

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

WRIT PETITION NO.99 OF 2016

1. Balaji S/o. Maroti Kalal, **...PETITIONERS**
Age-26 years, Occu-Service,
R/o. Jamb (Bk), Tq. Mukhed,
Dist. Nanded
2. Ravikant S/o. Madhavrao Andure,
Age-30 years, Occu-Service,
R/o. Jamb (Bk), Tq. Mukhed,
Dist. Nanded
3. Balaji S/o. Shivaji Biradar,
Age-27 years, Occu-Service,
R/o. Vadgaon, TQ. Mukhed,
Dist. Nanded

VERSUS

1. The State of Maharashtra **...RESPONDENTS**
Through its Secretary,
Education And Sports Department
Mantralaya, Mumbai-32
2. The Deputy Director of Education (Primary)
Maharashtra State,
Pune
3. The Education Officer (Primary)
Zilla Parishad, Latur
4. Vidyadevi Dnyanamrut Shikshan Sanstha,
Manjari, Tq. Mukhed, Dist. Nanded
Through its Secretary

5. Samartha Dhondutatya Primary School,
Wadhwana (Bk), Taluka Udgir,
Dist. Latur
Through its Headmaster

Mr.V.S.Panpatte, Advocate for the petitioners
Ms.C.S.Kulkarni, AGP for the respondent/State
Mr.P.R.Tandale, Advocate for respondent No.3
Mr.A.N.Nagargoje, Advocate for respondent Nos.4 and 5

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 29.01.2018

PRONOUNCED ON : 12.04.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. With the consent of the parties the matter is taken up for final hearing.

2. By this petition under Article 226 of the Constitution Of India the petitioners have claimed following substantive reliefs:

D. Rule may be made absolute and by allowing this petition the following reliefs may be granted.

I. Hold and declare that petitioners are entitled for absorption on the establishment of respondent No.5 school in accordance with the seniority on the

posts available on the establishment of respondent No.5-school consequent upon retirement of Shrirame Hanumant Marotirao and Thote B.M. and likelihood of creation of the posts of the Assistant Teacher and direct respondent Nos. 2 to 5 to absorb the petitioners on the posts of Assistant Teacher and pay to the petitioners regular monthly salary applicable to the post of Assistant Teacher by extending to the petitioners continuity of service and all other consequential benefits.

II. Pending such absorption, direct respondent Nos. 2 to 5 to pay to the petitioners regular monthly salary applicable to the post of Assistant Teacher.

III. Restrain respondent Nos. 2 to 5 to recruit any other person or fill up the posts of surplus teacher on the establishment of respondent Nos.5-school on the creation of vacancy due to retirement of Shrirame Hanumant Marotirao and Thote B.M.

3. Facts giving rise to this petition are as under:

I. Case of the petitioner is that respondent No.2 is the Deputy Director of Education (Primary),

Maharashtra State, Pune. Respondent No.3 is the Education Officer (Primary), Zilla Parishad, Latur. Respondent No.4 is Sanstha which runs by respondent No.5 Primary School where the petitioners are serving.

II. According to the petitioners respondent No.5 school had invited applications for filling up the posts of Shikshan Sevak by issuing advertisement in the local news paper. Accordingly in response thereto, the petitioners had applied for consideration of their candidature for appointment on the posts of Shikshan Sevak. Petitioner Nos.1 and 2 were appointed as a Shikshan Sevak on 08.10.2011 and petitioner No.3 was appointed as Shikshan Sevak on 31.12.2011. Thus, respondent No.4 is the employer of the petitioners and after following the due process of law the petitioners were appointed as Shikshan Sevak on the establishment of respondent No.5-school on sanctioned posts.

III. It is the case of the petitioner that there was some enquiry initiated by the State Government against the Education Officer who had granted approval to the appointments of the petitioners. As per communication of the Desk Officer dated 16.03.2013, the approvals granted by the said Education Officer were stayed during pendency

of the enquiry against the said Officer and on that basis salary of the petitioners pursuant to the approval order has not been released.

IV. Being aggrieved and dissatisfied by the stoppage of salary and non-payment of salary and order contained in the communication dated 16th March, 2013 the petitioners have approached this Court by filing writ petition being writ petition No.10098/2014.

It is apparent from the contentions raised in the said writ petition as well from the record available with the petitioners that the posts upon which the petitioners have been appointed were the posts attached to the respondent No.5-school of an institution where the divisions have become surplus or for want of students the divisions could not be run. The divisions alongwith the posts sanctioned thereon have been transferred to respondent No.5 and on the said posts which are admissible for grants, were sanctioned on the establishment of respondent No.5. Considering the said aspect only the then Education Officer had granted approval to the appointments of the petitioners on the posts which are receiving grant-in-aid. The aforesaid

aspect has been highlighted in the enquiry also and the petitioners can demonstrate from the enquiry report that neither they were party to the alleged violation of any rule nor they were in any manner concern with the irregularities committed by the then Education Officer. The approval order issued by the Education Officer is in accordance with the additional posts sanctioned because of the attachment of divisions on the establishment of respondent No.5-school.

V. It is contended that keeping aside the said controversy for a while, it would be important to note that the petitioners have completed their tenure of appointment as a Shikshan Sevak and have attained the status of permanency having completed three-years of service on the establishment of respondent No.5 school in the year 2014 itself. Even otherwise also the petitioners having rendered three-years continuous service on the posts which are admissible for grants, they are entitled to be absorbed in any other institution in accordance with the provisions contained in the Maharashtra Employees of Private Schools Act and Rules (for short 'the MEPS Act and Rules') framed there under.

VI According to the petitioners without entering

into the controversy as to whether the posts upon which they were appointed and whether they were admissible or not, the petitioners can be accommodated on the establishment of respondent No.5 School because there is likelihood of retirement of two teachers, namely, Shrirame Hanumant Marotirao retiring on 31.12.2015, Thote B.M. retiring on 31.03.2016 and in accordance with staff sanction for 2014-15 there is possibility of creation of two to three additional posts keeping aside the issue of additional divisions having been attached to respondent No.5 school.

VII. The petitioners had filed representation to respondent Nos.2 and 3 thereby pointing out therein the possibility of creation of the posts where the petitioners could be accommodated. Till this date there is no action initiated by respondent Nos.2 and 3 on the representation submitted by the petitioners and there is every likelihood of respondent Nos.2 and 3 for filling up the posts held by Shrirame Hanumant Marotirao and Thote B.M. by accommodating either service candidate or respondent Nos. 4 and 5 filling up the posts by inviting fresh candidates. It is contended that the inaction complained is arbitrary, illegal and unsustainable in law.

4. Respondent No.3 has filed affidavit-in-reply of Sanjay Vasant Rao Kshirsagar, Superintendent, Class-II in the department of Education (Primary), Zilla Parishad, Latur stating that respondent No.5 school run by respondent No.4 is 100% aided school. According to the staff approval, 1 post of Headmaster, 1 post of Primary Graduate Teacher, 8 posts of Asst. Teacher and as such 10 posts are sanctioned and grant in aid is provided.

5. Further it is stated that in the year 2010-11, the then Education Officer (Primary), Zilla Parishad, Latur had granted staff approval of 14 (1 post of Headmaster, one post of primary graduate teacher, 12 posts of Asstt. Teacher thus total 14 posts) for the respondent No.5 school by allotting & granting four divisions from 2nd to 5th Std by absorption which were closed down. Such an act of the then Education Officer granting said staff approval, and also allotment and granting divisions by absorption & permission to run standards 2nd to 5th in favour of the respondent No.5 school itself was illegal, irregular and without authority. In view of this situation, government by its letter dated 16.03.2013 directed present respondent to not to give any approval and also not to make any payment

of salary to the present petitioners. Therefore, present respondent authority did not make any payment and give approval to the post of petitioners.

6. It is stated that on 3rd to 5th October 2011 special Muster Roll Verification program was conducted by the government including the respondent No.5 school. In the said verification, it was found by the enquiry committee that the attendance of the students was not as per the norms prescribed in the rules.

7. It is further stated that in view of the facts referred above, large numbers of complaints were received to the respondent authorities. On receiving such complaints, government decided to conduct an enquiry through the committee headed by Id. Shri Ghonmode Dy. Director. Said committee had submitted its report to the Government. Upon receiving report of the committee, government taken a decision in the matter that the unauthorized allotted divisions by the then Education Officer (Primary) Zilla Parishad, Latur made unaided.

8. It is stated that the respondent No.5 school was allotted 4 divisions unauthorizedly i.e. by absorption, which were closed down earlier point of time by the then

Education Officer (Primary), Zilla Parishad, Latur and has given approval to the staff of 14 (1 Post of Headmaster, one post of Primary Graduate Teacher, 12 posts of Asstt. Teacher thus total 14 posts) for such divisions including present petitioners is being illegal and without authority. Therefore, present petitioners are not entitled for claiming any relief as prayed for.

9. It is further submitted that in view of the above submissions and considering the government resolution dated 02.12.2014, the respondent authority is not responsible for the payment of salary to such petitioners who are being appointed by the respondent school on such unauthorized divisions.

10. It is further submitted that petitioner is claiming posting by inter-transfer in the place of one Shri Shrirame who has retired as Asst. Teacher on 31.12.2015 from one of the schools run by the respondent No.4. This request of the petitioner also cannot be granted for the reason that as on 29.01.2015 172 Asstt. Teachers are declared as surplus by the present respondent authority and unless absorption of those teachers is made, it is not possible to absorb petitioners in the respondent No.5 school or any other

school run by the respondent No.4 society. It is contended that in view of the above facts and circumstances, there is no irregularity, illegality or arbitrariness in not giving approval to the post of present petitioners by the present respondent authority.

11. The additional affidavit-in-reply of Shaikh Nazeeruddin Mohd. Ismil is filed on behalf of respondent No.3 on 27.11.2017 stating that the name of the respondent No.5 school was not recommended by the authority to bring them on non-grant basis nor on self finance basis in view of the government resolution dated 06.07.2017. Therefore, it is very clear from the government resolution dated 02.12.2014, government communication letter dated 04.12.2014 and government resolution dated 07.07.2017 that there is no recommendation or any order in respect of grant of permission of additional divisions to the said school. That irregularly granted additional divisions cannot be considered for granting additional divisions for want of sufficient strength of students found in the school at the time of re-verification of muster roll in the school.

12. It is further stated that on 10.11.2017 when the petition came up for hearing before this Hon'ble Court

the statement on behalf of respondent No.3 was made that under the government resolution dated 04.07.2016 decision is taken to place all these divisions on self finance basis. Said communication was received by the advocate of the present respondent on the cell phone orally on the same date and it was just miscommunication and it was subject to production of relevant document. There was no intention to make misleading statement just it was miscommunication because of that it happened. Present respondent tenders unconditional apology for the same.

13. The affidavit-in-rejoinder of petitioner No.1 is filed on behalf of the petitioners to the affidavit-in-reply filed on behalf of respondent No.3. In the said affidavit in paragraph Nos. 1,2,3 and 4 it is stated as under:-

1. I say that as contended in the memo of writ petition, we, the petitioners having requisite qualification to be appointed as Shikshan Sevaks, the respondent Nos.4 and 5 by issuing advertisement, by following process of interview and selection, came to be appointed by respondent No.3 to the posts of Shikshan Sevaks in the respondent No.5 school w.e.f. 11.10.2011,

11.10.2011 and 05.01.2012 and since then we are in continuous service in the said school. I say that though our said appointments are made on additional divisions absorbed by the then Education Officer (Primary), Z.P. Latur on the establishment of respondent No.5 school, but the same were aided divisions and as such our appointments are deemed to have been made against clear vacant and sanctioned posts. Accordingly, in due course, the respondent No.5 forwarded proposals for getting approvals to our appointments and the then Education Officer after scrutiny of the said proposal and by following due procedure, granted approvals to our appointments as Shikshan Sevaks by order dated 05.03.2012 for a period of three years. I say that, accordingly, we, the petitioners have also completed the said period of three years as Shikshan Sevaks satisfactorily. I say that ultimately, the respondent No.4 society by passing resolution dated 15.06.2016 resolved to confirm our services and accordingly, confirmed our services. A copy of resolution dated 15.06.2016 passed by the respondent NO.4-society is annexed herewith and marked as **Exhibit-"F"**.

2. I say that, in due course, the respondent No.5 submitted proposal dated 23.06.2016 before the respondent No.3 Education Officer for getting permanent approvals to our services as Assistant Teachers in regular pay-scale. However, the respondent No.3 till this date neither considered nor responded the said proposal. Therefore, as per Govt. Resolution dated 14.10.2014, permanent approval is deemed to have been granted to our services. I further respectfully say that, as per sub-section (2A) of Section 5 of the M.E.P.S.Act, 1977 we are deemed confirmed employees and in view of Full Bench judgment dated 31.08.2007 in writ petition No.4645/2006 of our High Court at Bombay, permanent status of Assistant Teachers has been conferred on us. Copies of Govt. Resolution dated 14.10.2014 and full Bench Judgment dated 31.08.2007 of our High Court at Bombay in writ petition No.4645/2006 are annexed herewith and marked as **Exhibit-"G"**.

3. I say that, since permanent teachers of the schools run by the respondent No.4

society itself, namely, Shri H.M. Shrirame, Shri R.A.Biradar and Shri B.D. Chavan came to be retired on 01.01.2016, 01.01.2016 and 01.04.2017 and the said posts are vacant. Therefore, we the petitioners can very well be absorbed on the said posts as per the provisions of Rule 26 of the MEPS, Rules, 1981. Therefore, the petitioner made a detailed representation dated 07.02.2017 in this regard to the Dy. Director of Education, Latur by endorsing copy to the respondent No.3 Education Officer, however, our genuine request has not been considered till this date. A copy of representation dated 07.02.2017 made to the Dy. Director of Education Latur is annexed herewith and marked as **Exhibit-"H"**.

4. I say that, though in the affidavit-in-reply filed on behalf of the respondent No.3, it has been averred in para No.10 that there are 172 surplus teachers available as on 29.01.2015, however, till today the respondent No.3 has not taken any decision as to whether at the time of our appointments made in the respondent No.3 there were any surplus teachers. I therefore respectfully say that the writ petition deserves

to be allowed by directing the respondent No.3 to grant permanent approvals to our services as Assistant Teachers in the schools run by the respondent No.5-school, by directing our absorption on the posts of above said retired employees.

14. Moreover, affidavit of petitioner No.1 is filed in view of the order dated 10.11.2017 stating that after going through the record and the Government Resolution dated 04.07.2016 which is dated 04.07.2017, contending that the statement made by the respondent No.3 stating that, the division on which the petitioners were working has been brought on self finance basis, is incorrect and misleading one.

15. It is stated that, due to the above mentioned act of the respondent No.3, the petitioners are deprived from getting their valuable rights created under the provisions of Sec. 5(2) of the MEPS Act, by which they have received status of permanent employees. Therefore, the respondent No.3 should be dealt with disciplinary proceedings as being a Public Officer and have made incorrect statement, misrepresented and made misstatements of facts without taking utmost care while

making the statement and that too before the High Court.

16. The additional affidavit-in-reply on behalf of respondent No.3 of Shaikh Nazeeruddin Mohd. Ismil, Education Officer (Primary), Zilla Parishad, Latur in pursuance to the order dated 10.11.2017 is filed. In the said affidavit it is stated that the then Education Officer (Pri) had granted additional divisions to the respondent NO.5 school by an order dated ___/___/2011 vide communication out ward No.Jipla/Shikshan/Karya-13/CR/2011 by granting additional divisions for second, third, fourth and fifth standards for the academic year 2011-12 and committed irregularity in granting four divisions to respondent No.5 school.

17. So also, it is further stated that the then Education Officer (Pri), Zilla Parishad, Latur had granted approval for 3 academic years to the present petitioners and one Mr. Keshgire N.L. who were working in the respondent No.5 school by an order dated 05.03.2012 with effect from 11.10.2011 on grant in aid basis.

18. Moreover, it is stated that the Director of Education (Primary) M.S. by its order dated 13.01.2014 (letter bearing No.Khaprasha/2014/518/512-A-1) directed

respondent authority to conduct muster roll verification of all the schools at a time within the Latur District to clarify three points in view of the enquiry report submitted by the authorities in respect of allotment of additional divisions from the closed divisions and granting approval irregularly and illegally to the surplus teachers and therefore after conducting muster roll verification at a time as directed by the higher authority Zilla Parishad Latur had submitted its report to the authority on 23.06.2014. In the said report it has been clearly mentioned in point No.2 that there were no sufficient strength of students present in the school at the time of muster roll verification conducted in the respondent No.5 school which was expected by the rules for granting additional divisions to the school. Therefore, present respondent did not recommend the name of the respondent No.5 school to the government. Further it is stated that in the Latur District at present 90 teachers are declared surplus and as the present petitioners are appointed on such divisions, which were irregularly and illegally granted by the then Education Officer. In such circumstances, present petitioners cannot be absorbed or transferred in grant in aid school.

19. So also, additional affidavit of Shaikh

Nazeeruddin Mohd. Ismil, Deputy Education Officer (Pri), Zilla Parishad, Latur is filed on behalf of respondent No.3 on 24.01.2018. In the said affidavit it is stated that the staffing pattern for the academic year 2011-2012 of the respondent No.5 School namely Dhondutatya Primary School, Wadhwana (B), Tq. Udgir, Dist. Latur which is run by one Vidhyadevi Dnyananmrut Shikshan Sanstha Manjari Tq. Mukhed, Dist. Nanded cannot be decided in view of the Sec. 19 and 25 of the Right to Education Act 2009 i.e. 1:30 for the reason that the then Education Officer (Primary) had sanctioned divisions in the year 2011-12 irregularly and without authority and the petitioners were appointed on those divisions. The Right to Education Act 2009 is made applicable in the State of Maharashtra from 1st of April, 2010. For the applicability of the provisions of the said act, certain guidelines are prescribed in the Government Resolution dated 13.12.2013 & 28.08.2015 and in view of those government resolutions staffing pattern for the academic year 2016-17 is sanctioned.

20. Moreover it is stated that, in view of the irregularities committed by the then Education Officer (Pri) Zilla Parishad, Latur this High Court in the Criminal Public Interest Litigation bearing NO.10 of 2016

was pleased to direct the police authority, Shivaji Nagar Police Station, Latur on the basis of complaint filed by one Shri V.M. Bhosle to prosecute concern Officers. Further it is contended that in view of the government resolution dated 13.12.2013, with an intention to regularize those irregularly granted divisions within the Latur district, government of Maharashtra instructed to conduct muster roll verification at a time within the district. Total 58 schools were verified in a day out of which in view of the government resolution dated 02.12.2014, 147 divisions were found admissible from 37 schools as there were sufficient strength of students available. Out of remaining 20 schools as sufficient strength was not found in 6 schools, on the said day, so, divisions were not granted to those 6 schools, respondent No.5 school is one of the schools in those 6 schools. Therefore, in view of the government resolution dated 02.12.2014 as the sufficient strength of students on muster roll of the school was not found as per the government resolution dated 13.12.2013 divisions of those schools could not be granted for non grant basis. The Chief Executive Officer, Zilla Parishad, Latur had submitted its report to that effect on 23.06.2014 to the Government. So also, it is stated that there is no sufficient strength of students in the respondent No.5

school in the year 2011-12 to grant additional divisions and as per the school report card total 270 students were on the muster of the school and therefore, as per sec. 19 & 25 of the Right to Education Act, 2009 1 post of head master, 7 posts of teachers were admissible and for the 6th std to 7th std strength of students of muster was 79 so 2 posts of trend graduate teachers were admissible. Thus, total 10 could have been sanctioned. Total 14 posts have been sanctioned for the academic year 2011-2012 and approval was given to the petitioner by an order dated 01.03.2012 which itself was irregular and illegal one.

21. Learned Advocate appearing for the petitioners made submissions in the light of contentions raised in the petition and re-rejoinder affidavit, more particularly he submits that petitioner Nos. 1 and 2 were appointed on 08.10.2011 and petitioner No.3 was appointed on 31.12.2011 as Shikshan Sevak by respondent No.4 Sanstha in respondent No.5 primary school. The approval to their appointments was granted by respondent No.3- Education Officer (Primary), Zilla Parishad, Latur on 05.03.2012 for a period of three years from 11.10.2011 to petitioner Nos.1 and 2 and to petitioner No.3 from 05.01.2012 on aided basis. They have completed three years service as a Shikshan Sevak from their respective

appointments and as such they have confirmed as a Teacher in view of the Sub-section 2-A of Section 5 of the MEPS Act and Rules. Their appointments were on clear vacancies in respondent No.5 school which is receiving grant-in-aid. Therefore, their salary cannot be stopped on the ground that the Education Officer illegally approved appointments of the petitioners and four divisions to respondent No.5 school as per letter dated 16.03.2013 of respondent No.1 State to the Education Officer (Primary), Zilla Parishad, Latur and two others. Therefore, he submitted that the writ petition be allowed and petitioners be absorbed on the post as Assistant Teacher available on the establishment of respondent No.5 school consequent upon retirement of Assistant Teachers Shri H.M. Shrirame, Shri R.A.Biradar and B.C. Chavan and on the likelihood of creation of posts of Assistant Teacher and to restrain respondent Nos.2 to 5 from filling the said post until absorption of the petitioners.

22. To support his submissions learned Advocate for the petitioners has relied upon the Full Bench decision of this Court in the Case of Ram Avadh Mahel Pal Vs Shivdutta Educational Trust and others reported in 2007 (6) ALL MR 716 (Exh.G) and in the case of Vyankatesh Jaiprakash Gangamwar Vs The State of Maharashtra and

others in writ petition No.11107/2014 (Coram:S.S. Shinde and P.R. Bora, JJ.) decided on 08.04.2015. In the case of Ram Avadh Mahel Pal (supra) it has been held that as a result of the amendment, it had been provided that every person appointed as Shikshan Sevak shall be on probation for a period of three years. Moreover, subject to the provisions of sub-sections (3) and (4) of Section 5 a Shikshan Sevak shall on completion of the probation period of three years be deemed to have been appointed and confirmed as a teacher.

23. In the case of Vyankatesh Jaiprakash Gangamwar (supra) in paragraph Nos. 13 and 14 it was observed as under:-

13. On considering the entire material placed on record and in particular the advertisement, the appointment letter of the petitioner, approval granted by the Education Officer, and also approval for continuation of the petitioner on the post of Shikshan Sevak in particular pay scale, unequivocally indicates that, the petitioner was appointed as per the relevant procedure against the open post as it is evident from the perusal of the advertisement. The rights are crystallized in favour of the petitioner. The petitioner, who is qualified and appointed in accordance with the procedure established and the relevant provisions, cannot be non suited after 5 years from his date of appointment, thereby causing serious prejudice to his interest. It was for the respondent authorities to take

into consideration all relevant factors while appointment of the petitioner or at the earliest opportunity of granting his approval to the services of the petitioner.

14. *Prima facie*, in our opinion, respondent authorities have failed in their duties at the relevant time and belatedly tried to make an attempt to dislodge the petitioner from the post of Shikshan Sevak, contrary to the material available on record. In that view of the matter, in our considered view, the petition deserves to be allowed partly. Accordingly, petition is allowed in terms of prayer clause-B. In addition to the prayer clause-B, we direct the respondent Nos. 2 and 3 to restore, maintain and follow the order of approval dated 28.08.2012 and the confirmation order dated 6th August, 2013 at Exhibit-C granted to the appointment of the petitioner as Shikshan Sevak.

24. Learned AGP appearing for respondent Nos. 1 and 2 and learned Advocate appearing for respondent No.3 made submissions in the light of replies filed on behalf of said respondents. Learned AGP appearing for respondent Nos. 1 and 2 supported the action taken by respondent No.1 directing the Education Officer and others to take action against the Education Officer who illegally approved the appointments of the petitioners.

25. We have carefully considered the submissions made by the above said Advocates and learned AGP. With their assistance we have perused the pleadings on record

and the documents produced by the petitioners and the respondent No.3 in support of their contentions.

26. As per the case of the petitioner respondent No.5-school had invited the applications for filling up the posts of Shikshan Sevak by issuing advertisement in the local news paper. In response thereto they had applied for consideration of their candidature for appointment on the posts of Shikshan Sevak. The petitioner Nos.1 and 2 were appointed as Shikshan Sevak on 08.10.2011 and petitioner No.3 was appointed as Shikshan Sevak on 31.12.2011 by respondent No.4 employer Institution in respondent No.5 school as per appointment orders respectively (Exh.A & B Colly, Page Nos.14 to 16). So also, it is the contention of the petitioners that the said advertised posts were sanctioned on the establishment of the school as per staff sanctioned orders for the academic years 2011-12 and 2012-13. Respondent No.3 who has only filed reply and additional affidavit in reply has not denied above said contentions of the petitioners. Therefore, it can be said that posts on which the petitioners were appointed, were advertised and sanctioned posts.

27. The sanction order dated 01.03.2012 shows that

for the year 2011-12, 1 Headmaster, 1 Primary Teacher Graduate, and 10 Primary Teachers on aided basis were sanctioned for the year 2011-12 for respondent No.5 school. So also, sanctioned order dated 21.06.2013 shows that for the year 2012-13, 1 Headmaster, 1 Primary Graduate Teacher and 8 Primary Teachers total 10 posts were sanctioned on aided basis. The said sanctioned orders shows that these three petitioners and one Keshgire Nagnath Laxman total 4 Primary Teachers were found appointed on four divisions i.e. 2nd Std, 3rd Std, 4th Std and 5th Std and directions were issued not to make payment of the said Primary Teachers until further orders. It appears from the letter dated 05.03.2012 of the Education Officer (Primary), Zilla Parishad, Latur that approval was given to the appointment of the petitioners and one Keshgire Nagnath Laxman as a Shikshan Sevak for a period of three years from the dates shown against their names on aided basis. Petitioner Nos.1 and 2 were granted approval from 11.10.2011 on aided basis for three years and petitioner No.3 was granted approval from 05.01.2012 on aided basis for three educational years as a Shikshan Sevak. Thus, this letter of Education Officer (Primary), Zilla Parishad, Latur shows that to the appointment of the petitioner Nos. 1 and 2 as Shikshan sevak approval was given till 10.10.2014 and to

the appointment of petitioner No.3 the approval was given till 04.01.2015. There is no dispute that petitioners are still serving in respondent No.5 school. Thus it is clear that the petitioners have served continuously for three years from the date of their appointments as a Shikshan Sevak and as such they are deemed to be confirmed as a Teacher as per sub-section 3 and 4 of Section 5 of the MEPS Act and Rules as per ratio laid down in the case of Ram Avadh Mahel Pal (supra).

28. It appears that after the order dated 05.03.2012 of Education Officer (Primary), Zilla Parishad, Latur granting approval to the appointments of the petitioners for a period of three years, by letter dated 16.03.2013 the Desk Officer, Maharashtra Government, addressed to the Director of Education (Primary), Latur and others informed to stay all the orders issued by the Education Officer (Primary), Zilla Parishad, Latur as enquiry was initiated against him in respect of illegally issuing appointment orders of Shikshan Sevak and approval to the said appointments etc. However, when the petitioners were appointed on the sanctioned and advertised posts of Shikshan Sevak, and when they have continuously worked for three years and confirmed as a Shikshan Sevak as observed earlier, and when approval was granted to their

appointments, merely because enquiry is pending against the then Education Officer (Primary), Zilla Parishad, Latur in respect of allegations made against him, their appointments cannot be said to be illegal as contended by respondent No.3 Education Officer (Primary), Zilla Parishad, Latur.

29. It is pertinent to note that, according to the petitioners two teachers namely Shri H.M. Shrirame and Shri B.M. Thote were respectively retired on 31.12.2015 and 31.03.2016 and also there is possibility of creation of 2 to 3 additional posts, in that case even keeping aside the issue of additional divisions having been attached to respondent No.5 school, they can be accommodated on the said vacant posts. The said contention has not been denied by respondents.

30. It is the contention of respondent No.3 that, there are surplus teachers who are to be accommodated, and on 29.01.2015 there were in all 172 Assistant Teachers, who were declared as surplus in the Latur District. Therefore, unless those teachers are absorbed it is not possible to absorb the petitioners in respondent No.5 school or in any other school run by respondent No.4. As per the Government Resolution dated

02.05.2012 and in particular clause-1.8, unless 100% surplus teachers are accommodated, no new teachers can be recruited in private schools or schools established by local bodies. Petitioner Nos. 1 and 2 were appointed as per order dated 08.10.2011 and petitioner No.3 was appointed on 31.12.2011. Respondent No.3 has not specifically stated that particular number of Assistant Teachers were surplus teachers in Latur District when the petitioners were appointed as Shikshan Sevak. So also, the Education Officer (Primary) has not produced anything on record showing that the names of the Assistant Teachers who were declared surplus, when the appointments of the petitioners were made, were sent to respondent No.5 school for appointing them as Assistant Teachers. Considering the date of said Government Resolution and the fact that petitioner Nos. 1 and 2 were appointed on 08.10.2011, and petitioner No.3 was appointed on 31.12.2011, above said clause in the Government Resolution dated 02.05.2012, cannot be made applicable to the case of the petitioners. Therefore, the contention of respondent No.3 that unless Assistant Teachers who are surplus, are appointed, the petitioners cannot be absorbed, is not sustainable in the peculiar facts of this case.

31. For the forgoing reasons we hold that the petitioners are entitled to be absorbed on the establishment of respondent No.5 school in accordance with seniority on the posts available on the establishment of respondent No.5 school as Assistant Teachers, respondent Nos.2 to 5 cannot recruit any other person till the petitioners are absorbed and said respondents shall regularly pay monthly salary applicable to the posts of Assistant Teacher to the petitioners till they are absorbed.

32. In the result the writ petition is allowed. Rule is made absolute in terms of prayer clauses-D-I, II and III. No order as to costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]