.

R.D. DHANUKA, J.