

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

WRIT PETITION NO.8504 OF 2014

Sachin Shivajirao Deshmukh,
Age: 32 years, Occu.: Nil,
R/o. Deshmukh Par,
Parali-Vaijinath, Beed

= **PETITIONER**

VERSUS

- 1) Vaidyanath Shikshan Sanstha,
Through its President
Parali-Vaijinath,
Tq. Parali-Vaijinath,
Dist. Beed
- 2) The Secretary,
Vaidyanath Shikshan Sanstha,
Parali-Vaijinath,
Tq. Parali-Vaijinath,
Dist. Beed.
- 3) Vaidyanath Shikshan Sanstha,
Parali-Vaijinath,
Tq. Parali-Vajinath,
Dist. Beed
Through Shri. Bhanudas Madhavrao
Deshmukh, Claiming to be Secretary.
- 4) Headmaster,
Vaidyanath Shikshan Sanstha,
Parali-Vajinath, Tq. Parali-Vaijinath,
Dist. Beed
- 5) Education Officer, Secondary,
Zila Parishad, Beed

= **RESPONDENTS**

WITH

WRIT PETITION NO.9773 OF 2014

Smt. Sarika Janardhan Gade,
Age: 30 years, Occu.: Nil,
R/o. Anandkar Vitthalkrupa Niwas,
Kanya Shala Road, Parli-Vaijnath
Tq.Parli-Vaijnath Dist. Beed

= **PETITIONER**

VERSUS

1. Vidyanath Shikshan Sanstha,
Parli Vaijnath,
Ta. Parli-Vaijnath
Dist. Beed
Through its President
2. The Secretary,
Vidyanath Shikshan Sanstha,
Parli Vaijnath,
Ta. Parli-Vaijnath
Dist. Beed
3. Vidyanath Shikshan Sanstha,
Parli Vaijnath,
Ta. Parli-Vaijnath
Dist. Beed,
Through Shri Bhanudas
Madhavrao Deshmukh –
claiming to be Secretary
4. Headmaster,
Vidyanath Vidyalaya,
Parli Vaijnath,
Ta.Parli-Vaijnath,
Dist. Beed
5. Education Officer (Secondary),
Zilla Parishad, Beed
Dist. Beed

= **RESPONDENTS**

WITH

WRIT PETITION NO.8631 OF 2014

Ravindra Pralhadrao Ghatge,
Age:36 years, Occ: at
present Nil,
R/o. Padmavati Galli,
Parali Vaijnath,
Tq. Parli, Dist. Beed

= **PETITIONER**

VERSUS

1. Vidyanath Shikshan Sanstha,
Parli Vaijnath,
Tq.Parli, Dist. Beed,
(Through its President)
2. Vaidyanath Shikshan Sanstha
Parli Vaijnath,
Tq. Parli, Dist.Beed
(Through its Secretary)
3. Vaidyanath Shikshan Sanstha
Parli Vaijnath,
Tq.Parli, Dist. Beed,
(Through Bhanudas Madhavrao
Deshmukh so called Secretary)
4. Head Master,
Vaidyanath Vidyalaya,
Dhokate Galli, Near Ganesh Par,
Parli Vaijnath,
Tq. Parli, Dist. Beed
5. The Education Officer
(Secondary) Zilla Parishad,
Beed.

= **RESPONDENTS**

WITH
WRIT PETITION NO.8505 OF 2014

Rupali Rameshwar Phulari,
Age: 39 years, Occ: at present Nil,
R/o. Bopangalle Galli,

Near Hanuman Vyayamshala
Parali Vaijnath,
Tq.Parli, Dist. Beed

= **PETITIONER**

VERSUS

1. Vaidyanath Shikshan Sanstha,
Parli Vaijnath,
Tq.Parli, Dist. Beed,
(Through its President)
2. Vaidyanath Shikshan Sanstha
Parli Vaijnath,
Tq. Parli, Dist.Beed
(Through its Secretary)
3. Vaidyanath Shikshan Sanstha
Parli Vaijnath,
Tq.Parli, Dist. Beed,
(Through Bhanudas Madhavrao
Deshmukh so called Secretary)
4. Head Master,
Vaidyanath Vidyalaya,
Dhokate Galli, Near Ganesh Par,
Parli Vaijnath,
Tq. Parli, Dist. Beed
5. The Education Officer
(Secondary)Zilla Parishad,
Beed.

= **RESPONDENTS**

**WITH
WRIT PETITION NO.9775 OF 2014**

Smt. Jayshree Vishwanathappa Shete
Age:37 years, Occu.:Nil,
R/o.C/o. Jagtap Itake, Itakegalli,
Ambives, Parli-Vaijnath
Tq. Parli-Vaijnath Dist. Beed

= **PETITIONER**

VERSUS

1. Vidyanath Shikshan Sanstha,
Parli Vaijnath,
Ta.Parli, Dist. Beed,
(Through its President)
2. The Secretary,
Vidyanath Shikshan Sanstha
Parli Vaijnath,
Ta. Parli-Vaijnath, Dist.Beed
3. Vidyanath Shikshan Sanstha
Parli Vaijnath,
Ta.Parli-Vaijnath, Dist. Beed,
Through Shri Bhanudas Madhavrao
Deshmukh claiming to be Secretary.
4. Headmaster,
Vidyanath Vidyalaya,
Parli Vaijnath,
Tq. Parli-Vaijnath, Dist. Beed
5. The Education Officer
(Secondary), Zilla Parishad,
Beed, Dist. Beed. = **RESPONDENTS**

S/Shri S.V.Deshmukh, R.J. Godbole & S.R. Sapkal,
Advocates for respective Petitioners;
Shri H.F. Pawar, Adv.for Resp.Nos.3 & 4;
Shri S.W. Munde, AGP for Respondent No.5.

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CORAM: P.R. BORA, J.

Date of reserving the judgment:09/08/2017

Date of pronouncing the judgment: 21/12/2017

JUDGMENT:

1. The petitioners in all these petitions are the terminated employees of Vaidyanath Shikshan Sanstha. Their appointments were cancelled vide order dated 3.9.2012, by Shri Bhanudas Deshmukh, who claims himself to be the Secretary of Vaidyanath Shikshan Sanstha.

2. Petitioner in Writ Petition No.8504/2014 was appointed as a Clerk whereas the petitioners in the remaining four petitions were appointed as Shikshan Sevaks in respondent No.4 School i.e. Vaidyanath Vidyalaya, Parali Vajinath. The petitioners were appointed on their respective posts vide appointment order dated 13th September, 2010. Their appointments were for a period of three years i.e. from 14.9.2010 to 13.9.2013. The petitioners joined their duties w.e.f. 14.9.2010. The appointments of all these petitioners were approved by the Education Officer (Secondary), Zilla Parishad, Beed, vide his order dated 23rd of May, 2011. The petitioners were working on their respective posts from 14.9.2010 till 31st of August, 2012. The then Headmaster of respondent no.4 School restrained the petitioners from signing the muster roll w.e.f. 1.9.2012. Subsequently, the written orders dated 3rd of September, 2012 were issued against each

of the petitioners whereby the petitioners were communicated that their appointments were cancelled. The petitioners challenged the said orders by filing the appeals under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter, referred to as the M.E.P.S.Act) before the School Tribunal at Aurangabad.

3. It was the case of the petitioners before the Tribunal that their appointments were illegally cancelled without following due process of law and in violation of the provisions under the M.E.P.S. Act and the M.E.P.S. Rules. As against it, it was the contention of respondent no.3 that the appointments of the petitioners were rightly cancelled by him since their appointments were made by the former Headmaster, namely, Janardan Gade, in his individual capacity by representing that he was having an authority to make the said appointments since there was a dispute in the management of the trust. It was also contended that the circulars and the letters on the basis of which the appointments were issued by the Headmaster and were approved by the Education Officer were inapplicable to the appointments of the petitioners.

4. Respondent nos. 1 and 2 supported the case of the

petitioners contending that the appointments of all the petitioners were perfectly legal and were made after following due process of law. It was also contended that respondent no.3, in connivance with respondent no.4 had illegally cancelled the said appointments, without having any authority therefor.

5. Learned School Tribunal, after having considered the submissions made on behalf of the respective parties, dismissed the appeals. Aggrieved thereby, the petitioners have preferred the present writ petitions. Learned Advocate Shri R.J.Godbole advanced the lead argument on behalf of the petitioners and the other learned Counsel appearing for the petitioners adopted his argument and made few additional submissions. Shri H.P.Pawar, learned Counsel appearing for respondent nos. 3 and 4 resisted the submissions made on behalf of the petitioners. He supported the impugned judgments and orders.

6. After having heard the learned Counsel appearing for the parties and on perusal of the impugned judgment as well as the other material placed on record, it is apparently revealed that the entire approach of the School Tribunal in deciding the subject appeals was erroneous.

7. It is not in dispute that the petitioners were working on their respective posts in Vaidyanath Vidyalaya, Parali Vajinath w.e.f. 14.9.2010. According to the petitioners, their appointments were made by the School Committee of the Vaidyanath Vidyalaya on the strength of Resolution of the said School Committee passed in the meeting held on 12th of September, 2010. There is further no dispute that the Education Officer (Secondary), Z.P., Beed, granted approval to the appointments of the petitioners for the period of three years i.e. from 14.9.2010 to 13.9.2013 vide his order dated 23rd of May, 2011. The petitioners were admittedly working on their respective posts till the end of August, 2012.

8. Shri Bhanudas Deshmukh, claiming himself to be the Secretary of Vaidyanath Shikshan Sanstha, issued the letter dated 3.9.2012, to each of the petitioners informing them that their appointments stood cancelled w.e.f. 1st of September, 2012. As alleged by the petitioners, on instructions of said Shri Bhanudas Deshmukh, the then Head Master, namely, Shri Jogdand had restrained the petitioners from signing the muster roll w.e.f. 1.9.2012. Subsequently, by communication dated 3.9.2012, as noted hereinabove, the petitioners were informed that their appointments were cancelled. After having received

the aforesaid communication which had an effect of otherwise terminating the services of the petitioners, the petitioners filed the appeals before the School Tribunal at Aurangabad under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (hereinafter referred to as 'M.E.P.S.Act').

9. In the appeals before the School Tribunal, it was the specific contention of the present petitioners that the order dated 3.9.2012, passed by Shri Bhanudas Deshmukh was patently illegal and said Shri Deshmukh was not having any right or authority to cancel the appointments of the petitioners. It was also contended that the petitioners being appointed to fill up permanent posts, after following due process of law, their appointments could not have been cancelled or their services could not have been terminated without following the due process of law and without giving them an opportunity of hearing. The petitioners had also contended in their respective appeals that prior to making their appointments, an advertisement was issued on 26th of August, 2010, the B.C. Cell report was called, the roster was verified and their appointments were made by the School Committee by taking interviews. Along with the memo of appeal, the petitioners

had filed on record copy of the newspaper advertisement, the B.C. Cell report, and the resolution of the School Committee dated 12.9.2010. The petitioners had also filed on record their appointment orders, copy of approval dated 23.5.2011 granted by the Education Officer (Secondary), Zilla Parishad, Beed, and the communication dated 3.9.2012 whereby their appointments were cancelled by Shri Bhanudas Deshmukh.

10. In view of the grounds of objections raised by the petitioners in their respective appeals and the documents filed on record by them along with the said appeals, the School Tribunal was expected to decide the correctness, legality and validity of the order dated 3.9.2012, whereby Shri Bhanudas Deshmukh had cancelled the appointments of the petitioners. Perusal of the impugned order, however, reveals that instead of deciding the legality and validity of the order dated 3.9.2012, which was impugned by the petitioners in their respective appeals, the School Tribunal indulged in deciding the validity of the appointments of the petitioners and ultimately dismissed the appeals filed by the petitioners holding that the petitioners have failed in establishing that they were appointed on their respective posts after following due process of law and by the appropriate authority.

11. In fact, the moot question was whether Shri Bhanudas Deshmukh was having any authority to cancel the appointments of the petitioners vide the impugned communication and even if he was having such authority, whether he could have cancelled the said appointments without giving any opportunity of hearing to the petitioners and without following the process of law. In the impugned judgments, the learned School Tribunal has not at all addressed the aforesaid issues.

12. Section 9 of the M.E.P.S.Act provides a right to an employee in a private school who is dismissed or removed or whose services are otherwise terminated by an order passed by the management, to prefer an appeal to the School Tribunal. In such appeal, the School Tribunal has to adjudicate upon the validity of an order of termination challenged in the said appeal. No doubt, the Tribunal has the jurisdiction to decide the incidental and ancillary questions which would also include the issue whether the appointment of the concerned employee was legal and valid. Perusal of the impugned judgment reveals that the learned School Tribunal has not recorded any finding whether Shri Bhanudas Deshmukh was having any authority to cancel the appointments of the petitioners and if he was having

such authority, whether he has followed the due process of law before cancelling the said appointments.

13. As noted earlier, the petitioners were in the employment of Vaidyanath Vidyalaya w.e.f. 14.9.2010, and their appointments were approved by the Education Officer (Secondary), Zilla Parishad, Beed, vide his order dated 23rd of May, 2011, for the period of three years i.e. from 14.9.2010 to 13.9.2013. As is revealing from the appointment orders and the approval granted to the said appointments by the Education Officer, the petitioners were appointed on the permanent posts. The question arises whether appointments of the petitioners could have been cancelled after they had put in continuous service of about two years and when their appointments were approved by the Education Officer, without giving them any opportunity of hearing or without following the procedure as laid down in the M.E.P.S. Act and the Rules, even if in the opinion of Shri Bhanudas Deshmukh, their appointments were not valid.

14. Firstly, Shri Bhanudas Deshmukh could not have unilaterally cancelled the appointments of the petitioners even though it was his contention that the said appointments were

not valid and were not made in accordance with law. In fact, on this ground alone, the said orders were liable to be set aside and quashed. By placing on record (i) copy of the advertisement published in daily 'Viveksindhu' on 26th of August, 2010, (ii) the B.C. Cell report, (iii) the resolution dated 12th of September, 2010, passed by the School Committee of Vaidyanath School, and (iv) the approval accorded to their appointments by the Education Officer (Secondary), Zilla Parishad, Beed, vide his order dated 23rd of May, 2011, the petitioners have sufficiently discharged the burden on them to primarily prove that they were appointed after following due process of law. In view of the primary evidence placed on record by the petitioners, the burden was shifted on Shri Bhanudas Deshmukh to first prove his authority and competence to cancel the appointments of the petitioners and substantiate the reasons assigned by him for cancelling the said appointments. It was also incumbent on his part to clarify whether due process of law was followed before cancelling the said appointments.

15. From the discussion made in the impugned judgments, it however appears that, the learned School Tribunal has accepted the contentions of Shri Bhanudas

Deshmukh as gospel truth without putting any burden on him to prove the facts which he had alleged while cancelling the appointments of the petitioners. The Tribunal, must have first ascertained whether proper procedure was followed before cancelling the said appointments. Instead of recording any finding on the said issue, the Tribunal proceeded to hold that the petitioners have failed in proving that their appointments were legally and validly made after following due process of law. The entire approach of the School Tribunal was, thus, erroneous. Even if it is assumed that the appointments of the petitioners were not in accordance with law, the same could not have been cancelled by Shri Bhanudas Deshmukh unilaterally without following the procedure laid down in M.E.P.S.Act and Rules thereunder.

16. It is further apparently revealed that the learned School Tribunal has failed in appreciating that the appointments of the petitioners w.e.f. 14.9.2010 and the approval granted to the said appointments by the Education Officer vide his order dated 23rd of May, 2011, were questioned by Shri Bhanudas Deshmukh by filing Writ Petition No. 5492/2011. The same objections which are raised by said Shri Bhanudas Deshmukh in his affidavit in reply filed before the School Tribunal were

raised by him in the aforesaid writ petition in challenge to the appointments and approval to the said appointments. The material on record reveals that in the said Writ Petition No.5492/2011, one Shri Laxman Pasalwad filed an additional affidavit for and on behalf of the Education Officer, Secondary, Zilla Parishad, Beed, on 8th of May, 2012, contending therein that the appointments of the petitioners were made by the School Committee and the proposal for their approval was accordingly submitted to the Education Office. It is further contended in the said affidavit that the Education Officer has granted approval to the appointments of the petitioners after verifying the requirements of law.

17. It has to be stated that earlier one more Writ Petition was filed by Shri Bhanudas Deshmukh bearing Writ Petition No.3940/2010 wherein he had challenged the temporary appointments issued in favour of the petitioners. In the said writ petition also, Laxman Pasalwad had filed an affidavit on 26.11.2010. In the said affidavit, it was averred that there was no School Committee in existence and that there were disputes in the management of the Education Trust. In the said affidavit, it was not disclosed that the proposal was received seeking approval to the appointments of the

petitioners made by the School Committee and that such proposal was under consideration in the Education Office. In the additional affidavit filed by Shri Laxman Pasalwad in Writ Petition No.5492/2011, he has, therefore, tendered unconditional apology for not disclosing in the earlier affidavit filed on 26.11.2010 in Writ Petition No.3940/2010 that the proposal seeking approval to the appointments of the petitioners made by the School Committee was received in the Education Office and that it was under consideration. Shri Laxman Pasalwad in his affidavit dated 8.5.2012, has stated that it was an inadvertent mistake and there was no intention not to disclose the said fact. I deem it appropriate to reproduce paragraph no.5 of the said affidavit dated 8.5.2012 which reads thus:

" I say that, Education Officer granted approval to the services of respondent no. 5 to 10 after following due procedure and verifying the requirement of law. That, this deponent is tendering unconditional apology, because of not pointing out the proposal submitted by the School Committee on 20.9.2010 as per resolution dated 12.9.2010 which is inadvertent and is not deliberate or intentional. Therefore, this deponent is filing this additional affidavit in reply. "

Nothing is brought on record showing that Shri Bhanudas Deshmukh denied or disputed the contentions in the aforesaid

additional affidavit by filing any rejoinder to the said affidavit. It leads to an inference that Shri Deshmukh did not deny or dispute the averments in the said additional affidavit in reply. On the contrary, record shows that Shri Bhanudas Deshmukh withdrew the said writ petition on 30th of October, 2012.

18. It has to be further stated that Shri Bhanudas Deshmukh had made a complaint to the Deputy Director of Education in respect of the appointments of the petitioners and approval granted to the said appointments by the Education Officer vide his order dated 23rd of May, 2011, whereupon, the Deputy Director, vide his letter dated 7.7.2011, directed the Education Officer to temporarily stay the order of approval dated 23rd of May, 2011 and, accordingly, such temporary stay was ordered by the Education Officer, Zilla Parishad, Beed, on 13th of July, 2011. The Deputy Director then has directed an enquiry into the complaint made by Shri Bhanudas Deshmukh. Shri B.R.Deogude, the Deputy Education Officer was asked to conduct an enquiry and submit the report. Accordingly, the said officer conducted an enquiry and submitted his report to the Deputy Director of Education. The said officer submitted the report that there was no substance in the complaint made by Shri Bhanudas Deshmukh. After receiving the said report,

the Deputy Director of Education vacated the interim stay which was granted to the order of approval dated 23rd of May, 2011. The Education Officer, Secondary, vide letter dated 18.10.2011, informed the Headmaster of Vaijnath School that the interim stay dated 13.7.2011 granted to the order of approval dated 23rd of May, 2011, is vacated. As submitted on behalf of the petitioners, Shri Bhanudas Deshmukh did not challenge the enquiry report submitted by Shri B.R.Deogude wherein he had recorded a finding that there was no substance in the complaint made by Shri Bhanudas Deshmukh as about the appointments of the petitioners and the approval granted to the said appointments by the Education Office vide order dated 23rd of May, 2011.

19. From the facts mentioned as aforesaid it is quite evident that Shri Bhanudas Deshmukh had made an attempt to challenge the appointment orders and the approval to the said appointments first by making a complaint to the Education Office and thereafter by filing Writ Petition No.5492/2011.

20. It is the matter of record that Bhanudas Deshmukh did not challenge the enquiry report submitted in regard to the complaint made by him before the Deputy

Director of Education and also withdrew Writ Petition No.5492/2011 without inviting any verdict from the High Court on the issues raised by him in the said writ petition.

21. The question arises why Shri Deshmukh did not challenge the enquiry report wherein a finding was recorded that there was no substance in the complaint made by him in regard to the appointments and approval of the petitioners. The question also arises why Shri Deshmukh did not deny or dispute the statement on oath made by Shri Pasalwad in his additional affidavit dated 8th of May, 2012, to the effect that the appointments of the petitioners were made by the School Committee and were duly approved by the Education Officer after verifying the requirements of law, in the said writ petition itself and instead, chose to withdraw the writ petition without inviting the verdict of the Court on the issues raised by him in the said writ petition. The conduct of Shri Deshmukh, as above, leads to an inference that he conceded to the findings recorded in the enquiry report submitted by Shri Deogude and the facts which were averred by Shri Pasalwad in his additional affidavit in reply dated 18th of May, 2012. It was, therefore, not open and permissible for Shri Bhanudas Deshmukh to unilaterally cancel the appointments of the petitioners on the

same grounds which were raised by him in the complaint filed by him before the Deputy Director of Education and in the Writ Petition No.5492/2011.

22. Copy of the additional affidavit in reply filed by Shri Pasalwad on 8th of May, 2012, was filed on record before the School Tribunal, however, from the discussion made by the learned School Tribunal in the impugned judgment, it is quite clear that it misread and misinterpreted the contents of the said affidavit. In the additional affidavit filed by Shri Pasalwad, though it is specifically averred that the appointments of the petitioners were made by the School Committee, the learned School Tribunal has recorded a finding that the petitioners have failed in establishing that their appointments were made by the School Committee. Such finding cannot be sustained.

23. Now, I revert to the order dated 3.9.2012 whereby Shri Bhanudas Deshmukh cancelled the appointments of the petitioners. Shri Deshmukh has cancelled the appointments of the petitioners on the following grounds:

(1) That, Shri J.V. Gade, in his individual capacity, made the appointment of his daughter as well as the wards of the former Headmasters, wrongly representing

that there are disputes in the management.

(2) That the letter and the circular on the basis of which the approval has been obtained to the appointments of the petitioners were inapplicable for such appointments and approval.

(3) As on date, there is no dispute in the management of the school.

24. It is well settled that one who asserts the existence of facts, must prove that those facts exist. The burden was, therefore, on Shri Bhanudas Deshmukh to prove the existence of the facts asserted by him in the letter of cancellation of appointments dated 3.9.2012. Shri Bhanudas Deshmukh has not placed on record any document to show that the appointments of the petitioners were made by Shri J.D.Gade in his individual capacity and by representing that there are disputes in the management of the school. On the contrary, the petitioners have, along with their appeals, filed on record the copy of the resolution passed by the School Committee in its meeting held on 12.9.2010 whereby it was resolved by the School Committee to appoint the petitioners on their respective posts. In the order of approval dated 23rd of May, 2011 also, it is categorically mentioned that the appointments of the

candidates at Sr.Nos. 1 to 5 on the post of Shikshan Sevak and the appointment of the candidate at Sr.No.6 on the post of Junior Clerk made by the School Committee of Vaidyanath Vaidyalaya, Parali Vajinath vide Resolution no.2 dated 12.9.2010, are approved for the period of three years from 14.9.2010. The order of approval nowhere reflects that the appointments of the petitioners were made by Shri J.V.Gade in his individual capacity. Further, in the additional affidavit filed by Laxman Pasalwad in Writ Petition No.5492/2011 also it has been clarified that the appointments of the petitioners were made and proposal for their approval was submitted by the School Committee of Vaidyanath Vidyalaya, Parali Vajinath.

25. The material on record, thus, demonstrates that Shri Bhanudas Deshmukh did not bring on record any evidence to substantiate his assertion in the order dated 3.9.2012 that the appointments of the petitioners were made by Shri J.V. Gade, the then Headmaster of the School in his individual capacity. On the contrary, by placing on record the documents referred hereinabove, the petitioners have negated the allegations made in the letter dated 3.9.2012.

26. In the order dated 3.9.2012, there is reference of

the Government letter dated 1.11.2001 and the letter dated 19.11.2000 by the Director of Education. However, in the entire judgment of the School Tribunal, there is no reference of the aforesaid two letters. It is further not revealed whether the copies of these letters were filed on record of the School Tribunal and whether they were relevant to decide the controversy in the matters before the Tribunal.

27. In the order dated 3.9.2012, it is the further contention that Bhanudas Deshmukh alone is the Secretary of the educational trust and there is no dispute existing as on date of issuance of the said order in regard to the management of the trust. The contention as aforesaid is also not established by Shri Bhanudas Deshmukh. On the contrary, from the material on record the contention of said Shri Deshmukh that, there are no disputes existing as on the date of issuance of the impugned order, apparently appears false. It has come on record that several change reports are pending before the Assistant Charity Commissioner relating to the management of the trust.

28. From the facts as aforesaid, it is, thus, evident that Shri Bhanudas Deshmukh has not at all substantiated the facts

asserted in the order dated 3.9.2012. In fact, when the grounds on which the appointments of the petitioners were cancelled by Shri Bhanudas Deshmukh were not substantiated by him, the order dated 3.9.2012 could not have been maintained by the Tribunal and was liable to be set aside. However, as I have mentioned earlier, the Tribunal has presumed the said facts to be true and correct. Such presumption was apparently wrong and it has resulted in recording erroneous conclusions by the Tribunal.

29. I am constrained to observe that the learned Tribunal has blindly relied upon the averments made by respondent No.3 Bhanudas Deshmukh in his affidavit in reply filed on 1.11.2012. It was the contention of Shri Deshmukh in the said affidavit in reply that the School Committee was not in existence and the appointments of the petitioners were not made by the School Committee but were made by Shri J.V. Gade, the then Headmaster in his individual capacity. The Tribunal has blindly accepted the said contention. As noted earlier, the appellants i.e. present petitioners had placed on record the additional affidavit in reply filed by Shri Laxman Kisanrao Pasalwad in Writ Petition No.5492/2011, on 8th of May, 2012, for and on behalf of the Education Officer

(Secondary), Zilla Parishad, Beed. In the said additional affidavit, it has been specifically averred that the appointments of the petitioners were made by the School Committee and the proposal for approval was also submitted by the School Committee and that the Education Officer granted approval to the said appointments after following due procedure and by verifying the requirements of law. The Tribunal has, however, misread and misinterpreted the averments in the said affidavit.

30. It is true that in the affidavit in reply filed by the Education Officer, secondary, Zilla Parishad, Beed, on 26.11.2010 in Writ Petition No.3940/2010, it was not disclosed that the Education Office has received the proposal from the School Committee of Vaijanath School, Parali Vaijnath, seeking approval to the appointments of the petitioners and that the said proposal was under consideration. However, in the additional affidavit in reply filed in Writ Petition No.5492/2011, on 8th of May, 2012, for and on behalf of the Education Officer (Secondary), Zilla Parishad, Beed, it has been amply clarified that it was an inadvertent mistake that the facts to the effect that the proposal is received from the School Committee of Vaijnath School, Parali Vaijnath, seeking approval to the appointments of the present petitioners and it is under

consideration was not mentioned. In the additional affidavit in reply, as stated hereinabove, it has been specifically stated that the proposal was received from the School Committee and the same was approved by the Education Office after verifying the requirements of law. I deem it appropriate to reproduce hereinbelow the entire contents of the said affidavit dated 8th of May, 2012, in W.P.No.5492/2011, which read thus:

"Additional affidavit in reply on behalf of
Respondents No.2.:

" I, Laxman s/o Kishanrao Pasalwad, Age 58 years, Occu. Govt. Service, at presently working as Office Superintendent in the office of Education Officer, Secondary, Zilla Parishad, Beed. I am filing this Additional Affidavit duly authorized by Education Officer, Secondary, Zilla Parishad, Beed, do hereby state on oath as under:-

1. I am filing this Additional-Affidavit in Reply on the basis of record available with the office of Education (Secondary), Zilla Parishad, Beed and as per authorization given by Incharge Education Officer, because regular Education Officer is on long medical leave.

2. That, in Writ Petition No.5492/2011, the Affidavit-in-Reply filed on behalf of me by one Mr.Shankar s/o Kashiram Pawar, the Education Officer (Secondary), Zilla Parishad, Beed, however, in addition to that reply, I am filing this additional affidavit-in-reply as under:

I say that, in Writ Petition No.3940/2010 the approval granted by Education Officer for the period of 3 months i.e. 16.08.2009 to 11.10.2009 was questioned. In the said petition, approval was granted on the basis of proposal submitted by the then Head Master. The said proposal was not backed by decision of the school committee, but same appears to be forwarded in individual capacity of Head Master, therefore, in paragraph No.5 (Page No.78) statement was made that, in case if in future, Head Master submits proposal, the same will be considered over after scrutiny.

3. I say that, affidavit was filed on 26.11.2010 in W.P.No.3940/2010, in the said Affidavit though the proposal

submitted by school committee dated 12.09.2010 was pending under consideration, the issue in Writ Petition No.3940/2010 was as to whether the Head Master in his individual capacity can forward the proposal or whether, he can give appointment was questioned. Therefore, in paragraph No.5, I had stated that, in case if the Head Master forward the proposal, the same would be scrutinized. I say that, the school committee's proposal dated 20.09.2010 was pending when earlier reply was filed / order was passed, but due to inadvertent, it could not pointed out that, the proposal has been submitted by School Committee on the basis of School Committee's resolution dated 12.09.2010. When the Head Master insisted to grant approval as per proposal for the future of students and when it is noticed that, the advertisement was issued by Head Master to fill-up the post on 26.08.2010, the school committee took decision on 12.09.2010, B.C. Cell's report on 17.09.2010 and appointment were issued to the employees on 13.09.2010 and the employees joined on 14.09.2010. The copy of request made by Head Master dated 08.06.2010, proposal dated 20.09.2010 and B.C.Cell Report are annexed herewith and marked as **EXHIBIT 'R-1'** Colly.

4. I say that, as the appointments were made and proposal was submitted by the School Committee as per circular issued by Director of Education time to time, wherein it is stated that, when there is dispute between management then as a secretary of school committee, Head Master can give appointment to the employees in the school for the period of three years. That, considering the need and urgency for appointment of the teachers in the said school for the interest of the students. The Education Officer has granted approval to the appointment of the respondents as per proposal submitted by school committee i.e. after verifying the requirement about advertisement B.C.Cell report, vacancy, etc., that, Head master empower issue appointment to the employees for the period of three years and after considering the requirement for approval Education Officer granted approval to the services of respondent w.e.f. 14.09.2010, because till 14.09.2010, appointment had been issued to the respondents employees but except earlier one approval for three months, there was no approval. Though employees were working with the school, that, till 14.09.2010, all the requirements had been complied by the school committee. Therefore, approval is granted w.e.f. 14.09.2010.

5. I say that, Education Officer granted approval to the services of respondent No.5 to 10 after following the due procedure and verifying the requirement of law. That, this deponent is tendering unconditional apology, because of not to pointing out the proposal submitted by the school committee

on 20.09.2010 as per Resolution dated 12.09.2010 which is inadvertent and is not deliberate or intentional. Therefore, this deponent is filing this Additional Affidavit-In-Reply.

Considering the above facts and circumstances, Writ Petition may kindly be dismissed.

Hence this Additional affidavit-In-Reply.

Date: 08/05/2012

DEPONENT

Place: Aurangabad.

Sd/- 8/5/12

(Laxman s/o Kishanrao Pasalwad)"

31. It is significant to note that in the affidavit in reply filed by Shri Bhanudas Deshmukh in the appeals before the School Committee though there is a reference of the affidavit in reply filed by the Education Officer on 26.11.2010 in Writ Petition No.3940/2010, there is no mention or disclosure about the additional affidavit in reply filed by the said Education Officer on 8th of May, 2012, in Writ Petition No.5492/2011. The affidavit in reply was filed by Shri Bhanudas Deshmukh in the appeals before the School Tribunal on 1.11.2012 i.e. after about six months of the filing of the additional affidavit in reply by the Education Officer in Writ Petition No.5492/2011. It has also to be stated that Shri Deshmukh withdrew the W.P.NO.5492/2011 on 30-10-2012 i.e. prior to filing affidavit in reply before the School-Tribunal; but he did not disclose the said fact in his said affidavit in reply. Shri Bhanudas Deshukh, thus, suppressed the said material facts in his affidavit in reply filed before the School Tribunal.

32. Shri Bhanudas Deshmukh, however, has mentioned about the order passed by the Division Bench on 9th of May, 2012 in Writ Petition No.5492/2011. It is quite evident that the said order was mentioned with the only intention of prejudicing the mind of the School Tribunal. I deem it appropriate to reproduce the order passed by the Division Bench of this Court on 9th of May, 2012 in Writ Petition No.5492/2011 which reads thus:

"1] Heard learned counsel for the parties.

2] Rule.

3] Our attention is invited to the affidavit in reply filed by one Laxman Kisanrao Pasalwad, on behalf of the Education Officer (Secondary) Zilla Parishad, Beed in earlier W.P. No. 3940 of 2010. It will be necessary to make a reference to what is stated in the said affidavit, which was filed on 26 November, 2010.

4] In paragraph 3 and in particular on page 78, it is stated that :-

"Hence, it is submitted that, this office has granted approval to the appointments made for the period from 16.8.2009 to 11.10.2009. It is submitted that, the school committee is not yet formulated in the petitioner institution however, the career of the students should not be placed at stay, as per the letter of the Director of Education, the Head Master has been given authority to make appointments. It is submitted that, as the approval has been granted for a period of 57 days i.e. from 16.8.2009 to 11.10.2009, the honorarium needs to be paid. However, it is brought to the notice of this Hon'ble High Court that the said appointments are purely on temporary and for a period of less than 3 months."

5] Now it is brought to our notice that the Education Officer Secondary, Zilla Parishad has granted approval to the appointment of the same persons w.e.f. 14th September, 2010. We may note that on the basis of the aforesaid statement made in the affidavit dated 26th November, 2010, by

order dated 7th December, 2010, this Court disposed of the writ petition, by accepting the statement made in paragraph 5 of the aforesaid affidavit. While disposing of the petition, this Court observed thus :-

"It is thus clear that unless the permission is obtained from B.C. Cell and the appointments are made in accordance with due process of law, the same would not be approved by the Education Officer."

6] Prima facie, we are of the view that after making categorical statement as aforesaid and after the order dated 7th December, 2010 was passed by this Court, the Education Officer, could not have granted approval with retrospective effect from 14.9.2010.

7] Prima facie, it appears that this will have to be viewed very seriously. However, at this stage we refrain from passing any further orders, as it is pointed by the learned AGP that the Education Officer is on Medical Leave.

8] Hence, Rule on interim relief is made returnable on 13th June, 2012. Concerned counsel appearing for the respondents waive service."

33. It is more significant to note that inspite of an order as above passed by the Division Bench, Shri Bhanudas Deshmukh withdrew Writ Petition No.5492/2011 on 30th of October, 2012. I reiterate that Shri Bhanudas Deshmukh did not controvert the averments made in the additional affidavit in reply filed by the Education Officer in Writ Petition No.5492/2011 on 8th of May, 2012 by filing any rejoinder to it. In the aforesaid writ petition, it was the specific allegation of Shri Bhanudas Deshmukh that the appointments of the petitioners w.e.f. 14.9.2010 were not made by the School Committee and were not made by following due process of law.

It was, therefore, the further contention of Shri Deshmukh that the Education Officer should not have granted approval to such appointments for the period of three years and Shri Deshmukh has, therefore, challenged the order of approval dated 23rd May, 2011 also.

34. The contents of the additional affidavit in reply filed by the Education Officer in Writ Petition No.5492/2011 on 8th of May, 2012, demonstrate that the Education Officer has specifically denied all the allegations made by Shri Bhanudas Deshmukh in respect of appointments of the petitioners and approval to the said appointments by the Education Office. When Shri Bhanudas Deshmukh inspite of the facts as above did not file any rejoinder to the additional affidavit in reply filed by the Education Officer and did not prosecute the writ petition further, and instead of that withdrew the writ petition on 30th of October, 2012, his such conduct leads to the only inference that he conceded to the facts as were stated by the Education Officer in his additional affidavit in reply. In the circumstances, I reiterate that it was not open and permissible for Shri Bhanudas Deshmukh to cancel the appointments of the petitioners on the grounds which were raised by him in Writ Petition No.5492/2011.

35. If it was the genuine complaint of Shri Bhanudas Deshmukh that the School Committee was not in existence and the appointments of the petitioners were not made by the School Committee and by following due procedure of law, he must have prosecuted the said writ petition and must have invited some verdict from the Division Bench on the issues raised by him. Learned School Tribunal has failed in appreciating the aforesaid aspects and ignoring the material on record as aforesaid, has recorded a conclusion that the petitioners have failed in establishing that their appointments were made by the School Committee by following due process of law. It is to be reiterated that by placing on record the Resolution of the School Committee dated 12th of September, 2010, and placing on record the order of approval granted to the said appointments by the Education Officer, wherein also it was categorically mentioned that appointments of the petitioners were made by the School Committee in accordance with law, the petitioners have sufficiently discharged the primary burden on them and when it was the case of respondent Bhanudas Deshmukh that the School Committee was not in existence at the relevant time, the said fact was to be proved by him. As elaborately discussed hereinabove, Shri

Bhanudas Deshmukh has failed in establishing his allegation that the School Committee was not in existence at the relevant time. In the circumstances, the finding recorded by the School Tribunal in the impugned judgments that the appellants / petitioners have failed in proving that their appointments were made by the School Committee and were made in accordance with law is contrary to the evidence on record and, therefore, deserves to be set aside and quashed.

36. Perusal of the impugned judgments reveals that the learned School Tribunal has misinterpreted the ratio laid down in the Full Bench judgment of this Court in the case of **St. Ulai High School and another VS. Devendraprasad Jagannath Singh and another (2007 (1) Mh.L.J. 597)**. The correctness of the law laid down in earlier the two Division Bench judgments of this Court; one in the matter of **Anna Manikrao Pethe Vs. Presiding Officer, School Tribunal (1997 (3) Mh.L.J. 697)** and the other in the matter of **Shailaja Ashokrao Walse Vs. State of Maharashtra (1999(1) Mh.L.J. 291)**, was questioned in the said Full Bench judgment. In both the aforesaid judgments, the respective Division Benches have held that where the appointment of a teacher has not been approved by the Education Officer, the

appeal filed by the teacher against an order of termination must fail on that ground alone. The Full Bench held that both the aforesaid judgments were not reflecting correct position of law. The Full Bench held that the grant of approval by the Education Officer is not a condition precedent to hold order of appointment valid and the approval relates to disbursement of grant in aid to the management and want of approval will not invalidate the order of appointment if it is otherwise valid. Referring to the ratio laid down as above in the aforesaid judgment, the School Tribunal has held that merely because the petitioners possess the approval to their appointments by the Education Officer, would not validate their appointments. In paragraph No.48 of the impugned judgment, the School Tribunal has further observed that the respondent no.3 Shri Bhanudas Deshmukh has already challenged the said order of approval in Writ Petition No.5492/2011 and the same is pending. The School Tribunal has further observed that when the issue of validity of the appointment order dated 23.5.2011 was under consideration of the High Court in the aforesaid writ petition, it was not open for the petitioners to take protection of the said approval order to justify the validity of their appointments. From the material on record it is quite clear that the observations so made by the Tribunal are not only

legally incorrect but are also factually incorrect. It is the matter of record that Shri Bhanudas Deshmukh withdrew Writ Petition No.5492/2011 on 30th of October, 2012, i.e. prior to about one and half years of the decision rendered by the School Tribunal. If the same logic is to be applied, as has been applied by the School Tribunal that when the validity of the approval order was under challenge the petitioners cannot take protection of the said order, it has to be held that it was not open and permissible for Shri Bhanudas Deshmukh to challenge the order of approval on the same grounds when he had given up the said challenge by withdrawing the said writ petition.

37. There cannot be a dispute that if the order of appointment is valid, it is immaterial whether it has received the approval from the Education Office or not and the services of such candidate cannot be terminated on the ground that the Education Office has not granted approval to his appointment. However, if the approval is granted by the Education Office and if somebody alleges that the approval so granted is illegal or in violation of the Act and the Rules, the burden lies on the person who makes such allegation to substantiate the said allegation.

38 I have elaborately discussed hereinabove that

though Shri Bhanudas Deshmukh has made such an allegation, he has utterly failed in proving the said allegation. When in the additional affidavit in reply filed by the Education Officer in Writ Petition No.5492/2011, he has clarified that the appointments of the petitioners were made by the School Committee and the Education Officer has granted approval to the said appointments after following due process of law and by verifying the requirements of law and when the copy of the said affidavit was filed on record of the School Tribunal, there was no reason for the School Tribunal to disbelieve the averments in the said additional affidavit filed by the Education Officer. When it was the contention of the Education Officer that the appointments of the petitioners are made by the School Committee by following due process of law, without there being any contrary evidence on record, the School Tribunal could not have recorded any contrary finding. At this juncture, it has to be reiterated that Shri Bhanudas Deshmukh had also filed a complaint to the Deputy Director of Education against the appointment orders of the petitioners and approval granted to their appointments by the Education Officer. The said allegations were enquired into by the Enquiry Officer and a clear finding was recorded by the Enquiry Officer that there was no substance in the allegations made by Shri Bhanudas

Deshmukh in his complaint. Shri Bhanudas Deshmukh admittedly did not challenge the findings in the said enquiry report before any higher authority.

39. After having considered the entire material on record, I have reached to the conclusion that the learned School Tribunal has manifestly erred in dismissing the appeals filed by the petitioners. The School Tribunal was swayed by the fact that the petitioners are kins of the Headmasters, and the members of the Managing Committee. The School Tribunal failed in appreciating that to be a kin of the Headmaster or the Member of the Managing Committee, cannot be a disqualification for a person if he is otherwise eligible to be appointed. In view of the fact that Shri Bhanudas Deshmukh, who cancelled the appointment orders of the petitioners, failed in justifying his said action and could not substantiate the grounds which were taken by him in the said order of cancellation, the said order has to be quashed and set aside.

40. In the foregoing circumstances and for the reasons stated above, I am inclined to allow all these Writ Petitions. Hence, the following order.

ORDER

1. The orders passed by the School Tribunal, Aurangabad, in Appeal Nos. 33/2012, 34/2012, 35/2012, 36/2012 and 37/2012 stand quashed and set aside.

2. The order dated 3.9.2012 whereby the appointments of the petitioners were cancelled by respondent no.3 Shri Bhanudas Deshmukh, stands set aside and quashed.

3. The respondents are directed to reinstate the petitioners on their respective posts with continuity of service, backwages and the consequential benefits within two months from the date of this order.

. The Writ Petitions are allowed in the aforesaid terms. No order as to the costs.

(P.R.BORA)
JUDGE